



INTEGRITY DIVISION  
DISCIPLINARY AND ETHICS UNIT

## **CASE LAW**

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

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Foreword

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Dear Sir or Madam,

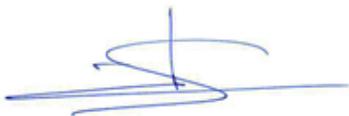
I am pleased to provide you with the case law of the UEFA Control, Ethics and Disciplinary Body and the UEFA Appeals Body for the period January-July 2017.

According to Article 5& 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**

A handwritten signature in blue ink, appearing to be 'Emilio García', with a stylized flourish at the end.

**Emilio García**  
**Managing Director 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 January 2017

Apoel FC

(racist behaviour, throwing of objects, crowd disturbances)

### **Circumstances of the case**

The Match Delegate of the match between APOEL FC and Olympiacos FC on 8 December 2016 reported that during the closing stages of the Match, supporters of each team verbally provoked each other in the North stand area. During this period of provocation, five supporters (of each team) climbed over the security fences and tried to attack each other. Such disturbance was however stopped by the stewards and police. Furthermore, supporters of each team (in the North stand area) threw plastic cups at each other during the final stages of the Match. After the Match, a FARE observer noted that he had observed certain racist incidents during the Match. As it was further corroborated by photo evidence, APOEL FC supporters in the East stand displayed a large flag featuring a styled Nazi SS Totenkopf skull together with the club emblem. The flag was on display throughout the match waved by APOEL supporters

### **Legal framework**

Article 14 (1) and (2) of the UEFA Disciplinary Regulations, Article 16 (2) (b) and (h) of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided to impose a partial stadium closure of at least 1'000 seats on the club as well as the additional obligation to display a "No to racism" banner. With regard to the Article 16 DR offences, the CEDB identified and took into account the seriousness of the offences committed, noting that such acts present a threat to the health and safety of supporters and other persons in the stadium, and the club's previous record, noting that the Club has been punished for such offences before. Based on the foregoing, the CEDB considers that a fine of €30,000 is the appropriate sanction for these offences.

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 (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 UEFA delegate for the UEFA Europa League 2016/2017 match between APOEL FC (the "**Club**") and Olympiacos FC on 8 December 2016 (the "**Match**") reported that:
  - during the closing stages of the Match, supporters of each team verbally provoked each other in the North stand area;
  - during this period of provocation, five supporters (of each team) climbed over the security fences and tried to attack each other;
  - such disturbance was stopped by the stewards and police;
  - supporters of each team (in the North stand area) threw plastic cups at each other during the final stages of the Match; and
  - after the Match, a FARE observer noted that he had observed certain racist incidents during the Match.
4. In his report, the FARE observer states that:

*"Approximately 20 minutes before the kick-off, APOEL supporters in the East stand displayed a large flag featuring a styled Nazi SS Totenkopf skull together with the club emblem. The flag was on display throughout the match waved by APOEL supporters..."*

*The Nazi SS Totenkopf division was part of the regular German Nazi troops during the World War II. The skull in its original or styled form is widely used by far-right groups in Europe."*

## II. The Respondent's position

5. In its statements dated 14 and 16 December 2016, the Club:
  - admits that the crowd disturbance and throwing of objects occurred;
  - denies that it is guilty of any racism offence; and

- in this regard, argues that the symbol shown on the flag identified by the FARE observer is not in the FARE manual and is therefore not prohibited.
6. 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

7. 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 the case.
8. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

#### B. The racist behaviour

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

9. 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.
10. According to 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.
11. Under Article 14 (2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club shall be punished with a minimum of a partial stadium closure.
12. 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*

13. Article 14 DR is a special rule (building on the principle set out in Article 8 DR) which stipulates that clubs are responsible for the racist conduct of their supporters.
14. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club in question (i.e. 'strict liability').

15. It has long been established in case law that strict liability applies regardless of fault. As a matter of fact, the 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).
16. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Racist behaviour is considered a serious offence under the DR and must be punished (having regard to the circumstances and the relevant club's previous record) with the utmost severe sanctions.
17. In the present case, the UEFA delegate was informed by a FARE observer that a banner displaying an image based on a Nazi symbol was displayed by the Club's supporters during the Match.
18. Subsequently, in his report, the FARE observer clarified the nature of the relevant Nazi symbol, as well as providing a photograph of the flag and other supporting images.
19. The CEDB notes that the Nazi SS Totenkopf skull does feature in the FARE manual (see page 10 of that document). However, in any event, it is noted that the FARE manual is not intended to be an exhaustive list of prohibited symbols (as stated on page 4 of that document).
20. Further, the FARE observer provided an image showing the same stylised version of the Nazi SS Totenkopf division logo that appeared on the flag (with bones substituted with knives and German World War II cap) on a far-right "SS" badge.
21. Based on this evidence, the CEDB concludes that the flag displayed by the Club's supporters was indeed styled on the Nazi SS Totenkopf skull.
22. This kind of imagery is an instantly recognisable form of racism which draws upon the repugnant imagery of Nazism. Such behaviour is completely unacceptable and has no place in football.
23. In light of the foregoing, the CEDB concludes that the conduct of the Club's supporters violated Article 14(1) DR and must be punished accordingly.

C. The improper conduct of supporters: crowd disturbance and the throwing of objects

a) *Applicable legal framework and general remarks*

24. According to Article 16 (2) DR:

*"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.*

25. 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*

26. Crowd disturbances and throwing objects are very serious offences because not only can this behaviour disrupt the orderly running of the match but also, more importantly, it can endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, such behaviour is strictly forbidden.
27. 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.
28. 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).
29. In the present case, various plastic cups were thrown and supporters of the Club also attempted to attack Olympiacos supporters.
30. This has been admitted by the Club.
31. The CEDB deems that these incidents are obvious examples of a lack of discipline from the Club's supporters as they endangered the physical integrity of those present in the stadium, as well as showing a complete disregard for any civic rules.
32. Consequently, under Articles 16(2)(b) and (h) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

33. 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.
34. With regard to the racist behaviour, the CEDB wishes to draw attention to the fact that, following the implementation of the 2013 edition of the DR (and as subsequently confirmed again in the 2014 and 2016 editions of the DR), UEFA's fight against racist behaviour entered a new era. This has resulted in more severe sanctions being imposed in respect of racist behaviour.
35. In light of the foregoing, applying Article 14 (2) DR, the Club shall be punished for the racist behaviour of its supporters at the Match with a partial stadium closure.
36. In addition, the Club shall display a banner bearing the words "*No to Racism*" alongside the UEFA logo in the closed sector(s).
37. With regard to the Article 16 DR offences, the CEDB identified and took into account the seriousness of the offences committed (noting that such acts present a threat to the health and safety of supporters and other persons in the stadium) and the Club's previous record (noting that the Club has been punished for such offences before). Based on the foregoing, the CEDB considers that a fine of €30,000 is the appropriate sanction for these offences.

## Decision of 23 February 2017

FC Schalke 04

(setting off of fireworks, throwing of objects)

### **Circumstances of the case**

The Match Delegate of the match between FC Salzburg and Schalke 04 on 8 December 2016 reported that in the 52nd minute of the match, a lump of ice was at the home-team goalkeeper by the away-supporters. Also, approximately 155 pyrotechnics were ignited by the away-team supporters before and during the match. It started 40 minutes before kick-off and can be summarized as follows: 15 fireworks ignited pre-match, 35 at kick-off, 55 during the first half of the match, 15 at the start of the second half of the match and 35 during the second half. The referee stopped the match in the 3<sup>rd</sup> minute for one minute to let the smoke clear. Several requests were made over the public announcement system urging the away-supporters to stop.

**Legal framework** Article 16 (2) (b) and (c) of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") took into account the multiplicity of the offences committed and the number of fireworks being ignited, the club's previous record, noting that Schalke 04 has already been punished for the setting-off/throwing of fireworks and objects, the seriousness of the offences committed as well as the fact that the number of fireworks being set off was shockingly high. In the light of the above considerations, by applying Article 6 (5) DR as well as to its Annex A, the CEDB deems that a total fine of €80'000 is the appropriate sanction.

Ad-hoc Chairman: Hansen Jim Stjerne (DEN)

Vice-Chairmen: Berzi Sándor (HUN)

Members:  
Antenen Jacques (SUI)  
Gea Tomás (AND)  
Leal João (POR)  
Řepka Rudolf (CZE)  
Larumbe Beain Kepa (ESP)

## 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. While 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. Briefly, according to the UEFA delegate's official report for the UEFA Europa League 2016/2017 match between FC Salzburg and FC Schalke 04 (the "**Club**") on 8 December 2016 (the "**Match**"), the most relevant facts of this case can be summarised as follows:
  - In the 52<sup>nd</sup> minute of the match, a lump of ice was at the home-team goalkeeper by the away-supporters.
  - Approximately 155 pyrotechnics were ignited by the away-team supporters before and during the match. It started 40 minutes before kick-off and can be summarized as follows: 15 fireworks ignited pre-match, 35 at kick-off, 55 during the first half of the match, 15 at the start of the 2<sup>nd</sup> half of the match and 35 during the second half. The referee stopped the match in the 3<sup>rd</sup> minute for one minute to let the smoke clear. Several requests were made over the public announcement system urging the away-supporters to stop.

## II. The Respondent's position

4. In its statement dated 15 December 2016, the Club:
  - states that despite the fact that the home club was warned about the possible usage of pyrotechnics by the away-club's supporters, the latter's security personal did not properly conduct body searches and in some cases, even when pyrotechnics were found, such items have not been confiscated.
  - alleges that despite what had been agreed during the MD-1 security meeting, supporters who tried to bring pyrotechnic to the stadium have been granted access by the home club's stewards. Also, no ID's have been protocolled which did not allow the Club to impose additional sanctions on the relevant supporters.
  - suggests that it has no information about the throwing of a lump of ice and demanded further explanations in this regard.
5. The more detailed arguments made by the Club 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 the case.
7. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

#### B. The improper conduct of supporters: setting off of fireworks and throwing of objects

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

8. According to Article 16 (2) DR:

*"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 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*

10. Setting off fireworks and throwing of objects are very serious offences 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 perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums, as well as, for the same reason, the throwing of such devices and other objects, is strictly forbidden.

11. 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.
12. 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).
13. In the present case, a total of 155 fireworks was lit and a piece of ice was thrown at the home club's goalkeeper by the supporters of the Club.
14. The CEDB deems that this incident is an obvious examples of a lack of discipline from the Club's supporters as it endangered the physical integrity of those present in the stadium, as well as showing a disregard for any civic rules.
15. Moreover, the CEDB noted that the Club did not provide any explanation whatsoever for the reported incidents and, as far as the fireworks are concerned, merely tried to shift the responsibility towards the home club.
16. However, the CEDB came to the conclusion that none of the arguments provided by the Club were sufficient to show a possible inaccuracy of the UEFA match delegate's report, neither in connection with the reported setting of off fireworks nor the throwing of objects. In particular in relation to the throwing of the lump of ice, the Club asked for an explanation of the incident, whereas, on the contrary, it would have been the obligation of the Club to provide further explanations in order to possibly justify the behavior of its supporters.
17. Consequently, again bearing in mind that the reported violations have undoubtedly been established by the report of the UEFA match delegate, according to Article 16(2)(b) and (c) DR above, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

18. 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.
19. In this regard, the CEDB took into account the seriousness and multiplicity of the offences committed as well as the previous record of the Club, whose supporters have committed the same violations already at previous occasions. As regards the seriousness of the violation, the CEDB in particular focused its attention on the setting off of fireworks and the incredibly high number of 155 fireworks which was to be considered as a shockingly high number and likewise a particularly serious violation of Article 16 (2) (b) DR.

20. The CEDB subsequently referred to Article 6 (5) DR as well as to its Annex A which stipulates standard sanctions, this *inter alia* for the setting off of fireworks. Said Annex suggests a fine of €500 per firework lit, plus, in case of recidivism as in the present case, an additional 50% of the basic fine. Therefore, by simply applying the proposed standard sanction, the sanction would have been a fine of €116'250.
21. However, the CEDB deemed that the behaviour of the Club prior to the match also has to be taken into account, which gave the CEDB the impression that the Club is committed to work on the issue and to find solutions in order to avoid similar violations in the future.
22. Consequently, the CEDB considers that a fine of €80,000 is the appropriate sanction in respect of such offences.

## Decision of 23 February 2017

AFC Ajax

(setting off of fireworks, throwing of objects)

### **Circumstances of the case**

The Match Delegate of the match between AFC Ajax and R. Standard de Liège on 8 December 2016 reported that there were incidents of pyrotechnics and other items thrown onto the field of play by the away fans in stand causing injuries as well as the game to be stopped for several minutes. Additionally, a battery charger for a mobile telephone was thrown onto the field of play by the away-supporters during the first half.

**Legal framework Article** 16 (2) (b) and (c) of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") took into account the multiplicity of the offences committed and the number of fireworks being ignited, the club's previous record, noting that AFC Ajax has already been punished for the setting-off/throwing of fireworks and objects, the seriousness of the offences committed as well as the fact that the setting off of fireworks had caused a delay in the match. In the light of the above considerations, the CEDB deems that a total fine of €40'000 is the appropriate sanction.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Hansen Jim Stjerne (DEN) Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Larumbe Beain Kepa (ESP) Lorenz Hans (GER) Repka Rudolf (CZE)

## 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 reports of the UEFA match delegate and the UEFA security officer at the UEFA Europa League 2016/2017 Group stage match on 8 December 2016 between Standard de Liège and AFC Ajax, can be summarised as follows:
  - There were incidents of pyrotechnics and other items thrown onto the field of play by the away fans in stand 4, causing a minor burn injury to a steward. There were also pyrotechnics lit in the away tribune and 1 pyrotechnic thrown into the home sector in stand 4 causing injury to a home supporter who was taken to hospital for minor burns to his face and arm. Also a pyrotechnic was lit in the home tribune, stand 3.
  - At 9:02pm as the players entered the field of play, the home-team supporters in stand 3 sector H3 lit a red Bengal-pyrotechnic.
  - In the 6<sup>th</sup> minute of the match, a coordinated act took place in the away sector of stand 4 when approximately 9 Bengal-pyrotechnics were thrown onto the field of play. At the same time, approximately 5 Bengal-fireworks were lit in the away sector and an additional Bengal pyrotechnic was thrown from the away sector into the home fans sector of that stand, causing minor burn injuries to a home-team supporter who was taken to hospital as a precaution.
  - Because of the amount of smoke affecting the pitch and the match, the game was stopped for approximately 3 minutes by the referee and the first step of the three step procedure to warn fans of their behavior was announced over the PA system.
  - Additionally, a battery charger for a mobile telephone was thrown onto the field of play by the away-supporters during the first half. This was retrieved by a steward and handed to the UEFA Venue Director.

## II. The Respondent's position

3. In its statement dated 19 January 2017, AFC Ajax argues the following:
  - It has various thoroughly thought-out and meticulous procedures with respect to measures before, during and after (identification and punishment perpetrators) every match in order to, at the best possible manner, prevent and/or stop disorderly behavior of supporters. These measures are implemented in scenario scripts (briefing for all security personnel, including all stewards) drafted for each specific match, which are carried out in a highly professional way by the Ajax security personnel in

- close cooperation with the Ajax stewards, and also with the away security persons and the local and the Amsterdam police.
- The club is was disappointed to read that the report of the UEFA match delegate stated the organization of the Ajax stewards was unsatisfactory. The club underlined that its security apparels if a high quality level and very often highly praised by the Royal Dutch Football Association, an example for many clubs both a National and International level.
  - Finally, the club wished to emphasize that the fact that the supporters did not behave well, which is unacceptable for Ajax as well, does not mean he security has failed in any manner at any time whatsoever.
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 improper conduct of supporters: setting off of fireworks and throwing of objects

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

7. According to Article 16 (2) DR:

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. Setting off fireworks and throwing objects are serious offences because not only can they disrupt the orderly running of the match but also, and more importantly, they can endanger the physical integrity of those lighting the fireworks, of other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums, as well as the throwing of objects, is strictly forbidden.
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. 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).
12. In the present case, as it was not disputed by the club, not only did the AFC Ajax supporters ignite numerous fireworks which already has to be considered as dangerous, but further was a Bengal-light and a battery charger thrown into the section of the home-supporters, even resulting in an injury of a supporter. Even though the behavior of the club’s supporters luckily only caused a minor injury to a home-team supporter, such behavior not only shows a shocking disregard of the club’s supporters for the rules of UEFA as well as the rules and regulations which are generally to be respected inside stadiums, but also for the health and safety of other supporters. Such behavior cannot be tolerated and is utmost unacceptable.
13. The Control, Ethics and Disciplinary Body emphasized that the above described incidents are obvious examples of a lack of discipline from AFC Ajax’s supporters, as they infringed several provisions of the UEFA regulations and in doing so put the physical integrity of the home-team supporters and other persons in danger, as well as showing a complete disrespect for any civic rules.
14. Given that the club did not dispute the occurrence of the events, the Control, Ethics and Disciplinary Body consequently decided that, according to Article 16 (2) (b) and (c) DR above, Ajax AFC 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. In the case of multiple offences, the punishment shall correspond to the most serious offence and be increased depending on the specific circumstances.

16. The Control, Ethics and Disciplinary Body further recalled Article 6 (5) DR and Annex A where standard measures are stipulated and where it is *inter alia* stated that for the setting off of fireworks, a fine of €500 per firework being ignited, plus an extra 50% fine in case of recidivism, is the standard sanction.
17. Moreover, in the present case, the Control, Ethics and Disciplinary Body identified and took into account the following:
  - the multiplicity of the offences committed and the number of fireworks being ignited;
  - the club's previous record, noting that AFC Ajax has already been punished for the setting-off/throwing of fireworks and objects;
  - the seriousness of the offences committed, noting that the club's supporters not only endangered themselves, but created a risk for life and safety of the home-team supporters, thereby even causing an injury, by also throwing the fireworks, which is a particularly dangerous and severe violation of the DR;
  - the fact that the setting off of fireworks caused a delay in the match;
18. Additionally, the Control, Ethics and Disciplinary Body acknowledged as a mitigating circumstance the club's continuous efforts to improve the situation and urged the club to take even better and more intensive precautions in order to avoid such incidents in the future.
19. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that a total fine of €40'000 is the appropriate sanction.

## Decision of 23 February 2017

Legia Warszawa

(illicit banner, not complying with UEFA disciplinary decision)

### **Circumstances of the case**

It was reported by the Match Delegate on 22 November 2016, that one controversial banners "Fuck UEFA - MAFIA" were displayed by Legia Warszawa supporters. Also, on 12 December 2016, the Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided to appoint an Ethics and Disciplinary Inspector to analyse the complete scope of potential infringements against the club, including here the non-compliance with a previous decision of the CEDB of 10 November 2016, which imposed towards Legia Warszawa banning the latter from selling tickets to its away fans. It

**Legal framework** Article 16 (2) (e) of the UEFA Disciplinary Regulations, Article 11 (2) (e) of the UEFA Disciplinary Regulations,

### **Decision**

The CEDB deemed that the club did act diligently acted in order to comply with the CEDB decision of November and so impede that the said supporters had access to tickets for that particular match. Therefore, the CEDB couldn't hold the club responsible for a non-compliance of its previous decision imposed on the latter, even though the entrance of the away supporters at the stadium and the deriving incidents produced by them were regrettable. Regarding the illicit banner, the CEDB was convinced that the banner was provocative and transported a message which was not fit for a sports event. Consequently, the CEDB imposed a fine of €17'000.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Hansen Jim Stjerne (DEN) Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Larumbe Beain Kepa (ESP) Repka Rudolf (CZE)

## **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. On 22 November 2016, Borussia Dortmund played a UEFA Champions League match against Legia Warszawa. The delegate of the match reported the following incidents:
  - One controversial banner "Fuck UEFA".
3. On 12 December 2016, the Control, Ethics and Disciplinary Body decided to appoint an ethics and disciplinary inspector to analyse the complete scope of potential infringements against the club, including here the non-compliance with a previous decision of the Control, Ethics and Disciplinary Body of 10 November 2016, which imposed towards Legia Warszawa banning the latter from selling tickets to its away fans.
4. On 5 January 2017, the Ethics and Disciplinary Inspector submitted his report. In summary he requested to impose a sanction against the club for illicit banners and for the non-compliance of the previous CEDB sanction imposed to Legia Warszawa.

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

5. The Club in its statements dated on 29 November 2016, argues that before the match it informed its supporters that the club will not organize the transportation for the match, nor will sell any tickets. The club was in constant contact with Borussia's officials during which the club informed and asked Borussia not to sell tickets for the match to any supporters having Polish nationality. Briefly, Legia fully acted in line with the decision leaving no space for error in regards to the imposed sanction.
6. Regarding the other incidents, the club holds that these supporters even wearing symbols and colors of Legia were present at the match only due to the fact that they bought tickets to Borussia. Consequently, the club should not be considered as the entity responsible for any of the safety measures during the match. It fully cooperated with Borussia's officials during and after the match. It had no chances to prevent the display of the illicit banner.
7. 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.

8. 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.
9. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The incident

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

10. According to Article 11 DR:

1. *Member associations and clubs, as well as their players, officials and members, and all persons assigned by UEFA to exercise a function, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.*
2. *For example, a breach of these principles is committed by anyone:*
  - a. *who engages in or attempts to engage in active or passive bribery and/or corruption;*
  - b. *whose conduct is insulting or otherwise violates the basic rules of decent conduct;*
  - c. *who uses sporting events for manifestations of a non-sporting nature;*
  - d. *whose conduct brings the sport of football, and UEFA in particular, into disrepute;*
  - e. *who does not abide by decisions or directives of the UEFA Organs for the Administration of Justice, or decisions of the Court of Arbitration for Sport involving UEFA as a party or between two UEFA members associations;*
  - f. *who does not comply with instructions given by match officials;*
  - g. *who does not pay for tickets received from another club or national association;*
  - h. *who culpably reports late – or not at all – for a match, or is responsible for a late kick-off;*
  - i. *who culpably causes a match to be interrupted or abandoned, or is responsible for its interruption or abandonment;*
  - j. *who enters a player on a match sheet who is not eligible to play.*
3. *Breaches of the above-mentioned principles and rules are punished by means of disciplinary measures.*

*b) The responsibility of the club*

11. In the present case following a previous Control, Ethics and Disciplinary Body decision of 10 November 2016, Legia Warszawa was banned from selling tickets to away supporters.
12. On 22 November 2016, Borussia Dortmund played a UEFA Champions League match against Legia Warszawa. At this match, Legia Warszawa supporters managed to enter the stadium. These supporters were indeed allocated to a particular section of the match.
13. The Ethics and Disciplinary Inspectors deems that indeed Legia Warszawa incurred in an infringement listed in Article 11 (2) DR. The club did not abide a decision of the Control, Ethics and Disciplinary Body.
14. The club, in substance, asserts that it implemented every possible measure to impede that away supporters could both have access to tickets and enter the stadium.
15. The Control, Ethics and Disciplinary Body deems that the club did act diligently acted in order to comply with the CEDB decision of November and so impede that the said supporters had access to tickets for that particular match.
16. For the above mentioned reasons, the Control, Ethics and Disciplinary Body can't hold the club responsible for a non compliance of its previous decision imposed on the latter, even though the entrance of the away supporters at the stadium and the deriving incidents produced by them are regrettable.

C. Illicit banner

*a) Applicable legal framework and general remarks*

17. According to Article 16 (2) (e) DR, 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;
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 Control, Ethics and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise their political, ideological, religious or

provocative opinions. This is the reason why Article 16 (2) (e) DR expressly forbids the transmission of any message which is not fit for football during football matches.

20. In the present case, a controversial banner "Fuck UEFA" was displayed by Legia supporters.
21. The club in its statements does not contest the accuracy of the report of the delegate or the content of the banner. It merely explained it implemented every possible measure to impede its supporters to enter the stadium. Those entering the stadium, even though they wore Legia symbols, entered because they bought tickets to Borussia.
22. First and foremost, the Control, Ethics and Disciplinary Body recalls that UEFA in its regulations to the notion of supporters leaves an open definition and provides UEFA with a more comprehensive and reasonable scope of action on disciplinary matters. The use of the term "supporter" must remain open in order to be able to act against conduct by individuals that could harm the aims and values of UEFA.
23. Bearing in mind the above, it is unconstested the fact that the spectators displaying the above mentioned banner were indeed to be consider as Legia supporters. Indeed, these supporters were identified by the host team as Legia supporters and placed in a specific section of the stadium for this reason. In addition, the club confirms the fact that they wore symbols connecting them to the club.
24. Bearing the above in mind, after having evaluated the information provided by the UEFA delegate concerning the banner in question, the Control, Ethics and Disciplinary Body reiterated that it is obviously not fit for a sport's event. Consequently, the banner violates Article 16 (2) (e) DR. The club must be held responsible and punished accordingly.

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

25. 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.
26. 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: Legia Warszawa has already been punished several times for the inappropriate behaviour of its supporters, and, in particular, for the displaying of illicit banners.
27. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that 17'000 shall be deemed as the adequate disciplinary measure.

## Decision of 23 February 2017

Borussia Dortmund

(illicit banner, stairways blocked, not complying with UEFA disciplinary decision)

### **Circumstances of the case:**

It was reported by the Match Delegate on 22 November 2016, that five controversial banners "Fuck UEFA - MAFIA" were displayed by Borussia Dortmund supporters. Moreover, the stairways in the Dortmund supporters South End were partly occupied the whole match, impeding the free flow of spectators especially in the lower section of the South End. Also, on 12 December 2016, the Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided to appoint an Ethics and Disciplinary Inspector to analyse the complete scope of potential infringements against the club, including here the non-compliance with a previous decision of the CEDB of 10 November 2016, which imposed towards Legia Warszawa banning the latter from selling tickets to its away fans.

**Legal framework** Article 16 (2) (e) of the UEFA Disciplinary Regulations, Article 38 UEFA Safety and Security Regulations, Article 11 (2) (e) of the UEFA Disciplinary Regulations

### **Decision**

The CEDB decided that the banners under scrutiny were clearly provocative and the message incorporated in it are definitely not fit for a sports event, while also coming to the conclusion the despite the explanations provided by the club, the passageways were blocked during the match as stated by the delegate and admitted by the club. Regarding the alleged non-compliance with a previous CEDB decision, the CEDB decided that the club complied with the UEFA Safety and Security Regulations insofar it segregated this group from the other spectators inside the stadium. In total, the CEDB imposed a fine of €30'000 on the club.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Hansen Jim Stjerne (DEN) Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Larumbe Beain Kepa (ESP) Repka Rudolf (CZE)

## **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. On 22 November 2016, Borussia Dortmund played a UEFA Champions League match against Legia Warszawa. The delegate of the match reported the following incidents:
  - Five controversial banner "Fuck UEFA - MAFIA".
  - Stairs in the Dortmund supporters South End were partly occupied the whole match. Dortmund really tried to keep them open by sending pre-information about it to its supporters via different social media channels before the match (info 1-4) and placing more stewards to the staircases. Stairs were more open than earlier match but unfortunately standing on staircases impeded also this time partly the free flow of spectators especially in the lower section of the South End.
3. On 12 December 2016, the Control, Ethics and Disciplinary Body decided to appoint a ethics and disciplinary inspector to analyse the complete scope of potential infringements against the club, including here the non compliance with a previous decision of the Control, Ethics and Disciplinary Body of 10 November 2016, which imposed towards Legia Warszawa banning the latter from selling tickets to its away fans.
4. On 5 January 2017, the Ethics and Disciplinary Inspector submitted his report. In summary he requested to impose a sanction against the club for the blocking of stairways, for illicit banners and thirdly for the non-compliance of the previous CEDB sanction imposed to Legia Warszawa.

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

5. The Club in its statements dated on 29 November 2016 and 18 January 2017, requested that the Control, Ethics and Disciplinary would take into consideration the several improvements in relation to potential blocking of stairways incidents by implementing a number of security measures, in comparison with previous matches.
6. Regarding the illicit banners, the club draws the attention to its immediate reaction to remove the banners hung at the South end sector. However, due to safety and security reasons, which would have included the entrance to the sector and trigger a dangerous situation, the other banners displayed by the supporters had not been removed.

7. Regarding the away supporters entering the stadium, the club draws the attention to fact that for this specific match a named ticketing system was implemented. However, the club can't control the transfer of these tickets to third parties due to the fact that this isn't prohibited in accordance to German law. There is a high number of Polish persons living in Germany who most likely have acquired the ticket directly from the ticket holders.
8. During the match 300 spectators were identified as Polish and for security reasons segregated from the other spectators and allocated to a specific section of the stadium. Indeed, 50 out of the 300 Polish spectators were indeed Legia supporters.
9. In addition, the club insists on the fact that several security measures were implemented in order to avoid away supporters to enter the stadium. In particular, the fact that further 50 tickets were resold is indeed an infringement against the general conditions included in the tickets. The club is examining the existence of potential legal claims towards these individuals
10. 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.

11. 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.
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 incident

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

13. According to Article 11 DR:
  1. *Member associations and clubs, as well as their players, officials and members, and all persons assigned by UEFA to exercise a function, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.*
  2. *For example, a breach of these principles is committed by anyone:*
    - a. *who engages in or attempts to engage in active or passive bribery and/or corruption;*

- b. *whose conduct is insulting or otherwise violates the basic rules of decent conduct;*
  - c. *who uses sporting events for manifestations of a non-sporting nature;*
  - d. *whose conduct brings the sport of football, and UEFA in particular, into disrepute;*
  - e. *who does not abide by decisions or directives of the UEFA Organs for the Administration of Justice, or decisions of the Court of Arbitration for Sport involving UEFA as a party or between two UEFA members associations;*
  - f. *who does not comply with instructions given by match officials;*
  - g. *who does not pay for tickets received from another club or national association;*
  - h. *who culpably reports late – or not at all – for a match, or is responsible for a late kick-off;*
  - i. *who culpably causes a match to be interrupted or abandoned, or is responsible for its interruption or abandonment;*
  - j. *who enters a player on a match sheet who is not eligible to play.*
3. *Breaches of the above-mentioned principles and rules are punished by means of disciplinary measures.*

*b) The responsibility of the club*

14. In the present case following a previous Control, Ethics and Disciplinary Body decision of 10 November 2016, Legia Warszawa was banned from selling tickets to away supporters.
15. On 22 November 2016, Borussia Dortmund played a UEFA Champions League match against Legia Warszawa. At this match, Legia Warszawa supporters managed to enter the stadium. These supporters were indeed allocated to a particular section of the match.
16. The Ethics and Disciplinary Inspectors deems that Borussia Dortmund incurred in an infringement listed in Article 11 (2) DR. The club did not abide a decision of the Control, Ethics and Disciplinary Body.
17. The club, in substance, asserts that it implemented every possible measure to impede that away supporters could both have access to tickets and enter the stadium. It also submits that potential legal claims may derive from an alleged infringement of the ticket general conditions against those supporters having resold their tickets.
18. The Control, Ethics and Disciplinary Body deems that the club did act diligently to impede that the said supporters entered the stadium, as well as, once a small number of these supporters entered the stadium it complied also with the UEFA Safety and Security Regulations insofar it segregated this group from the other spectators inside the stadium (Article 10, 17 and 27 UEFA Safety and Security Regulations).
19. For the above mentioned reasons, the Control, Ethics and Disciplinary Body can't hold the club responsible for a non compliance of its previous decision imposed on Legia

Warszawa, even though the entrance of the away supporters at the stadium and the deriving incidents produced by them are regrettable.

C. The blocking of stairways

20. 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.
21. 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*

22. 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.
23. In the present case, stairs in the Dortmund supporters South End were partly occupied the whole match. Dortmund really tried to keep them open by sending pre-information about it to its supporters via different social media channels before the match (info 1-4) and placing more stewards to the staircases. Stairs were more open than earlier match but unfortunately standing on staircases impeded also this time partly the free flow of spectators especially in the lower section of the South End.
24. 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.
25. 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*).
26. 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.
27. 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.

28. Moreover, the Control, Ethics and Disciplinary Body took note that the club merely argued that it took proactive measures in order to keep the stairways unblocked during the match. However, these arguments do not have any relevance whilst establishing the existence of the club's responsibility in keeping those stairways free of any obstructions. In this regard, the Control, Ethics and Disciplinary Body took note of the fact that pictures attached to the official reports evidenced that stairways were blocked by supporters during the above mentioned match.
29. 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, the latter violated Article 38 UEFA Safety and Security Regulations and needs to be punished accordingly.

D. Illicit banner

*a) Applicable legal framework and general remarks*

30. According to Article 16 (2) (e) DR, 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;
31. 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*

32. The Control, Ethics and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise their political, ideological, religious or provocative opinions. This is the reason why Article 16 (2) (e) DR expressly forbids the transmission of any message which is not fit for football during football matches.
33. In the present case, five controversial banner "Fuck UEFA - MAFIA".
34. The club in its statements does not contest the accuracy of the report of the delegate or the content of the banner and merely explained that the banners were removed immediately from the South end section while others couldn't be removed for security reasons.
35. The Control, Ethics and Disciplinary Body however had to come to the conclusion that this explanation does not change the character of the banner and the provocative

connotation of it. As such, said banner and the message incorporated in it are definitely not fit for a sports event and therefore violate Article 16 (2) (e) DR.

36. Bearing the above in mind, after having evaluated the information provided by the UEFA delegate concerning the banner in question, the Control, Ethics and Disciplinary Body reiterated that it is obviously not fit for a sport's event. Consequently, the banner violates Article 16 (2) (e) DR. The club must be held responsible and punished accordingly.

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

37. 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.
38. According to Art. 17 (3) DR, in case of offences related to Article 16 (2) (e) DR, the competent disciplinary body may take into consideration the immediate reaction of the host club or national association as a mitigating circumstance.
39. The Control, Ethics and Disciplinary Body notes that the Ethics and Disciplinary Inspector requests different sanctions for the blocking of stairways and the illicit banners. Even if this UEFA disciplinary body shares some circumstances as relevant for determining the sanction, there are some other elements which have not been taken into consideration by the Ethics and Disciplinary Inspector that also need to be included when imposing the correct sanction. 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: Borussia Dortmund has already been punished several times for the inappropriate behaviour of its supporters, and, in particular, for the displaying of illicit banners.
  - The high number of illicit banners displayed and the duration of such a display, strengthen the illicit message and its visibility.
  - the club's previous record: Borussia Dortmund has already been punished several times for the insufficient organisation, and, in particular, for the blocking of stairways.
  - Both the fact that the club took immediate action and removed some banners, but did not try or was prepared to remove the others.
40. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that a fine of €30'000 shall be deemed as the adequate disciplinary measure.

## Decision of 23 February 2017

FK Austria Wien

(racist behaviour, setting off of fireworks)

### **Circumstances of the case**

It was reported by the Match Delegate on 8 December 2016, that pyrotechnics such as bengal lights, smoke bombs and blinkers were used by FK Austria Wien supporters. Moreover, a controversial flag (Reichskriegsflagge) was raised on the upper tier at the main stand in the 28<sup>th</sup> minute of the match by a FK Austria Wien supporter group "Unsterblich". Stewards removed the flag.

**Legal framework** Article 14 (1) and (2) of the UEFA Disciplinary Regulations Article 16 (2) (c) of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") emphasized that UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Racist behaviour is considered a serious offence under the DR and must be punished with the utmost severe sanctions. In view of the club's previous record, taking into account aggravating and mitigating circumstances, the CEDB deemed that a partial stadium closure of at least 1'500 seats shall be considered the appropriate sanction for the racist behaviour of the club's supporters, while also deciding that the club shall display a banner bearing the words "No to Racism" alongside the UEFA logo in the closed sectors, covering the same amount of seats. With regard to the other violations, the CEDB decided to impose a fine of €4'000.

Ad- hoc Chairman: Hansen Jim Stjerne (DEN)

Vice-Chairman: Berzi Sándor (HUN)

Members:  
Antenen Jacques (SUI)  
Gea Tomás (AND)  
Larumbe Beain Kepa (ESP)  
Lorenz Hans (GER)

**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 UEFA delegate for the UEFA Europa League 2016/2017 match between Viktoria Plzen and FK Austria Wien (the "**Club**") on 8 December 2016 (the "**Match**") reported that:
  - Use of pyrotechnics (bengal lights, smoke bombs, blinkers), controversial flag (Kriegsflagge).
  - Due to previous incidents, this match was spotted by FARE as a potential risk match in matter of discrimination. A FARE observer was present at the match and informed me that the Kriegsflagge was raised on the upper tier at the mainstand (19.29 hrs = 28th minute). Stewards removed the flag.
  - According to the FARE observer and the security officer of the home club, another Kriegsflagge (similar to the first one) was raised shortly after. This time they refused to give the flag to the stewards and the situation became aggressive. According to the security officer of the home club, the flag was not raised in second half due to good communication with the supporters and presents of an Austrian steward.
  - Pyrotechnics used 4 times during the match: During walk on/line up – blinkers and 1 bengal light; 19<sup>th</sup> minute (1.goal Austria Wien) – 2 bengal lights; 40<sup>th</sup> minute (2.goal Austria Wien) – 1 bengal light; 90<sup>th</sup> minute – 1 smoke bomb.
4. The illicit banner was also observed and photographed by a representative of FARE who reported that:

*"...Approximately in the 7th minute into the game, Austria Wien away fans in section A displayed a flag reading 'Unsterblich' styled as the German Reichskriegsflagge (war flag). The flag was used by the Nazis since 1935 and is commonly used by far-right groups across Europe. Far-right groups in football often replace the original colours and swastika with the colours and emblem of their club respectively.*

...

*The displayed flag belongs to a neo-Nazi group of FK Austria Wien supporters named 'Unsterblich'. The flag is banned from FK Austria Wien home matches...*

...

*At the 7th minute in the beginning of the game it was attached to a railing in front of Austria Wien supporters in sector A. The flag remained on display till 36th minute, held by at least 5 different individuals and briefly attached to other railing in front of the entire sector. The flag disappeared between 36th and 42nd minute to reappear again the beginning of the second half. The flag was on display again from the beginning of the second half till approximately 87-88th minute into the game."*

## II. The Respondent's position

5. In its statement dated 17 December 2016, the Club:
  - explained that it has banned the "Unsterblich" group from its own stadium;
  - suggests that it works hard to prevent the "Unsterblich" group from attending its away games (including the Match), and that it, in order to ensure that these banned supporters cannot get access to the stadium, introduced the obligation for its away-supporters to purchase personalized tickets only.
  - added that this is why these banned supporters from the "Unsterblich" group were forced to purchase tickets in the home sector of Viktoria Plzen.
  - claims that it cannot accept any responsibility for the reported incident since it was not at fault itself, which is why no sanction can be imposed on the Club.
6. 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.

7. 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 the case.
8. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The racist behaviour

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

9. 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.
10. According to 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.
11. Under Article 14 (2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club shall be punished with a minimum of a partial stadium closure.
12. 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*

13. Article 14 DR is a special rule (building on the principle set out in Article 8 DR) which stipulates that clubs are responsible for the racist conduct of their supporters.
14. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club in question (i.e. 'strict liability').
15. It has long been established in case law that strict liability applies regardless of fault (emphasis added). As a matter of fact, the 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).
16. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Racist behaviour is considered a serious offence under the DR and must be punished (having regard to the circumstances and the relevant club's previous record) with the utmost severe sanctions.
17. In the present case, the UEFA match delegate and the FARE observer equally observed that a banner inspired by a Nazi-inspired variation of the "Reichskriegsflagge" was displayed by a section of the Club's supporters known as the "Unsterblich" group on numerous occasions during the Match.
18. The CEDB notes that such emblems and variations of Nazi symbols in which the respective club's logos and emblems are incorporated are commonly used by far-right groups in football and has been displayed by the Club's supporters already on previous occasions.

19. As it was already stated in previous decisions against the Club in connection with the same violation, the CEDB reiterated that this kind of imagery is an instantly recognisable form of racism which draws upon the repugnant imagery of Nazism. The CEDB again emphasized that such behaviour is completely unacceptable and has no place in football.
20. The Club has not provided any evidence that would breach the accuracy of the UEFA delegate's official report and, as a matter of fact, has not disputed the occurrence of the reported incident, which clearly states that the banner was displayed by its supporters and which is supported by the photographic evidence presented by the FARE observer.
21. In light of the foregoing, the CEDB concludes that the conduct of the Club's supporters violated Article 14 (1) DR and must be punished accordingly.

C. The improper conduct of supporters: setting off of fireworks

a) *Applicable legal framework and general remarks*

22. According to Article 16 (2) DR:

*"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."*

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.

b) *The responsibility of the Club*

24. Setting off fireworks is a very serious offence because not only can this behaviour disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices is strictly forbidden.

25. 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.
26. 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).
27. In the present case, the CEDB was convinced that a total number of five fireworks was lit by the Club's supporters, even though the report of the UEFA match delegate indicates that the amount could be even higher, without being specific enough about it.
28. The CEDB deems that these incidents are obvious examples of a lack of discipline from the Club's supporters as they endangered the physical integrity of those present in the stadium.
29. Consequently, according to Article 16 (2) (c) DR above, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

30. 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.
31. With regard to the racist behaviour, the CEDB wishes to draw attention to the fact that, following the implementation of the 2013 edition of the DR (and as subsequently confirmed again in the 2014 and 2016 editions of the DR), UEFA's fight against racist behaviour entered a new era.
32. This has resulted in more severe sanctions being imposed in respect of racist behaviour.
33. Under Article 14 (2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club shall be punished with a minimum of a partial stadium closure. Article 14 (3) (a) DR further stipulates that in the event of recidivism, a second offence is punished with one match played behind closed doors and a fine of € 50'000.
34. Having regard to the extremely serious and highly repugnant nature of the racist behaviour shown by the Club's supporters on this occasion (which has a strong neo-Nazi connection), the CEDB noted that the standard sanction for the club would be to impose a partial stadium closure as well as a fine of €50,000.

35. The CEDB on the other hand recalled Article 17 (3) DR which allows the competent decisions making body to reduce or increase the relevant disciplinary measure on the basis of the circumstances of the specific case.
36. Bearing in mind the abovementioned, the CEDB took note of the arguments of the Club and agreed with the fact that the latter has already banned the relevant supporter group named "*Unsterblich*" and, by introducing a personalization system for ticket purchases for away-matches, has made an effort to tackle the apparent problem the Club has with parts of its supporters. The CEDB also acknowledged that the racist incident occurred at an away-match, i.e. during a match which was not organized by the Club, which had to be considered as a mitigating circumstance.
37. Taking all of the above into account, the CEDB deemed that a partial stadium closure of at least 1'500 seats shall be considered the appropriate sanction for the racist behaviour of the Club's supporters. However, the CEDB emphasized that such sanction has to be considered as rather lenient in view of the standard sanction which is normally awarded for such recidivistic behaviour, and, therefore, with such sanction issued a strong warning to the Club, urging it to continue its efforts to effectively deal with this situation.
38. In addition, by applying Article 14 (6) DR, the CEDB additionally decided that the Club shall display a banner bearing the words "*No to Racism*" alongside the UEFA logo in the closed sector(s), covering the same amount of seats, i.e. the total number of at least 1'500.
39. With regard to the lighting of fireworks, the CEDB further recalled Article 6 (5) DR and Annex A where standard measures are stipulated and where it is *inter alia* stated that for the setting off of fireworks, a fine of €500 per firework being ignited, plus an extra 50% fine in case of recidivism, is the standard sanction.
40. Furthermore, the CEDB identified and took into account the seriousness of the offences committed, noting that such acts present a significant threat to the health and safety of supporters and other persons in the stadium, as well as the Club's previous record, noting that the Club has been punished for such offences before.
41. Based on the foregoing, the CEDB considers that a fine of €4,000 is the appropriate sanction for the setting off of fireworks.

## Decision of 23 February 2017

Beşiktaş JK

(crowd disturbances, setting off of fireworks, acts of damages)

**Circumstances of the case**

It was reported by the Match Delegate on 6 December 2016, that during the half time, the club's supporters tried to get in touch with home-team supporters on the second stand and where throwing different items toward them, (Bengal-lights, chairs). Only after the intervention of the police, the two sides were distanced from each other. After this incident tension got higher and both team supporters started to move toward each other in order to find the location for a fight. But police timely reacted to the incident, involved Special Forces and localized the club's supporters in a secured area and didn't let the supporters reach each other. Also, about 55 chairs were broken and three further Bengal-lights were ignited by the club's supporters during the Match. Furthermore, the club's supporters set off several Bengal-lights before and during the match, more than 35 firecrackers were set off, some of them were thrown toward the home-team supporters, one home supporter was even injured.

**Legal framework** Article 16 (2) (b), (c), (f) and (h) of the UEFA Disciplinary Regulations, Art. 6 (5) DR and Annexe A (I) and (II) to the UEFA Disciplinary Regulations.

**Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided, taking all of the abovementioned violations into account, the CEDB first considered that in view of the severity of the violations by the club's supporters, a ban for selling tickets to away supporters might be the appropriate sanction. However, while also issuing a strong warning to the club, urging it to address the issues the club is obviously facing with regard to the behaviour of its supporters. With this being established, the CEDB considered that a fine of €60,000 is the appropriate sanction for these offences.

<u>Chairman:</u>	Thomas Partl (AUT)
<u>Vice-Chairmen:</u>	Hansen Jim Stjerne (DEN) Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Lorenz Hans (GER) Larumbe Beain Kepa (ESP) Repka Rudolf (CZE)

## 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 UEFA match delegate for the UEFA Champions League 2016/2017 Group Stage match between FC Dynamo Kyiv ("**Dynamo**") and Besiktas JK (the "**Club**") on 6 December 2016 (the "**Match**") reported that:
  - Several incidents that occurred before and during the match.
  - During the half time, Club's supporters tried to get in touch with home-team supporters on the second stand, and where throwing different items toward them, (Bengal-lights, chairs) as far as the two opposing sides, where segregated with media sector fired items were appearing in the media area. Only after the intervention of the police, the two sides were distanced from each other.
  - About 55 chairs were broke by the Club's supporters.
  - Three further Bengal-lights were ignited by the Club's supporters during the Match.
  - The Club's supporters have set off several Bengal-lights before and during the match, more than 35 firecrackers were set off, some of them were thrown toward the home-team supporters (seated in sector 73 and 75). One home supporter was even injured (see photos and details in additional report).
4. In an additional report, the UEFA match delegate specified that:
  - About 25 minutes before kick-off, a group of aggressive Besiktas JK fans moved to sectors 20 and 22 and started throwing object towards local supporters sitting on the lower tier. In particular, a big garbage bin was thrown which didn't hit anyone fortunately. Also, the Club's supporters have thrown a smoke bomb.
  - During the whole first half, the Club's supporters located in sectors 76, 78 and 80 several times set up Bengal-lights, one of them was thrown on the VIP-stand balcony but didn't hit anyone.
  - More than 35 firecrackers were set up by the Club's supporters, most of them were thrown towards the home-team supporters in Sectors 75 and 77 from above as well as one Bengal-Light. One female home-team supporter was hit by firecracker and got burnt. As I was informed after the match, about 55 chairs were broken by the Club's supporters in the above-mentioned sectors.
  - During half-time, the Club's supporters tried to get in touch with home-team supporters on the second stand, but they were separated by the media sectors 72 and 74. They started throwing different items towards opponent supporters (Bengal-lights and chairs), but the objects didn't reach the opponents and mainly fell in the

media area. Only after the intervention of the police special forces, the two sides was distanced from each other.

- After this incident tension got higher and both team supporters started to move toward each other in order to find the location for a fight. But police timely reacted to the incident, involved Special Forces and localized the Club's supporters in a secured area and didn't let the supporters reach each other.

## II. The Respondent's position

5. In its statement dated 13 December 2016, the Club:

- The stadium of the Match, Olimpiyskiy National Sports Complex, has a capacity of 70'050 spectators. Therefore, according to article 37.01 of the relevant competition Regulations, Dynamo had to provide at least 3'525 seats exclusively to the Club's supporters. However, without a valid explanation to or consent of the Club, Dynamo only provided 2'250 tickets for the visiting fans and decided to sell the remaining tickets by themselves. This way, the Club was not only deprived of the right to sell its supporters the correct number of tickets but also the remaining away-team supporters were forced to purchase their tickets from the home team directly and to watch the Match among Dynamo supporters in separate groups, despite the apparel they were wearing clearly showing that they were supporting the Club.
- When asked by the Club's officials, Dynamo officials explained the shortage in the away-team supporter tickets as a security precaution that was enforced by the security forces. However, according to report of the UEFA match delegate, there were only 14'036 fans in the stadium during the Match and there were plenty of area for the remaining supporter of the Club while full security was implemented to prevent an incident.
- First of all, the home team as well as the local security forces did not execute a thorough security check at the entrance of the Match and it was reported to the Club's officials through some away-team supporters, that there were no security measures such as body searches at the entrance.
- The home-team supporters failed to show the same level of respect towards the away-team supporters. During the Match and in particular at the beginning, several home-team supporters made inappropriate and insulting hand gestures towards the Club's supporters, burnt a Turkish flag as well as a flag of the Club and presented discriminatory banners of Neonazi symbols.
- The non-stop provocation by the home-team supporters were not replied in the same sense by the visiting fans in the segregated area and there were no further incidents between the two fan groups. Instead, the Club's supporters located in the segregated area for away-team supporters showed respect towards the home team as well as the recent disaster involving "Football Club Chapecoense".
- As explained above, throughout the match, there were no incidents by the the Club's supporters in the segregated visiting supporter area who did not throw any objects or did not set off any flares or firecrackers.

- Since the Club had no control over the other Turkish fans that were provided with a ticket by the home team, the Club believes that it should not be held responsible for the alleged actions of these individuals.
6. 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.

7. 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 the case.
8. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

#### B. The improper conduct of supporters: crowd disturbances

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

9. 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 anthems;*
- h) any other lack of order or discipline observed inside or around the stadium."*

10. 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.
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 Club*

12. The CEDB on a preliminary note emphasized that its decision is purely based on the incidents which occurred inside the stadium. Even though it appears like numerous violent incidents occurred outside the stadium in the city centre of Kyiv, involving supporters of both the home- and the away team, which have to be regarded as despicable and should have no place in football, neither before, during or after a football match, the competence of the CEDB is limited to incidents inside or around the stadium, cf. Article 16 (2) (h) DR.
13. Furthermore, the CEDB notes that the official report of the UEFA delegate for the Match clearly states that about 25 minutes before kick-off, a group of the Club's supporters very aggressively moved to sectors 20 and 22 and started throwing object towards local supporters sitting on the lower tier and that in particular, a big garbage bin was thrown down the stands, fortunately no causing any injuries.
14. The CEDB subsequently recalled the content of the report of the UEFA match delegate who had further specified that during half-time, the Club's supporters tried to get in touch with home-team supporters on the second stand, but were only hindered to do so by means of the separation by the media sectors 72 and 74, which separated the two opposing supporter groups. According to the report, the Club's supporters started throwing different items towards opponent supporters such as Bengal-lights and chairs who ultimately fell in the media area. Only after the intervention of the police special forces, the two sides was distanced from each other. The CEDB noted that after this incident tension got higher and both team supporters started to move toward each other in order to find the location for a fight, which required the police to react to the incident, even involving Special Forces who localized the Club's supporters in a secured area and didn't let the supporters reach each other.
15. None of the arguments presented by the Club breach the accuracy of this statement and the CEDB acknowledged that the Club merely tried to shift the responsibility for the reported incident towards Dynamo. However, whatever the organizational flaws of this match might have been in connection with the segregation of the different supporter groups and the circumstances which might have motivated the Club's supporters to purchase tickets in the section where the Dynamo supporters were situated, the CEDB was convinced that none of these explanations given by the Club were able to justify the behaviour of its supporters. The CEDB equally formed the belief that neither the provocations which evidently happened by the Dynamo supporters through gestures and other actions do not justify any of the behaviour displayed by the Club's supporters.
16. The reported incident involved a deliberate attempt by the Club's supporters to violently attack the supporters of the home club. It was only due to luck that no more and severe injuries have occurred, especially in view of the throwing of objects down to the lower ranks which has to be considered as particularly dangerous. Accordingly, this must be considered to be a particularly serious act of hooliganism.

17. As well as posing a risk to the safety and security of supporters, such behaviour is all the more unacceptable because it tarnishes the image of football, UEFA and the UEFA Champions League.
18. Moreover, the CEDB recalled that the Club's supporters broke 55 chairs throughout the match. Such acts of damage have been reported by the UEFA match delegate and remained undisputed during the course of these proceedings.
19. 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.
20. 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).
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) (h) DR as well as Article 16 (2) (f) DR and must be punished accordingly.

C. The improper conduct of supporters: setting off fireworks

a) *Applicable legal framework and general remarks*

22. According to Article 16 (2) DR:

"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."*

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.

b) *The responsibility of the Club*

24. Setting off fireworks is a very 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 perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadia is strictly forbidden.
25. As it was already established above, 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.
26. 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).
27. In the present case, more than 35 fireworks were lit and some of them thrown by the Club's supporters. Such facts remained undisputed by the Club who merely argued that such fireworks were not thrown by its supporters in the designated sectors, but from other Beşiktaş JK supporters seated in other areas of the stadium. The CEDB emphasized at this point that such circumstances are irrelevant when it comes to establishing the violation of Article 16 (2) (b) and (c) DR.
28. The CEDB deems that this is an obvious example of a lack of discipline from the Club's supporters as such behaviour endangered the physical integrity of those present in the stadium, as well as showing a complete disregard for any civic rules.
29. Consequently, according to Article 16 (2) (b) and (c) DR above, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

30. 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.
31. With regard to the crowd disturbances and the acts of damage, the CEDB took into account the seriousness of the offense committed and with regard to the crowd disturbances also the illustrious previous record of the Club, whose supporters have committed the same violations already on several occasions.
32. At this point, the CEDB emphasized that the problems the host club might have had in terms of segregation of supporters cannot be regarded as mitigating circumstances which would speak in favour of the behaviour of the Club's supporters. Such circumstances are only to be considered as relevant in separate proceedings against Dynamo to which the Club is not a party.

33. With regard to the lighting of fireworks, the CEDB identified and took into account the seriousness and the multiplicity of the offences committed (noting that such acts present a significant threat to the health and safety of supporters and other persons in the stadium) and the Club's previous record (noting that the Club has been punished for such offences before).
34. Furthermore, also with regard to the lighting of fireworks, the CEDB further recalled Article 6 (5) DR and Annex A where standard measures are stipulated and where it is *inter alia* stated that for the setting off of fireworks, a fine of €500 per firework being ignited, plus an extra 50% fine in case of recidivism, is the standard sanction.
35. Based on the foregoing, taking all of the abovementioned considerations into account, the CEDB first considered that in view of the severity of the violations by the Club's supporters, a ban for selling tickets to away supporters might be the appropriate sanction. However, while also issuing a strong warning to the Club, urging it to address the issues the Club is obviously facing with regard to the behaviour of its supporters. With this being established, the CEDB considered that a fine of €60,000 is the appropriate sanction for these offences.

## Decision of 2 March 2017

Real Madrid Youth

(direct red card)

### **Circumstances of the case**

In the match between AS Monaco FC Youth and Real Madrid CF Youth on 22 February 2017 the referee reported that in the 85<sup>th</sup> minute of the match, while AS Monaco FC was counterattacking, an AS Monaco FC player was kicked from behind by the Real Madrid player Feuillasier Abalo Francisco with speed, with stretched leg and with his studs impacting the calves of his opponent. The ball was one meter away and not in a playing distance.

**Legal framework** Article 15 (1) (e) of the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided that the tackle was intentional, intended to stop a counter attack, threatening the well-being of his opponent, thereby fulfilling the definition of assault in the sense of Article 15 (1) (e) of the UEFA Disciplinary Regulations. Therefore, a three match suspension was considered the adequate sanction.

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. On 22 February 2017, AS Monaco FC Youth and Real Madrid CF Youth played an UEFA Youth League 2016/2017 match. The Real Madrid player Feuillasier Abalo Francisco was sent off the field of play by the referee who described the situation as follows:

*During the above mentioned match at the minute 85 while FC Monaco FC was counterattacking, a Monaco FC player was kicked from behind by the Real Madrid player Feuillasier Abalo Francisco with speed, with stretched leg and with his studs impacting the calves of his opponent. The ball was one meter away and not in a playing distance.*

3. On 28 February 2017, the Chairman of the Control, Ethics and Disciplinary Body decided to impose a sanction of three matches against the player. However, on the same date and after the issue of the said decision Real Madrid sent its submissions, which were taken then into consideration by the Chairman of the Control, Ethics and Disciplinary Body and conform part of the current decision of 2 March 2017.

## II. The Respondent's position

4. The Club in its statements dated on 28 February 2017 argues that the definition given by the referee is closer to the wording of Article 15 (1) (a) (ii) DR, i.e rough play. Consequently, the applicable sanction is one match and not three, which is clearly a too high sanction.
5. In addition, the club requests to take the following circumstances as mitigating elements:
  - The opponent kept playing the match without problems;
  - The intention was to stop the player's attack with no risk of injury;
  - The player has no previous records.
6. 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.

7. 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.
8. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

B. The direct red card

*a) Applicable legal framework and general remarks*

9. According to Article 15 (1) DR:

*The following suspensions apply for competition matches:*

*a. suspension for one competition match or a specified period for:*

- i. a second caution in the same match;*
- ii. rough play;*
- iii. repeated protests against or a failure to comply with the referee's orders;*
- iv. insulting players or others present at the match;*
- v. unsporting conduct;*
- vi. provoking spectators;*
- vii. participating in a match when suspended or otherwise ineligible to play;*
- viii. denying an obvious goal scoring opportunity*

10. According to Article 15 (1) (e) of the UEFA Disciplinary Regulations, suspension for three competition matches or a specified period for assaulting another player or another person present at the match.
11. 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*

12. The UEFA disciplinary bodies 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. In the case of a particularly serious attack on a person's physical or psychological well-being, we therefore talk of "serious assault" in the sense of letter g) of this same provision.

13. According to the constant practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent's physical or psychological well-being is interfered with. Such an act would involve aggressive contact such as slapping, head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting.
14. It shall be noted that important elements to infer the existence of an assault are the presence of a challenge for the ball and the dangerousness of the action.
15. In the case in hand, during the above mentioned match at the minute 85 while FC Monaco FC was counterattacking, a Monaco FC player was kicked from behind by the Real Madrid player Feuillasier Abalo Francisco with speed, with stretched leg and with his studs impacting the calves of his opponent. The ball was one meter away and not in a playing distance.
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".
17. The club mainly argues that the above referred action is to be embedded in the scope of Article 15 (1) (a) DR as a rough play. It also adds that the intention of the player was rather to stop the counter attack, never willing to put the opponent in danger.
18. The Control, Ethics and Disciplinary can't comply with the assertions of the club insofar it has been confirmed by the club that the tackle was intentional, regardless if it was aimed at stopping the counter attack. Consequently, the conditions described for the definition of an assault are fulfilled, i.e intention of tackling his opponent through which it threatened the well being of his opponent.
19. Consequently, the act of the Real Madrid CF player Feuillasier Abalo Francisco as described by the referee above constitutes assault under the terms of Article 15 (1) (e) of the UEFA Disciplinary Regulations and needs to be punished accordingly.

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

20. As regards the fixing of the sanction, the existence of both aggravating and exonerating circumstances must be examined (article 17 DR).
21. Kicking an opponent from behind in the above described manner as a matter of principle, does not allow a plea of mitigation. The Control, Ethics and Disciplinary Body has taken into consideration the fact that the player has no previous records, but given the nature of the act committed, this is not enough to justify a reduction in the standard punishment.

22. By kicking his opponent in the described manner placed the physical well-being the Real Madrid CF player Feuillasier Abalo Francisco of his opponent in danger. It could have caused serious injuries and pain. It is to be considered a particular brutal behavior.
23. In view of the above considerations, a three-match suspension is therefore considered to be the minimum sanction regarding the circumstances.

## Decision of 23 March 2017

### SSC Napoli

(use of laser pointers, throwing of objects, setting off of fireworks, stairways blocked)

#### **Circumstances of the case**

In the match between SSC Napoli and Real Madrid CF on 7 March 2017, the Match Delegate reported that the referees noticed during their warm-up that three green laser pointers were used in the stands without targeting them. Two announcements were made through the loudspeakers and nothing happened during the game. Also, exit stairways were blocked during the whole game in both curves, i.e. the stands behind the goals. Moreover, after the third goal scored by Real Madrid CF by the player Alvaro Morata, a former player of rival team of Juventus who had been whistled at his entrance, made a gesture of provocation towards the local fans (meaning to be quiet) and in response five plastic bottles were thrown on the athletic track without hitting anyone. Finally, a total of six flares was lit by home-team supporters of both curves.

**Legal framework** Article 16 (2) (b), (c) and (l) of the UEFA Disciplinary Regulations, Art. 6 (5) DR and Annexe A (I) and (II) to the UEFA Disciplinary Regulations, Article 38 of the UEFA Safety and Security Regulations.

#### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided with regard to all of the abovementioned violations, taking into account the seriousness and multiplicity of the offences committed, the club's previous record and with regard to the usage of laser pointers the fact that no players or referees were targeted by the laser pointers, that a fine of € 38'000 should be deemed the appropriate sanction for the aforementioned violations of the DR.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Member:</u>	Gea Tomás (AND) Leal João (POR) Lorenz Hans (GER)

## 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 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 reports of the UEFA match delegate present at the UEFA Champions League 2016/17 match between SSC Napoli (the "**club**") and Real Madrid CF on 7 March 2017 (the "**match**"), can be summarized as follows:
  - "The referees noticed during their warm-up that 3 green laser pointers were used in the stands without targeting them. 2 announcements were made through the loudspeakers and nothing happened during the game
  - Exit stairways blocked during the whole game in both curves, i.e. the stands behind the goals.
  - After the 3<sup>rd</sup> goal scored by Real Madrid CF by Morata , a former player of rival team of Juventus who had been whistled at his entrance, the player has a gesture of provocation towards the local fans (meaning shut your mouth) and in response 5 plastic bottles were thrown on the athletic track without threatening or hitting anyone.
  - In total 6 flares (not thrown) lit by home team supporters of both curves."

## II. The Respondent's position

3. The club, in its statements dated on 14 March 2017, mentions that the UEFA match delegate has defined the organization of the security by the club as satisfactory.
4. The club further explains that through many appeals spread among the media, it warned its supporters to behave in compliance with UEFA rules, respecting all the disciplinary dispositions outside and inside the stadium. Furthermore, in collaboration with the public authorities and police, the club argued that it managed the security adopting a number of 950 stewards, 32 of which charged to supervise the stadium area since 24 hours before the beginning of the match. Therefore, the club argued that it performed all what was in its possibility to guarantee the compliance with UEFA rules and the security of the match.
5. Further, the club held that if one considers all the activities done and the satisfactory organization of the match managed by the club, in a game in which more than 60'000 spectators attended the stadium, as the same UEFA match delegate confirmed, the incidents occurred are almost insignificant.

6. Regarding the use of the laser pointer, the club argues that, as it was remarked by the UEFA match delegate, only during the warm-up three green laser were used in the stands and not in the direction of players. The club immediately made two announcements and calmed the situation.
7. With respect to the flares used by the supporters allocated in "Curva A" and "Curva B", the club thought it is necessary to consider that only six flares were ignited and, taking into account the previous records of the club, it represents a very huge step forward of the club. Second, the use of the fireworks has been very limited in time (just few seconds), without any influence on the game that run smoothly.
8. As per the throwing of objects, the club emphasized that this kind of incident is not usual at all for the fans of Napoli. In fact, after the third goal scored by Real Madrid CF, the Real Madrid CF player Morata, former player of Juventus, rival team of Napoli, made a clear gesture of provocation towards the local fans. Only for this reason, and in response of an unjustifiable clear provocation, only 5 (five) plastic bottles were thrown on the athletic track (and not into the pitch) without hitting anyone.
9. Explained all the above, the club submitted to the consideration of the CEDB to have done all what was in its competence, possibility and power, controlling and securing the stadium, inside as well as outside, therefore no negligence attitude can be found on it with regards to what falls under its responsibility.
10. 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.

11. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations ("DR"), the CEDB is competent to deal with the case.
12. 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: throwing of objects

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

13. According to Article 16 (2) DR:

*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.*

14. According to Article 8 DR, which stipulates the principle of "strict liability", and Article 16 (2) DR, which picks up on such, the club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
15. 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*

16. It shall be recalled that the throwing of objects is a serious offence in that it cannot only disrupt the orderly running of the match but also, and more importantly, 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 of objects is strictly forbidden.
17. In the case at hand, it is undisputed that after the 3<sup>rd</sup> goal of the match was scored by the Real Madrid CF player Álvaro Morata who happens to be a former player of one of the club's biggest rivals, Juventus FC, and who had been whistled throughout the match, made a "shushing" gesture towards the home-team supporters and that in response, five plastic bottles were thrown on the athletic track without hitting anyone.
18. The club notes that this behaviour is not typical for the behaviour of its supporters to throw items and that such acts only occurred after a provocation by a Real Madrid CF player, which is why the club should not be held responsible for it.
19. However, the CEDB noted first that the unacceptable behaviour by the clubs supporters remained undisputed throughout these proceedings, while also stressing that such a provocation as it was apparently made by the player Morata cannot be considered as "highly provocative". Such gestures can be witnessed during a large number of matches whenever a goal is scored, in particular by a player who was been whistled by the home-team supporters before. In any case, irrespective of the question whether the player was provoked first by the home-team supporters and if he provoked the same supporters in return, the CEDB strongly emphasized that no such provocation can justify the dangerous behaviour of the club's supporters.

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

C. The blocking of stairways

a) *Applicable legal framework and general remarks*

21. 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.”*

22. 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*

23. The purpose of the SSR is to maintain the safety and security of everyone present at the match (see Article 2 SSR).
24. In order to achieve this goal, the SSR contain several provisions concerning spectator control at the stadium.
25. The CEDB 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.
26. In the present case, the UEFA match delegate’s official report for the match clearly states, that Exit stairways were blocked during the whole game in both curves, i.e. the stands behind the goals.
27. The club merely refers to its excellent preparation of the match and the great level of organization, pointing *inter alia* to the total number of stewards deployed at the stadium, while also explaining that the supporters already entered the stadium hours before kick-off and to its excellent preparations of the match.
28. Accordingly, the club - as the host and match organiser - has undisputedly violated Article 38 SSR and must be punished accordingly.

D. The improper conduct of supporters: the use of a laser pointer

*c) Applicable legal framework and general remarks*

29. 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.”*

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

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

*d) The responsibility of the club*

32. Laser pointers can seriously affect the physical wellbeing of the person who is targeted and can also disrupt the match (in particular, by distracting the person who is targeted and therefore causing that person to miss the ball). Accordingly, any use of such devices is strictly prohibited, irrespective of whether someone is directly targeted or not.

33. In the case at hand, the referees noticed that during their warm-up, three green laser pointers were used in the stands without anyone being concretely being targeted. After announcements were made through the loudspeaker system, the usage of laser pointers stopped and no similar incident occurred during the game.

34. The club argued that they made announcements through the loudspeaker and that no players or people in the stadium were targeted during the match.

35. As it was already established above, applying the principle of strict liability as described in Articles 8 and 16 (2) DR, a 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).

36. In the present case, nothing has been presented that would breach the accuracy of the official UEFA report which refers to the use of a laser pointer and attributes this to the supporters of the home team. It is undisputed that laser pointers were used and, in this regard, the CEDB pointed to the legal framework of Art. 16 (2) (I) DR which does not require that the laser is being used against referees or players, given that no usage whatsoever is permitted inside the stadium (emphasis added). Such circumstance can only be regarded when determining the appropriate disciplinary measure in the sense of Art. 17 DR.
37. Consequently, the club is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

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

a) *Applicable legal framework and general remarks*

38. According to Article 16 (2) DR:

"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."*

39. 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*

40. Setting off fireworks is a very serious offence because not only can this behaviour disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadia is strictly forbidden.

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. 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).
43. In the present case, a total of six flares were lit by home team supporters of both curves, this without being thrown.
44. The club argues that, taking into account the previous records of the club, the fact that only six flares have been lit represents a very huge step forward of the club. The club further argued that the use of the fireworks has been very limited in time (just few seconds), without any influence on the game that run smoothly.
45. The CEDB deems that the mere fact that the total number of lit fireworks was relatively low is a circumstance which can be taken into account when determining the appropriate sanction, while it obviously does not break the accuracy of the referee's report, while also recalling that the incident remained undisputed anyway by the club.
46. Consequently, according to Article 16 (2) (c) DR above, the club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

47. 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.
48. With regard to the crowd behaviour in connection with the throwing of objects, the use of the laser pointer, the blocking of stairways and the setting off of fireworks, 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. In the present case, the CEDB identified and took into account the following concrete circumstances:
  - the seriousness and multiplicity of the offences committed; and the club's previous record: the club has already been punished for the improper conduct of its supporters

- and, in particular, for the setting off of fireworks, usage of laser pointers, blocking of stairways and throwing of objects;
- regarding the throwing of objects and the setting off of fireworks, on the one hand that no one was hit by any of the objects, while on the other hand taking into account the dangerous nature of the offence committed (noting that throwing objects and lighting fireworks creates a serious risk for the safety of spectators, officials and players).
  - the fact that no players or referees were targeted by the laser pointers.
50. In connection with the setting off of fireworks, the usage of the laser pointers and the blocking of stairways, the CEDB further referred to Art. 6 (5) DR and Annexe A (I) and (II) which provides for standards disciplinary measures for the abovementioned violations of the DR.
51. Consequently, taking all of the above into account, by applying Art. 6 (5) DR and Annexe A (I) and (II), the CEDB deems that a fine of € 38'000 should be deemed the appropriate sanction for the aforementioned violations of the DR.

## Decision of 23 March 2017

Paris Saint Germain

(Late kick-off, violation of broadcasting regulations, improper conduct of the team)

### **Circumstances of the case**

In the match between FC Barcelona and Paris Saint-Germain on 8 March 2017, it was reported that the 1st half was delayed 2:35min and the 2nd half 2:10min, both delayed caused by the visiting team from Paris who left their dressing room late. Moreover, Paris Saint-Germain accumulated a total of 5 yellow cards. Furthermore, no players from PSG and only the coach were available for flash interviews after the match. The club has therefore not fulfilled its media obligations.

**Legal framework** Articles 8 and 11 (2) (g) of the UEFA Disciplinary Regulations, Article 15 (4) of the UEFA Disciplinary Regulations, Art. 6 (5) DR and Annex A (VII) to the UEFA Disciplinary Regulations, Articles 48.01 and 71.01 (e) of the UEFA Champions League Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided with regard to the late kick-off, it needs to be taken into account that every delay of the kick-off times might lead to serious consequences for the relationship of UEFA and its commercial partners. In this view, any behaviour tending to tarnish the image of this major competition cannot be accepted and must therefore be punished accordingly. Moreover, respecting the principle of equal treatment and opportunities, both teams are entitled to and need to be given the same duration of preparation prior to the commencing of the match. Any unilateral extension of the kick-off time by a team, would infringe this fundamental principle. Likewise, It is the head coach who under normal circumstances decides when the team is prepared to get out of the dressing room. In view of all of the above, the CEDB decided to fine the club 37'000€ and to warn its coach for the late kick-off infringement.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Member:</u>	Gea Tomás (AND) Leal João (POR) Lorenz Hans (GER)

## 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 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 at the UEFA Champions League 2016/2017 Round of 16 match (the "**match**") between FC Barcelona and Paris Saint-Germain (the "**club**") can be summarized as follows:
  - 1st half delayed 2min35 sec and 2nd half delayed 2 min10sec (both caused by visiting team, late leaving their dressing room despite the fact that VD and 4th Official reacted properly on time. This issue was mentioned precisely during Organizational Meeting 10.30 am and both teams confirmed they understand the importance of punctual start of the game.
  - Conduct of the away-team: 5 yellow cards
  - Many Barcelona players appeared for flash interviews but no players from PSG (only the coach). In general PSG hasn't fulfilled media obligations however journalists understood the reasons (frustration after dramatic end of the match).

## II. The Respondent's position

3. The club in its statements dated on 15 March 2017 doesn't dispute that its players showed up late for the kick-offs of the two halves. In this regard, the club explained that due to the traffic in Barcelona, the team arrived a bit late to the stadium, despite the numerous precautions made by the club.
4. As regards the second half and the late-kick-off, the club further explained that due to intensive discussions within the team as regards the difficulties the team had in the first half, the coach, Mr. Emery, lost track of time, while it was never the club's intention to cause a late kick-off.
5. Even if UEFA assumed that the club shall bear the responsibility by applying to the present case the assumption of the strict liability, the said principle cannot be extended to Mr. Emery, or to any coach whatsoever, given that his name isn't mentioned in any report and no proof has been provided which would indicate that this would be the case.
6. Moreover, the legal framework does not provide for an automatic responsibility of the coach of a club, hence by applying the legal principle of *nulla poene sine lege*, the coach cannot be sanctioned for the late kick-off infringement for which only the club is responsible.

7. Furthermore, the club stated that the offense Mr. Unai Emery Echegoyen (the “**coach**” or “**Mr. Emery**”) is accused of is merely an extension of the sanction imposed to club. Therefore, the club will suffer a double sanction for the same – allegedly offense. This situation, therefore, interferes with the basic principle of *ne bis in idem*.
8. The club argued that before the match, Mr. Emery and Mr. Kluivert, i.e. the coach and the sporting director of the club, have given interviews to several TV stations. The club further explained that also after the match, several players went through the mixed zone and gave interviews, as it was also reported in the media.
9. Also, the club stressed that Art. 71.01 (e) of the Regulations of the UEFA Champions League 2015-18 Cycle 2016/17 Season stipulates that “clubs must ensure that the head coach/manager and players are available for such interviews within 15 minutes of the end of the match, unless in exceptional circumstances”. As it was stated by the delegate, one must understand that after such a dramatic end to a game, no player is immediately ready to give interviews. That is why the club asked his players, after they went to the dressing rooms, to respect their obligations and speak to the media, only to note that the media had already left the mixed zone.
10. 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.

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

#### B. The late kick off

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

13. According to Article 11 (2) (g) a breach of the DR is committed by anyone who is responsible for a late kick-off.
14. According to Article 8 DR, a member association or 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 member association or the club concerned can prove the absence of any fault or negligence.

*b) The responsibility of the club and coach*

15. In the case in hand, the 1<sup>st</sup> half of the match was delayed for 2:35min and the 2<sup>nd</sup> half was delayed for 2:10min, both caused by the visiting team which was leaving its dressing room late, despite the fact that the UEFA venue director and 4<sup>th</sup> official reacted properly on time.
16. The CEDB took into account that the club accepted its responsibility for the kick-off, while at the same time disputing the added responsibility of its coach, Mr. Emery.
17. In this respect, it needs to be taken into account that every delay of the kick-off times might lead to serious consequences for the relationship of UEFA and its commercial partners.
18. In addition, respect needs to be paid to the nature of the competition of the UEFA Champions League as one of UEFA's flagship club competitions. In this view, any behaviour tending to tarnish the image of this major competition cannot be accepted and must therefore be punished accordingly.
19. Moreover, respecting the principle of equal treatment and opportunities, both teams are entitled to and need to be given the same duration of preparation prior to the commencing of the match. Any unilateral extension of the kick-off time by a team, would infringe this fundamental principle.
20. Referring to the responsibility of the coach and as an introductory remark, it shall be pointed out that the wording of the provision contemplating the infringement of the late kick-off has been modified. The former UEFA Disciplinary Regulations Edition 2012 established that a violation of the DR is committed by anyone who culpably reports for a match late or not at all. However, the current DR contemplate a violation by anyone who is responsible for late kick off. The approach between the notions of culpably reporting a late kick off and being responsible for the late kick off is evident, since the first needs, in principle, the intention to be late on the field of play and with the current version a negligent attitude is enough in order to conclude that a kick off timing violation is at stake.
21. Furthermore, as regards the arguments of the club regarding the responsibility of its head-coach, the CEDB first noted that the same issue had been already raised by the club in the past as the club and its respective head-coach at the time have already been sanctioned on numerous occasions for the same violation. Particular reference in this regard is made to the disciplinary case 29070 and the decision of the UEFA Appeals Body, where the exact same issues had been raised in the past. In this regard, the CEDB as well as the UEFA Appeals Body had already explained at the occasion of each of the respective decisions that undisputedly the head coach of a club or association is the highest

- authority of the team before, during and after the game, and that he is also responsible that his team is on the pitch on time.
22. The CEDB deems that the respect of the timing shall also be considered as being within the scope of those matters under the head coach's responsibility, because, obviously, assuring that the team is on the field of play on time is essential. It is the head coach who under normal circumstances decides when the team is prepared to get out of the dressing room. Fact is that the responsibility of the club and the head coach are in the spotlight when respecting timings to be on the field of play.
  23. Furthermore, the CEDB, after thorough analysis of the statements provided by the club, noted that the club itself was aware and accepted such a responsibility, given that the club itself was stating that the coach lost track of time during the half-time speech which is why the players came out late of the dressing room. Already from this statement it can be seen that it is the responsibility of the head-coach of the club to make sure that the players leave the dressing room early enough to be on the pitch for the kick-off in a timely manner.
  24. Subsequently, the CEDB recalled the arguments of the club who had also argued that there is no legal basis for establishing a responsibility of a club's coach to ensure that the players leave the dressing room in a timely manner, which is why such a decision would contravene the *nulla poene sine lege* principle.
  25. Therefore, the CEDB concluded that the further issue in the case at hand regards the interpretation of Article 11 (2) (g) DR and the twofold question who is responsible for the teams to come and return to the pitch on time for a timely kick-off at the start of the game and the start of the second half and, in case the responsibility is on a club, if such responsibility can be extended on the coach.
  26. In this regard, the CEDB could not concur with the arguments of the club regarding the *nulla poene sine lege* principle. In view of the legal framework which is established above, whoever is responsible for a late kick-off breaches the general principles of conduct, cf. Article 11 (2) (g) DR. This provision has been consistently applied in cases of late kick-offs, notably and as it was already established above, also against the club who has a considerable procedural history of late kick-offs for which it was sanctioned repeatedly by the UEFA Disciplinary Bodies. Moreover, the CEDB recalled the content of Article 36 (1) of the UEFA Club-licensing and Financial Fair Play Regulations according to which any licence holder must have appointed a qualified head coach who is responsible for football matters of the first squad.
  27. In view of all of the foregoing, emphasized again that based on the abovementioned provisions, the head coach of a club is the highest authority of the team before, during and after the game. Such authority is not limited to the tactical instructions a coach might have to give to his team during half-time, as it was apparently done by Mr. Emery in the case at hand, but also includes the responsibility of making sure that his team arrives on the pitch on time, i.e. that Law 7 of the IFAB laws of the Game is respected. In view of the

CEDB, the fact that the name of the coach was not mentioned on any official UEFA report where the incident was reported, does not change this assessment.

28. The CEDB further recalled the club's argument that by not only sanctioning the club but also its head coach by applying the principle of strict liability, i.e. by punishing the head coach for the same infringement the club has already been sanctioned for, this would have violated the *ne bis in idem* principle.
29. However, the CEDB did not come to the same conclusions as the club. The principle of strict liability of clubs for the misconduct of its officials and even their supporters, even when the club is not at fault itself, has been applied by the UEFA Disciplinary Bodies and has been confirmed by the CAS on numerous occasions (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*; also with regard to supporters: *CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia*).
30. As it was already established in previous cases and can therefore be regarded as established jurisprudence of UEFA's disciplinary bodies, it is not only the coach who is responsible for ensuring that a team is on time for kick-off of any half of a given match, given that also the club itself has a general responsibility to ensure that the players are on the field in a timely manner. Particularly when recalling the position of the club that its coach lost track of time during half-time as the team was in a difficult and stressful position, the CEDB was convinced that obviously some other official or employee of the club should have made sure that the 15 minute period of half-time was respected. Therefore, the CEDB could only concur with the previous decisions taken by the UEFA disciplinary bodies under such circumstances and came to the conclusion that in application of the principle of strict liability, both the club and the coach are to be held responsible for the late kick-off infringement.
31. Consequently, both the club and the coach shall be held responsible for the late kick off infringement, and, therefore, violated Article 11 (2) (g) DR.

### C. Media obligations

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

32. According to Article 48.01 of the UEFA Champions League Regulations (the "**UCLR**"), the provisions of the DR apply for all disciplinary offences committed by clubs, officials, members or other individuals exercising a function at a match on behalf of an association or club.
33. According to Article 71.01 (e) UCLR:

*"...Flash interviews and indoor studio interviews are obligatory and take place after the match in a designated area close to the dressing rooms. Clubs must make the head coach/manager and at least two key players available (using their best efforts to make at*

*least four key players available) to satisfy interview requests from audiovisual rights holders. The players made available for post-match interviews must include the UEFA man of the match/best-rated player, unless in exceptional circumstances. Players exclusively provided for super-flash interviews are not considered as part of these minimum requirements. Clubs must ensure that the head coach/manager and players are available for such interviews within 15 minutes of the end of the match, unless in exceptional circumstances.”*

34. 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*

35. It is clear that the UCLR require the club to ensure that the head coach as well as at least two key players are made available, while a total number of four key players is to be aimed for.
36. In the match at hand, the UEFA match delegate reported that no players from the club and only the coach appeared for flash interviews and that in general, the club hasn't fulfilled media obligations. The UEFA match delegate further stated that journalists understood the reasons, e.g. frustration after the dramatic end of the match.
37. This is unacceptable since it affects UEFA's commercial/media programme for its most prestigious club competition.
38. The CEDB took note of the arguments provided by the club and obviously had some sympathy for the disappointment of the club and its players. However, the CEDB was also convinced that mere disappointment cannot be considered as an exceptional circumstance as stipulated in Art. 71.01 (e) of the UCLR. The CEDB considered that if disappointment would be accepted as such an exceptional circumstance, it would easily be possible that the players of the losing team would rarely or never give interviews after the match and would not fulfil its media obligations, which would obviously put UEFA's commercial/media programme and the interest of its commercial partners in jeopardy.
39. The CEDB further acknowledged that the club merely referred to uncorroborated news articles in connection with interviews which were allegedly given in the mixed zone after the match.
40. Moreover, the CEDB noted that the club contradicted itself with its statements. On the one hand, the club claimed that its players did fulfil the media obligations stipulated in Art. 71.01 (e) UCLR, while on the other hand claiming that the players first went to the dressing room without giving interviews, only to come back afterwards to find out that the media had already left the mixed zone. Taking into account these contradictory circumstances, the CEDB finally came to the conclusion that the club did not provide

sufficient proof which would breach the accuracy of the official report of the UEFA match delegate in the sense of Art. 38 DR.

41. Consequently, the Club shall be held responsible for its breach of the UCLR and shall be punished accordingly.

D. The improper conduct of the team

*a) Applicable legal framework and general remarks*

42. 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.
43. 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*

44. In the present case, five of the club's players were cautioned with yellow cards.
45. 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.
46. 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.
47. 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**

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. Regarding the late kick-off violation by the club, the CEDB identified and took into account the following circumstances:
  - the seriousness of the offences committed;
  - the previous record of the club, taking into account that the club has already been punished for the same violation on numerous previous occasions;
  - the fact that two late kick-offs were caused by the club in the same match.
  
50. Regarding the violation of its media obligations, the CEDB identified and took into account the following circumstances:
  - the seriousness of the offences committed;
  - the previous record of the club, taking into account that the club has already been punished for the same violation once;
  - the dramatic ending to the match and the obvious disappointment of the players after having lost in the last seconds of the match.
  
51. The CEDB further recalled the content of Art. 6 (5) DR and Annex A (VII) which stipulates standard sanctions for the abovementioned violation of the UCLR.
  
52. Regarding the improper conduct of the team, the CEDB referred to Art. 6 (5) DR and Annex A (VIII).
  
53. In view of all of the above, the CEDB deemed that a fine of €37'000 was the appropriate sanction for the abovementioned violations.
  
54. Regarding the late kick-off violation by the coach, Mr. Emery, the CEDB identified and took into account the following circumstances:
  - the seriousness of the offences committed;
  - the fact that the coach was responsible for two late kick-offs in the same match.
  - the fact that this is the first violation by the coach.
  
55. In the light of the above considerations, the CEDB decided to warn the Paris Saint-Germain coach Unai Emery Echegoyen for the late kick-off infringement.

## Decision of 23 March 2017

FC Schalke 04

(illicit banner; stairways blocked)

### **Circumstances of the case**

In his report from 22 February 2017, the Match Delegate reported that supporters from FC Schalke 04 displayed several illicit banners, which read "UEFA MAFIA", "ACAB" and "FUCKING PAOK FANS GET OUT OF HERE". Also, FC Schalke 04 supporters blocked stairways in the 2nd half in sectors N3 and N4 in the North stand.

**Legal framework** Article 16 (1) and (2) (e) of the UEFA Disciplinary Regulations, Article 38 UEFA Safety and Security Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided with regard to the banners displayed by the club's supporters that, after having evaluated the content of the pictures as well as the description and interpretation provided by the UEFA match delegate concerning the banners in question, that the content of the three banners is illicit. The CEDB was convinced that the interpretation given by the UEFA match delegate to the banners under scrutiny was correct. Taking into account also the blocking of stairways as well as the previous record of the club with regard to such offences, the CEDB decided to impose a total fine of 28'000 on the club.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Member:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Larumbe Beain Kepa (ESP) Lorenz Hans (GER)

## 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:
  - Banner by Schalke fans: UEFA MAFIA displayed at 22<sup>nd</sup> min.
  - Banner by Schalke fans: ACAB (All Cops Are Bustards) displayed at 72<sup>nd</sup> min.
  - Banner by Schalke fans: FUCKING PAOK FANS GET OUT OF HERE displayed at 88<sup>th</sup> min.
  - Blocked stairways by Schalke fans in 2<sup>nd</sup> half - sector N3 and N4 (North stand).

## II. The Respondent's position

3. The Club in its statements dated on 28 February 2017, argues that during a previous meeting with the away team it was agreed that clubs would contact fans and be the intermediaries in security questions. The club appealed in its webpage to the fans to avoid all forms of provocation and the corresponding prohibited provisions. At the security discussions it was made clear that flags of all kinds should not be brought into the stadium, but that is impossible to locate them, even with enhanced entry checks taking place at every entrance.
4. Regarding the flags with the wording "ACAB", the club refers to the Federal Constitutional Court, the highest German court, decision on 17.05.2016, whereupon this lettering is not forbidden in Germany.
5. Regarding the flag, the club asserts that "Fucking PAOK Fans get out of here" was a reaction to the provocation from the first leg. During that match Schalke supporters had to endure the sight of a banner saying "Fucking Nazis get out of here".
6. The stairways in the North Stand ("Nordkurve") were kept free, but for a few steps. At no point was there any ever risk of danger and no complaints were lodged by local police, nor the on-site fire department. In any case, in the event of any evacuation for this block, fans are required to move upwards according to the evacuation process
7. 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.

8. 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.
9. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. Illicit banners

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

10. According to Article 16 (1) DR, host associations and clubs are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match.
11. According to Article 16 (2) (e) DR, 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;
12. 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*

13. The Control, Ethics and Disciplinary Body takes this opportunity to recall, that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise messages which have no relation to football whatsoever. This is the reason why Article 16 (2) (e) DR expressly forbids the transmission of any message which is not fit for football during football matches. Demonstrations extraneous from those reasonable linked to a sport's event have no place in football matches.
14. According to Article 38 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

15. In the present case, the supporters of Schalke displayed three separate banners, one of which stipulated "UEFA MAFIA", whereas another stated "ACAB" (meaning "All cops are bastards") and finally, the third banner contained the wording "FUCKING PAOK FANS GET OUT OF HERE".
16. In addition to what was mentioned above, the Control, Ethics and Disciplinary Body took into account the position of the club but could not agree with its arguments. The club in its statements referred mainly to a Macedonian flag, which is not part of these disciplinary proceedings, the banner containing the statement "ACAB" and another banner with the wording "FUCKING PAOK FANS GET OUT OF HERE".
17. The club first line of arguments is based on the idea that it did everything possible to avoid the displaying of illicit banners and to comply with the UEFA rules. However, 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). Consequently, the responsibility of the club derives from the illicit behaviour of its supporters, which in this case was expressed by means of the displaying of several illicit banners.
18. As regards the banner saying "ACAB", the Control, Ethics and Disciplinary notes that the club asserts that this banner is legal in Germany. Notwithstanding this, this argument is irrelevant. UEFA, according to Swiss law, has the power to discipline and issue its own regulations to protect its interest and in the benefit of the promotion of its principles and values. This has constantly been backed up by several CAS Awards. In particular, the content of a banner which means "all cops are bastards" is exactly the kind of message specifically banned by Article 16 (2) (e) DR.
19. Finally, the club holds that the banner containing the wording "FUCKING PAOK FANS GET OUT OF HERE" must be put in context. The club supporters reacted to a banner displayed during the first leg against PAOK in which the latter called Nazis to the Schalke supporters. Their reaction is, according to the club, understandable.
20. The Control, Ethics and Disciplinary Body notes that, the argument of the club is not aimed at contesting the illicit nature of the banner, but rather at the reasons behind the display of the said banner. Therefore, the club confirms the illicit nature of this banner.
21. Further on, UEFA can't accept the argument that an offensive attitude can be justified by another previous offensive conduct. If it were so, PAOK supporters would then be legitimated to react again and so on and so forth. Consequently, there is no justification in addressing aggressive and offensive messages towards other supporters or spectators at the stadium in any given situation.
22. Bearing the above in mind, after having evaluated the content of the pictures as well as the description and interpretation provided by the UEFA match delegate concerning the banners in question, this UEFA disciplinary body deems that that the content of the three banners is illicit. The Control, Ethics and Disciplinary Body was convinced that the

interpretation given by the UEFA match delegate to the banners under scrutiny was correct.

23. Consequently, such messages as they were displayed on the banners are not fit for a sports event and therefore violated Article 16 (2) (e) DR. Hence, the club must be held responsible and punished accordingly.

C. The blocking of stairways

24. 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.
25. 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*

26. 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.
27. In the present case, Schalke supporters blocked stairways during the second half in sectors N3 and N4.
28. 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.
29. 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*).
30. 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.
31. 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.

32. Moreover, the Control, Ethics and Disciplinary Body took note that the club merely argued that it took proactive measures in order to keep the stairways unblocked during the match. However, these arguments do not have any relevance whilst establishing the existence of the club's responsibility in keeping those stairways free of any obstructions. In this regard, the Control, Ethics and Disciplinary Body took note of the fact that pictures attached to the official reports evidenced that stairways were blocked by supporters during the above mentioned match.
33. 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, the latter violated Article 38 UEFA Safety and Security Regulations and needs to be punished accordingly.

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

34. 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.
35. 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: Schalke has already been punished for the inappropriate behaviour of its supporters, and, in particular, for displaying of illicit banners.
  - The different accounts of incidents regarding illicit banners.
  - The highly offensive content of the banners.
36. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that a total fine €28'000 shall be deemed as the adequate disciplinary measure.

## Decision of 23 March 2017

Italian Football Federation – U17

(direct red card, improper conduct of the team)

### **Circumstances of the case**

On 16 March 2017, the referee reported that the Football Federation of Italy U17 player wearing number 2, Bellanova Raoul, was dismissed for “violent conduct”. It was reported that players stood chest to chest arguing and during this, Bellanova Raoul, made the motion of a head-butt to his opponent. Moreover, four yellow cards were issued to Italian players during the Match.

**Legal framework** Article 15 (1) (e) of the UEFA Disciplinary Regulations, Article 15 (4) (b) of the UEFA Disciplinary Regulations, Part VIII of Annex A to the UEFA Disciplinary Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: “CEDB”) decided with regard to the violent conduct, the CEDB held that the act of the player had to be considered a highly aggressive act and threatens serious injury by using the head as a weapon. It has nothing to do with the game and is simply a hostile act of physical violence. The CEDB therefore decided to suspend the player for three matches. With regard to the improper conduct of the team, the CEDB decided to impose a fine of 1’750 on the association.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Member:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Larumbe Beain Kepa (ESP) Lorenz Hans (GER)

## 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. According to the referee’s report for the UEFA European Under-17 Championship 2017 match between Italy and Belgium on 16 March 2017 (the “**Match**”):
  - The Italy player Bellanova Raoul (No. 2) was dismissed for “*violent conduct*”, specifically:

*“They then stood chest to chest arguing and during this I observed Italy No. 2 make the motion of a headbutt to his opponent.”*

- Four yellow cards were issued to Italy players during the Match.

## II. Merits of the Case

### A. UEFA’s competence

4. 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 the case.
5. In light of the foregoing, UEFA’s statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The player Bellanova Raoul

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

6. According to Article 15(1)(e) DR, a suspension for three competition matches (or a specified period) applies when a player assaults another player (or another person present at the match).
7. 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*

8. The UEFA disciplinary bodies 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) DR.

9. According to the consistent practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent’s physical or psychological well-being is interfered with.
10. In the present case, the player Bellanova Raoul headbutted his opponent.
11. This is a highly aggressive act and threatens serious injury by using the head as a weapon. It has nothing to do with the game and is simply a hostile act of physical violence.
12. Consequently, the act constitutes assault under the terms of Article 15(1)(e) DR and shall be punished accordingly.

C. The improper conduct of the team

*a) Applicable legal framework and general remarks*

13. According to Article 15(4) DR, a sanction can be taken against an association if individual disciplinary sanctions have been imposed by the referee on at least five players during the match.

*a) The responsibility of the federation*

14. In the present case, four yellow cards and one red card were issued to five different Italy players during the Match.
15. The CEDB acknowledges 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. Nothing has been provided in the present case that would breach the accuracy of the referee’s report on this issue.
16. Moreover, the CEDB 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.
17. Referring to the above provisions, the federation is to be held responsible for the misconduct of its players and must be punished accordingly.

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

18. 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. Disciplinary measures can be reduced or increased by the competent disciplinary body on the basis of the circumstances of the specific case.

19. With regard to the improper conduct of the team, in accordance with Part VIII of Annex A to the DR and having regard to the federation's previous records, the CEDB considers that a fine of €1,750 shall apply.
20. With regard to the "*violent conduct*" of Bellanova Raoul, the CEDB considers that a suspension of three matches is appropriate.

## Decision of 18 May 2017

Borussia Mönchengladbach

(stairways blocked; dismissal from bench)

### **Circumstances of the case**

On 16 March 2017, the Match Delegate reported that around the 80th minute, the Borussia Mönchengladbach official Max Eberl ran towards him in an aggressive manner, throwing his arms in the air, shouting in an extremely aggressive manner. Then, in the 88th minute, Max Eberl reacted extremely badly to an incident, running towards the Match Delegate, shouting in an aggressive manner using lots of German words. After being told to stop and sit down, he said "FUCK YOU, FUCK OFF, ITS YOUR FAULT". After intervention from the referee, Max Eberl was removed from the technical area. Moreover, away-fans were standing, blocking stairways in the lower sector.

**Legal framework** Article 11 (1) and (2) of the UEFA Disciplinary Regulations, Article 15 (1) (b) of the UEFA Disciplinary Regulations, Article 38 of the UEFA Safety and Security Regulations.

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided with regard to the dismissal from the bench to suspend the Borussia Mönchengladbach official Max Eberl for two matches. With regard to the blocking of stairways, the CEDB decided to impose a fine of 8'000 on the club.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Member:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) 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. As per the UEFA official referee's report facts of this case can be summarized as follows:

*In or around the 80th minute of the match I, Harry Lennard was acting as fourth official of the technical area. Before this moment I had several reasonable dealings with the manager of the home side who acted appropriately and did not over step the boundaries of unacceptable behaviour. At this time I had had to use strong words with the Technical Area Director who I know as Max EBERL (who I had met earlier at the matchday organisational meeting) after he ran towards me in an aggressive manner - he was throwing his arms in the air and shouting at me in an extremely aggressive manner, I could not say what he was saying as he was shouting in German. I instructed him to return to his seat otherwise he may be sanctioned for irresponsible and abusive behaviour. Then in the 88<sup>th</sup> minute, Mr EBERL reacted extremely badly to an incident. He ran towards me again shouting in an aggressive manner using lots of German words. I clearly told him to stop and sit down before he clearly said FUCK YOU, FUCK OFF ITS YOUR FAULT. I then informed the referee Mr Mark Clattenburg of EBERL's behaviour and that he had to be removed from the technical area. The referee came over and EBERL left the technical area. The game was restarted and the home technical area caused me no further issues for the remainder of the game.*

3. Further, the UEFA official delegate stated the following incident:

- Away fans standing blocking stairways whole home in lower sector

## II. The Respondent's position

4. The Club in its statements dated on 23 March 2017, confirms the incident involving its official Mr Eberl. In addition it refers to three circumstances which might lead to understand the reaction of the official during the match:

- The importance of the UCL match providing the club with the opportunity to gain access to the Quarter Final round was a key element of the high intensity of all participants of that match (also described as a "derby" due to the close location between both German teams).
- The fact that Schalke FC was able to draw a leading 2:0 score of the club after halftime increased the already dramatic situation. This result lead to the final disqualification of the club of the UCL.

- The last goal scored by Schalke FC after a penalty kick is deemed by the club as a wrong decision by the referee. The referee's wrong decision was shared by the media as well as by the Schalke own representatives.
- 5. The above circumstances, so the club, do provide a reasonable background about the club official's negative reaction.
- 6. Regarding the blocking of stairways incident, the club points out that only the blocking of stairways was only partial as it referred to the lower part of the away sector. Further, the both home and away stewards tried to avoid the incident and to restore the situation but was fruitless. The club also highlights the fact that for UEFA competition matches the capacity of 2066 of this sector is reduced to 1065, which provides more space to those spectators located in this section. Finally, there were no high risks connected to the situation that could derive in a non-avoidable security issue.
- 7. 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.

- 8. 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.
- 9. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The misconduct of the official

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

- 10. According to Article 11 (1) of the UEFA Disciplinary Regulations, member associations and clubs, as well as their players, officials and members, must respect the Laws of the Game, as well as UEFA's Statutes, regulations, directives and decisions, and comply with the principles of loyalty, integrity and sportsmanship.
- 11. As for Article 11 (2) DR, a breach of this principles is committed by anyone: (b) whose conduct is insulting or otherwise violates the basic rules of decent conduct.
- 12. Pursuant to Article 15 (1) DR, "The following suspensions apply for competition matches:  
(...)

(b) suspension for two competition matches or a specified period for directing abusive language at a match official;

(...)

(d) suspension for three competition matches or a specified period for insulting any match official”.

13. 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 Coach*

14. In the case in hand and according to the referee’s report, at the minute 88, Mr Eberl ran towards the fourth official shouting in an aggressive manner using lots of German words. He was told to stop and sit down before he clearly said “FUCK YOU, FUCK OFF ITS YOUR FAULT”.
15. It shall be recalled 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.
16. The club does not object to the picture drawn by the UEFA official in his report. It, however, addresses to other factors that could make understandable the reaction of Mr Eberl. Amongst them stand the importance of this match for the club, the dramatic disqualification of the club of the competition and an alleged wrong penalty awarded by the referee against the club – which finally derived in the decisive goal leading to the club’s disqualification.
17. The Control, Ethics and Disciplinary Body after analyzing the official reports considers that the official incurred in an unsporting behavior breaching the general principles of conduct. In this regard, any individual must comply with the principles of ethical conduct, loyalty, integrity and sportsmanship.
18. It must be stressed that the circumstances of this incident draws a picture in which the attitude of the team official is not to be accepted at football matches. Briefly, the authority of the referees, the officials and UEFA is not to be undermined by any person participating at a match. If UEFA would accept that club officials show dissent in the aggressive, insulting and insisting manner as it was done in the case in hand, it would have a negative impact on the performance of the referees. It would put more pressure to an already demanding and intensive task. Such conducts are completely unacceptable during football matches.
19. In this regard this disciplinary body wishes to remark that the status of the referees and UEFA officials require a special protection. Hence, any infraction committed against the latter entail strong disciplinary measures.

20. Consequently, the actions of the club official Mr Eberl as described by the referee above constitute an insulting conduct under the terms of Article 15 (1) (b) of the UEFA Disciplinary Regulations and needs to be punished accordingly.

C. Insufficient organization: blocking of stairways

a) *Applicable legal framework and general remarks*

21. 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.
22. 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.
23. 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."*
24. 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*

25. 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.
26. 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*).
27. In the case at hand, according to the report of the UEFA delegate, Away fans standing blocking stairways whole hame in lower sector
28. The Control, Ethics and Disciplinary Body took note of the club's arguments which, in substance, admitted the incident and refer mainly to the intents to solve this situation and the lack of any potential security incidents having in mind the circumstances of this case.

29. The Control, Ethics and Disciplinary Body took into account the efforts the club made in connection with safety and security, while however stressing that these efforts are expected from the club since they merely constitute the club's obligations pertaining to safety and security in the stadium, this in accordance with Art. 38 SSR. Therefore, such arguments could not be regarded as suited to break the accuracy of the official UEFA report.
30. Consequently, 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 match delegate's report, which is why the club 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**

31. 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.
32. Regarding the club official misconduct, the Control, Ethics and Disciplinary Body is thrilled by the highly violent and insistent attitude of Mr Eberl. He insulted gravely the UEFA official of the match. It is recalled that if this UEFA disciplinary body would impose a sanction separately to each of these insulting, aggressive and insistent actions the sanction would go up to very high number of matches suspension. However, the Control, Ethics and Disciplinary Body is willing to examine jointly the different behaviours and consider a different punishment.
33. In the light of the above, UEFA, the Control, Ethics and Disciplinary Body deems that a two match suspension is the adequate disciplinary measure regarding the circumstances of this case. This is indeed the minimum suspension for conducts falling within the scope of Article 15 (1) (b) DR.
34. Regarding the blocking of stairways, in the present case, the Control, Ethics and Disciplinary Body identified and took into account the seriousness of the offence committed, as well as the risk connected to these kind of incidents.
35. In the light of the above considerations, the Control, Ethics and Disciplinary Body deems that 8'000€ shall be deemed as the adequate disciplinary measure.

## Decision of 7 June 2017

Manchester United

(late kick-off; improper conduct of officials; direct red card)

### **Circumstances of the case**

On 11 May 2017, according to the reports of the official reports from the referee and the Match Delegate, in the 87<sup>th</sup> minute of the match, there was a mass confrontation between the players. The Manchester United player Eric Bertrand Bailly struck a player from the opponent team in the face. Following this, the player from Celta Vigo wearing number 24 punched Eric Bailly in the face. The player was sent off and shown the red card for violent conduct. Additionally, there was a late kick-off in second half. Players from Manchester United left dressing room too late, causing a 2min5sec delay. Players of away team were at the pitch waiting for them and referees had to wait in the tunnel.

**Legal framework** Article 15 (1) (e) and Article 11 (2) (g) of the UEFA Disciplinary Regulations

### **Decision**

The Control, Ethics and Disciplinary Body (hereinafter: "CEDB") decided with regard to the violent conduct to suspend the player for three matches for which he would be otherwise eligible. With regard to the late kick-off, the CEDB warned both Manchester United as well as its coach, Jose Mourinho

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 reports of the referee and the UEFA match delegate, can be summarized as follows:
  - In the 87th minute, after a foul the match was stopped. A yellow card was shown to number 8 of Celta Vigo for dissent, in that moment there was a mass confrontation between the players. Number 3 of Manchester United, Eric Bertrand Bailly (hereinafter: "the player"), struck an opponent in the face - by punching number 9 of Celta Vigo. Following this, number 24 of Celta Vigo came and struck number 3 of Manchester United by punching him in the face. Both players were sent off and shown the red card for violent conduct.
  - Late kick-off in second half - 2,05 minutes. Players of home team left dressing room too late. Players of away team were at a pitch waiting for them and referees wait them in a tunnel.

## II. The Respondent's position

3. The Club in its statements dated on 18 May 2017, explained that the player fully apologizes for his action in the incident, he realizes that he should not have become involved and totally regrets what happened. He admits that it was a foolish, petulant act that has now cost him the opportunity to play in what would have been the biggest game of his career so far, a major UEFA final.
4. Furthermore, the Club would also ask to be taken into consideration the continued provocation and abuse received by Eric from the Celta Vigo players during the entirety of the game. According to the Club, various players were targeting him with derogatory and abusive comments from the start of the game until the 88<sup>th</sup> minute sending off, and although many were overheard by our players, it is uncertain if the match officials were aware of what was happening. What is certain is that no action was taken to try and limit the verbal abuse Eric was receiving.
5. Likewise, the player's in the 88<sup>th</sup> minute was petulant rather than violent and certainly caused no serious harm or injury to his opponent. We understand the need for him to be suspended but would plead that a one match punishment is sufficient under these circumstances - especially given the magnitude and importance of the game that the player will miss.

6. 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.

7. 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.
8. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.

#### B. The red card

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

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

11. The UEFA disciplinary bodies 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) DR. In the case of a particularly serious attack on a person's physical or psychological well-being, we therefore talk of "serious assault" in the sense of letter g) of this same provision.
12. According to the constant practice of the UEFA disciplinary bodies, assault in the sense of the above provision consists of any act committed not only intentionally but also recklessly by which the opponent's physical or psychological well-being is interfered with. Such an act would *inter alia* involve aggressive contact such as slapping, head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting.
13. In the case in hand, according to the referee's report, the player struck an opponent in the face by punching the player from Celta Vigo wearing number 9.

14. According to Article 38 DR: "Facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided".
15. The CEDB was convinced that, irrespective of the fact that the Club did not provide any documentary evidence for such allegations, in general previous provocations which might have happened before the incident under scrutiny, do certainly not justify a behavior as it was reported by the referee of the match. This is also the established jurisprudence of this decision making body.
16. Consequently, the act of the player who struck the opponent player in the face as described by the referee above constitutes assault under the terms of Article 15 (1) (e) DR.

C. The late kick off

*a) Applicable legal framework and general remarks*

17. According to Article 11 (2) (g) a breach of UEFA Disciplinary Regulations is committed by anyone who is responsible for a late kick-off.
18. According to Article 8 DR, a member association or 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 member association or the club concerned can prove the absence of any fault or negligence.

*b) The responsibility of the club and coach*

19. In the case in hand, it was reported that a late kick-off occurred in the second half which started 2 minutes and 5 seconds. The UEFA match delegate had reported that players of the home-team left their dressing room too late, making the away-team and the referees wait on the pitch and the tunnel, respectively.
20. In this respect, it needs to be taken into account that every delay of the kick-off times might lead to serious consequences for the relationship of UEFA and its commercial partners.
21. In addition, respect needs to be paid to the nature of the competition of the UEFA Europa League is one of UEFA's flagship club competitions. In this view, any behaviour tending to tarnish the image of this major competition cannot be accepted and must therefore be punished accordingly.

22. Moreover, respecting the principle of equal treatment and opportunities, both teams are entitled to and need to be given the same duration of preparation prior to the commencing of the match. Any unilateral extension of the kick-off time by a team, would infringe this fundamental principle.
23. Referring to the responsibility of the coach and as an introductory remark, it shall be pointed out that the wording of the provision contemplating the infringement of the late kick-off has been modified. The former UEFA Disciplinary Regulations Edition 2012 established that a violation of the UEFA Regulations is committed by anyone who culpably reports for a match late or not at all. However, the current UEFA Disciplinary Regulations contemplate a violation by anyone who is responsible for late kick off. The approach between the notions of culpably reporting a late kick off and being responsible for the late kick off is evident, since the first needs, in principle, the intention to be late on the field of play and with the current version a negligent attitude is enough in order to conclude that a kick off timing violation is at stake.
24. Furthermore, as the head coach of a club or association is the highest authority of the team before, during and after the game, he is also responsible that his team is on the pitch on time.
25. The CEDB deems that the respect of the timing shall also be considered as being within the scope of those matters under the head coach's responsibility, because, obviously, assuring that the team is on the field of play on time is essential. It is the head coach who under normal circumstances decides when the team is prepared to get out of the dressing room. Fact is that the responsibility of the Club and the head coach are in the spotlight when respecting timings to be on the field of play.
26. In this particular case the CEDB is comfortable satisfied that there are no particular circumstances that may exculpate the coach. Consequently, the coach shall be held responsible for the late kick off infringement, and, therefore, violated Article 11 (2) (g) DR. Furthermore, according to the principle of strict liability, the CEDB decides that the Club shall be held responsible as well for the late kick-off of its team.

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

27. 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.
28. Regarding the red card for the player, striking an opponent in the face is undoubtedly an act of assault, which, as a matter of principle, does not allow a plea of mitigation. The CEDB has taken into consideration the fact that the player has no previous record from

the last five years, but given the nature of the act committed, this is not enough to justify a reduction in the standard punishment.

29. Furthermore, the CEDB, by referring to its established jurisprudence, also noted that even though it has sympathy for the player and the fact that he will not be available for his team during important matches and, in this context took into account the apology of the player, could not agree with argument of the Club that such circumstances could lead to a mitigation of the sanction.
30. Bearing the above in mind, the CEDB deems that to suspend the player for three (3) UEFA competition matches for which he would be otherwise eligible, as the adequate disciplinary measure.
31. Regarding the late kick-off infringement, the CEDB identified and took into account the seriousness of the offences committed and the fact that the Club has no previous record in connection with late kick-off infringements.
32. In the light of the above considerations, the CEDB deems that a warning shall be deemed as the adequate disciplinary measure against the club. In addition this UEFA disciplinary body also warns the Manchester United coach, José Mourinho, for the improper conduct of the team.



Appeals Body

## Decision of 12 January 2017

BATE Borisov

(direct red card)

### **Circumstances of the case**

It was reported by the referee of the UEFA Europa League 2016/2017 match between FC BATE Borisov and FC Astana on 25 August 2016 “the number 17 of FC BATE Borisov, Mr. Rios Aleksei gave a kick on the face of his opponent with his elbow after the ball had been played away” and was shown a red card by the referee for “violent conduct”. However, after the match, the referee reported that it was in fact the player Vitali Rodionov who had committed the offence and not Aleksei Rios.” On 28 September 2016, the CEDB decided to suspend Vitali Rodionov four matches for the violent conduct, increasing the standard sanction due to the particularly dangerous offense of using the elbow against an opponent’s face. The CEDB added an additional match suspension for his dishonest conduct with regard to the mistaken identity. The club in its appeal did not dispute that the incident of “violent conduct” occurred but claimed that the player was not trying to be aggressive or to harm his opponent with his elbow, which is why only the standard sanction should have been applied. With regard to the further unsporting conduct, the club argued that the fact that various players were involved in a protest to the referee led the player to believe that Rios Aleksei was sent-off for protesting.

**Legal framework** Article 15 (1) (a) (v) and 15 (1) (e) of the UEFA Disciplinary Regulations.

### **Decision**

On 28 September 2016, the CEDB decided to suspend Vitali Rodionov five matches. The Appeals Body partially upheld the initial CEDB decision and reduced the suspension to four matches.

Chairman: Pedro Tomás (ESP)

Members: Rainer Koch (GER)  
Urs Reinhard (SUI)

## 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 (the "**CEDB**") on 17 November 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 key elements of the present case can be summarised as follows:
  - a. in the 82nd minute of the UEFA Europa League 2016/2017 match between FC BATE Borisov (the "**Club**") and FC Astana on 25 August 2016 (the "**Match**"), *"the number 17 of BATE FC Mr RIOS Aleksei gave a kick on the face of his opponent with his elbow after the ball had been played away"* and was shown a red card by the referee for *"violent conduct"*; and
  - b. after the Match, the referee reported that it was in fact the player Vitali Rodionov (the "**Player**") who had committed the offence and not Aleksei Rios.
4. Disciplinary proceedings were opened against the Club on 28 August 2016 and the CEDB convened on 28 September 2016 to decide the case. The Decision with grounds was notified to the Club on 18 October 2016.
5. In the Decision with grounds, the CEDB concluded that the Player's behaviour during the Match constituted assault under Article 15(1)(e) of the UEFA Disciplinary Regulations (the "**DR**").
6. However, the CEDB considered the Player's behaviour to be particularly dangerous because it involved the use of his elbow. Accordingly, the CEDB decided to exercise its discretion under the DR to increase the three match sanction provided for in Article 15(1)(e) to four matches.
7. In addition, the CEDB considered that players have a duty to assist the referee and not to try and subvert the principles of good sportsmanship. The CEDB decided that the Player had deliberately misled the referee by not owning up to being the person who had committed the offence. This was considered an instance of unsporting conduct under Article 15(1)(a)(v) DR and, accordingly, the CEDB imposed a further one match suspension.
8. For these reasons, in total the CEDB decided to suspend the Player for five (5) UEFA competition matches for which he would be otherwise eligible.

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

9. On 21 October 2016, the Club announced its intention to appeal against the Decision.
10. On 25 October 2016, the Club filed its grounds for appeal.
11. In its statement:
  - a. the Club does not dispute that the incident of “*violent conduct*” occurred but claims that the Player was not trying to be aggressive or to harm his opponent with his elbow;
  - b. the Club argues that the standard three match suspension under Article 15(1)(e) should apply to the Player and that a further one match should not have been added because of the use of an elbow; and
  - c. the Club denies that the Player is guilty of unsporting conduct, suggesting that the fact that various players were involved in a protest to the referee led the Player to believe that Rios Aleksei was sent-off for protesting.
12. On 15 November 2016, the UEFA Ethics and Disciplinary Inspector (the “**EDI**”) submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.
13. The EDI considered the Decision to be correct in all aspects, including with regard to the exercise of the CEDB’s discretion when increasing the standard three match suspension for assault to four matches and its additional consideration of unsporting conduct. The EDI also provided video footage of the incident.

## **III. Hearing**

14. The Club did not request a hearing. Consequently, the Appeals Body rendered its decision based on the written statements submitted by the parties.
15. The Appeals Body examined the entire case file, in particular the Decision with grounds, the EDI’s reply and the grounds for appeal.
16. The various 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**

17. 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 particularly urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.*

18. The Club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
19. 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**

20. According to Article 15(1)(a)(v) DR, a suspension for one competition match (or a specified period) applies in respect of instances of unsporting conduct.
21. According to Article 15(1)(e) DR, a suspension for three competition matches (or a specified period) applies in respect of the assault of another player (or another person present at the match).
22. 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 present case**

23. The Appeals Body notes that the Club does not deny that the “*violent conduct*” occurred.
24. Indeed, having read the referee’s report and having watched the video evidence, there is no doubt that the Player elbowed his opponent.
25. Consequently, the Appeals Body shares the conclusion of the CEDB in the Decision that the Player breached Article 15(1)(e) DR.
26. The Club does, however, contest the charge of “*unsporting conduct*”, suggesting that the fact that various players were involved in a protest to the referee led the Player to believe that Rios Aleksei was sent-off for protesting.
27. Having considered the circumstances of the incident and the behaviour of the teams after the incident occurred, the Appeals Body is prepared to give the benefit of the doubt to the Player on this occasion. It is noted that the referee himself did not allege that any unsporting conduct occurred nor is the video evidence conclusive with regard to the existence of any deliberate attempt of the Player to mislead the referee.

28. The Appeals Body agrees with the CEDB that players have a duty to assist the referee and not to try and subvert the principles of good sportsmanship, however, on this occasion, such an offence has not been proven.
29. Consequently, the Appeals Body does not agree that the Player breached Article 15(a)(v) DR.
  - C. Determination of the disciplinary measure
30. It is the Appeals Body's consistent practice to consider the CEDB'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.
31. In the opinion of the Appeals Body, none of this applies here with regard to the Article 15(1)(e) DR offence.
32. The Appeals Body is of the opinion that the CEDB neither abused nor exceeded its broad powers of discretion when increasing the standard three match sanction provided for in Article 15 (1)(e) to four matches.
33. Video evidence shows that the Player deliberately elbowed his opponent in the face.
34. Using an elbow in this way is particularly dangerous and the CEDB was entitled to take this into account.
35. The Decision complies with the principles of legality and proportionality with regard to the Article 15(1)(e) DR offence.
36. Accordingly, the Appeals Body has no option but to uphold the Decision in so far as it relates to the Article 15(1)(e) DR offence.
37. With regard to the Article 15(a)(v) DR, as mentioned above, the Appeals Body admits the Club's appeal.

## **VI. Costs**

38. The Appeals Body decides at its own discretion how to allocate the costs of proceedings.
39. The appeal fee is either deducted from the costs of proceedings or reimbursed (in accordance with Article 44 (2) DR).
40. 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.
41. In the present case, the costs of proceedings are €1,000.

## Decision of 12 January 2017

FK Austria Wien

(racist behaviour, throwing of objects, setting of fireworks)

### **Circumstances of the case**

The UEFA delegate for the UEFA Europa League 2016/2017 match between AS Roma and FK Austria Wien on 20 October 2016 reported that the “Unsterblich” group of the club’s supporters displayed an illicit banner throughout the Match, three plastic flag poles were thrown by the Club’s supporters during the match and nineteen fireworks in total were lit by the Club’s supporters during the Match and some were also thrown onto the running track which surrounded the pitch. The illicit banner was a German “Reichskriegsflagge”, a flag which was used by the Nazis since 1935 and is commonly used by far-right groups across Europe. The CEDB on 10 November 2016 decided to impose a partial stadium closure, a fine of €25,000 as well as to display a “No to racism” banner covering 1’500 seats. With regard to the lighting of fireworks and throwing of objects, the CEDB considered that a fine of €10,000 was the appropriate sanction for these offences.

The club in its appeal inter alia explained that it has banned the Unsterblich group from its own stadium while suggesting that it works hard to prevent the group from attending its away matches. The club also stated that the banner in question entered the stadium despite rigorous checks, that multiple requests to remove the banner were made to the group (including from local police) but these were ignored and ultimately, under the threat of violence/pitch invasion, it was decided to leave the banner

**Legal framework** Article 14 (1) and (2) of the UEFA Disciplinary Regulations, Article 16 (2) (b) and (c) of the UEFA Disciplinary Regulations.

### **Decision**

On 10 November 2016, the CEDB decided to impose a partial stadium closure on the club as well as a fine of € 35’000.

The Appeals Body partially upheld the initial CEDB decision and reduced the fine to € 10’000, while confirming the partial stadium closure.

Chairman: Pedro Tomás (ESP)

Members: Rainer Koch (GER)  
Urs Reinhard (SUI)

## 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 (the “**CEDB**”) on 17 November 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 key elements of the present case can be summarised as follows:
  - The UEFA delegate for the UEFA Europa League 2016/2017 match between AS Roma and FK Austria Wien (the “**Club**”) on 20 October 2016 (the “**Match**”) reported that: (i) a group of the Club’s supporters known as the ‘Unsterblich’ ultras displayed an illicit banner throughout the Match; (ii) plastic flag poles and fireworks were thrown by the Club’s supporters during the Match; and (iii) nineteen fireworks were lit by the Club’s supporters during the Match.
  - The illicit banner was also observed and photographed by a representative of FARE who reported that:

*“... Austria Wien away fans in Distinti Ospiti, sector 50 and 51 displayed a flag reading ‘Unsterblich’ styled as the German Reichskriegsflagge (war flag). The flag was used by the Nazis since 1935 and is commonly used by far-right groups across Europe. Far-right groups in football often replace the original colours and swastika with the colours and emblem of their club respectively...”*

*The displayed flag belongs to a neo-Nazi group of FK Austria Wien supporters named ‘Unsterblich’. The flag is banned from FK Austria Wien home matches...”*
4. Disciplinary proceedings were opened against the Club on 21 October 2016 and the CEDB convened on 10 November 2016 to decide the case. The Decision with grounds was notified to the Club on 16 November 2016.
5. In the Decision with grounds, the CEDB concluded that the Club had breached Articles 14(1) and 16(2) the UEFA Disciplinary Regulations (the “**DR**”).
6. On this basis, the CEDB decided to:
  - order the partial closure of the Club’s stadium during the next (1) UEFA competition match which the Club hosts; and
  - fine the Club €35,000.

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

7. On 18 November 2016, the Club announced its intention to appeal against the Decision.
8. On 23 November 2016, the Club filed its grounds for appeal.
9. In its statement, the Club:
  - Explains that it has banned the Unsterblich group from its own stadium.
  - Suggests that it works hard to prevent the Unsterblich group from attending its away games (including the Match).
  - Suggests that the banner in question entered the stadium despite rigorous checks.
  - Explains that multiple requests to remove the banner were made to the Unsterblich group (including from local police) but these were ignored and ultimately, under the threat of violence/pitch invasion, it was decided to leave the banner.
  - Claims that the UEFA delegate indicated that the banner was not racist.
  - With regard to all of the offences, questions the applicability of the 'strict liability' principle.
10. On 16 December 2016, the UEFA Ethics and Disciplinary Inspector (the “**EDI**”) submitted his reply to the appeal.
11. In his statement:
  - The EDI notes that an objective observer would conclude that the flag in question was displayed by the Club’s supporters and therefore the fans who displayed the banner with the Reichskriegsflagge at the Match (i.e. the Unsterblich ultras) should be considered supporters of the Club (regardless of whether the Club has banned them from home matches).
  - The EDI confirms that it has long been established in UEFA and CAS case law that strict liability applies regardless of fault. As a matter of fact, the Club cannot therefore argue that it is not liable on the grounds that it did not commit any fault.
  - The EDI explains that, according to the FARE Report, the relevant banner is used by neo-Nazi and far-right groups in football and is actually banned from the Club’s home matches. He therefore concludes that the Club is well aware of the unacceptable discriminatory nature of the flag.

- In the EDI's opinion, the sanctions imposed by the CEDB are adequate and proportionate. The Decision should therefore be confirmed and the appeal rejected.

### **III. Hearing**

12. The Club did not request a hearing. Consequently, the Appeals Body rendered its decision based on the written statements submitted by the parties.
13. The Appeals Body examined the entire case file, in particular the Decision with grounds, the EDI's reply and the grounds for appeal.
14. The various 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**

15. 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 particularly urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."*

16. The Club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
17. 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**

18. According to 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.
19. Under Article 14 (2) DR, if one or more of a club's supporters engages in the behaviour described in Article 14 (1) DR, the club shall be punished with a minimum of a partial stadium closure.
20. According to Article 16(2) DR:

*“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:*

...

*b) the throwing of objects;*

*c) the lighting of fireworks or any other objects;*

...”.

21. 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 present case

22. It is noted that the Club does not deny that the banner was displayed at the Match, nor that fireworks were ignited and objects thrown during the Match.
23. Generally speaking, however, the Club does question the applicability of the principle of ‘strict liability’ in the present case.
24. The Club’s arguments regarding ‘strict liability’, however, are erroneous.
25. According to Article 8 DR, which stipulates the principle of ‘strict liability’ (and Articles 14(1) and 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.
26. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club in question (i.e. ‘strict liability’).
27. 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).
28. The Club’s responsibility for the acts of its supporters is therefore clear.
29. The Club has provided no evidence that would disprove the accuracy of the official delegate’s report with regard to the Article 16 DR offences. Accordingly, the Appeals Body agrees with the findings of the CEDB in this regard.

30. With regard to the Article 14 DR offence, the Club attempts to distance itself from the Unsterblich group of supporters (principally by explaining how it has banned them from its home matches).
31. The Appeals Body, however, agrees with the EDI's analysis that an objective observer would conclude that the Unsterblich ultras are the Club's supporters.
32. Further, although the Appeals Body acknowledges the actions taken by the Club in the build-up to the Match and at the Match itself, this does not absolve the Club from responsibility for the acts of this group of ultras.
33. In the opinion of the Appeals Body, the Club has not managed to explain why it should not be held responsible for the acts of the Unsterblich group.
34. It is noted that the Club's comment that the delegate for the Match indicated that the banner was not racist is not supported by any evidence and is not mentioned in the delegate's report.
35. Further, in light of the FARE report and given that the Club has clearly identified the Unsterblich ultras as a far right group, the Appeals Body has no doubt that the banner is racist and fully agrees with the CEDB's analysis of the Nazi symbolism.
36. On this basis, the Appeals Body concludes that the CEDB was correct to decide that the Club had breached Article 14(1) DR.

C. Determination of the disciplinary measure

37. It is the Appeals Body's consistent practice to consider the CEDB'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.
38. In the opinion of the Appeals Body, none of this applies in the present case with regard to the Article 16 DR offences.
39. The Appeals Body is of the opinion that the CEDB neither abused nor exceeded its broad powers of discretion when imposing a fine of €10,000.
40. The measure complies with the principles of legality and proportionality.
41. Accordingly, the Chairman of the Appeals Body has no option but to uphold the Decision in so far as it relates to the Article 16 offences.
42. With regard to the Article 14 DR offence, the Appeals Body partially admits the Club's appeal.

43. The Appeals Body notes that the Club has no previous record for racism offences.
44. For this reason, the Appeals Body considers that only a partial stadium closure (without an additional fine of €25,000) should apply.
45. Such an approach would be consistent with the wording of Article 14(2) DR, as well as previous case law in this area.

#### **VI. Costs**

46. The Appeals Body decides at its own discretion how to allocate the costs of proceedings.
47. The appeals fee is either deducted from the costs of proceedings or reimbursed (in accordance with Article 44 (2) DR).
48. 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.
49. In the present case, the costs of proceedings are €1,000.

## Decision of 12 January 2017

Bayern München

(illicit banner)

### **Circumstances of the case**

It was reported that Bayern München supporters displayed banners bearing the following text during the Match between the club and PSV Eindhoven: "In Warsaw, Rostov or elsewhere - no to bans of fans - smug UEFA battles football instead of racism." and "St. Etienne/Paris - terrorism misused - no to Lock out fans of FC Basel (fuck) authorities."

On 17 November 2016, the CEDB decided that such messages are clearly offensive and are not fit for a sporting event given that the negative anti-UEFA messages are clearly intended to be provocative and offensive. The CEDB therefore deemed a fine of 10'000 € to be the appropriate sanction.

The club in its appeal admitted that the Second Banner is offensive, while stating with regard to the first banner that it cannot be said to be unfit for a sports event because it makes reference to certain UEFA Champions League matches (involving Legia Warsaw and FC Rostov) and also UEFA's 'No to Racism' campaign. The club suggested that the first banner was only intended to show solidarity with other fans, does not criticise UEFA's values and contains no vulgar language; and in conclusion, the club suggested that the two banners are not equally serious and the fine imposed by the CEDB in the Decision should therefore be reduced.

**Legal framework** Article 16 (2) (e) of the UEFA Disciplinary Regulations

### **Decision**

On 17 November 2016, the CEDB decided to impose a fine of 10'000 on the club.

The Appeals Body upheld the initial CEDB decision and rejected the appeal of Bayern München.

Chairman: Pedro Tomás (ESP)

## 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 (the "**CEDB**") on 17 November 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. According to the UEFA delegate's official report (with photographs) for the UEFA Champions League 2016/2017 match between FC Bayern München (the "**Club**") and PSV Eindhoven on 19 October 2016 (the "**Match**"), during the Match the Club's supporters displayed a banner bearing the text "*In Warzaw, Rostov or elsewhere - no to bans of fans - smug UEFA battles football instead of racism*" (the "**First Banner**") and a banner bearing the text "*ST. Etienne/Paris - terrorism misused - no to Lock out fans of FC Basel (fuck) authorities*" (the "**Second Banner**").
4. Disciplinary proceedings were opened against the Club on 20 October 2016 and the CEDB convened on 17 November 2016 to decide the case. The Decision with grounds was notified to the Club on 30 November 2016.
5. In the Decision with grounds, the CEDB concluded that the Club had breached Article 16(2)(e) of the UEFA Disciplinary Regulations (the "**DR**"). For this reason, the CEDB decided to fine the Club €10,000.

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

6. On 1 December 2016, the Club announced its intention to appeal against the Decision.
7. On 5 December 2016, the Club filed its grounds for appeal.
8. In its statement:
  - the Club admits that the Second Banner is offensive;
  - with regard to the First Banner, the Club argues that it cannot be said to be unfit for a sports event because it makes reference to certain UEFA Champions League matches (involving Legia Warsaw and FC Rostov) and also UEFA's 'No to Racism' campaign;
  - the Club suggests that the First Banner was only intended to show solidarity with other fans, does not criticise UEFA's values and contains no vulgar language; and

- in conclusion, the Club suggests that the two banners are not equally serious and the fine imposed by the CEDB in the Decision should therefore be reduced.

### **III. Hearing**

9. The Club did not request a hearing. Consequently, the Appeals Body rendered its decision based on the written statements.
10. The Appeals Body examined the entire case file, in particular the Decision with grounds and the grounds for appeal.
11. The various 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**

12. 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 particularly urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.*

13. The Club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
14. 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**

15. 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 a 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..."*

16. 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 present case

17. According to the delegate's report, the First Banner and Second Banner were displayed during the Match.

18. The fact that the two banners were displayed during the Match is not contested by the Club.

19. Further, the Club does not contest the fact that the Second Banner is offensive within the meaning of Article 16(2)(e) DR.

20. With regard to the First Banner, in the opinion of the Appeals Body, the Club has presented no evidence to contradict the finding of the CEDB in the Decision that this is also offensive within the meaning of Article 16(2)(e) DR.

21. The First Banner displays a negative anti-UEFA message and is clearly intended to be offensive (as well as provocative).

22. It does not matter that vulgar language was not used – vulgar language is not a prerequisite for offence to be caused.

23. It is also nonsensical to suggest that the First Banner does not question UEFA's values when it clearly questions UEFA's commitment/priorities with regard to anti-racism activities.

24. The CEDB was correct to stress that it cannot allow football matches organised by UEFA to become forums for people who want to abuse the game's popularity to publicise political, religious, ideological, offensive and/or provocative opinions which are unrelated to sporting events.

25. Against this background, both the First Banner and Second Banner are clearly unfit for a football match.

26. Consequently, the Appeals Body shares the conclusion of the CEDB in the Decision that the Club breached Article 16(2)(e) DR with regard to both the First Banner and the Second Banner.

C. Determination of the disciplinary measure

27. It is the Appeals Body's consistent practice to consider the CEDB'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.

28. In the opinion of the Appeals Body, none of this applies here.
29. The Appeals Body is of the opinion that the CEDB neither abused nor exceeded its broad powers of discretion in taking the Decision.
30. The Decision complies with the principles of legality and proportionality.
31. The CEDB rightly took into account the offensive and provocative nature of the messages on the First Banner and the Second Banner. Such messages are explicitly anti-UEFA in nature.
32. The Appeals Body sees no evidence that the CEDB's powers of discretion have been abused or exceeded here.
33. Indeed, the Appeals Body wishes to stress that, with regard to Annex A of the DR, even the Second Banner taken alone would be sufficient to justify the fine imposed by the CEDB in the Decision. If anything, it could be argued that the CEDB was too lenient in imposing only a €10,000 fine, but certainly not too severe.
34. Accordingly, the Chairman of the Appeals Body has no option but to uphold the Decision and reject the appeal.

## **VI. Costs**

35. The Appeals Body decides at its own discretion how to allocate the costs of proceedings.
36. The appeal fee is either deducted from the costs of proceedings or reimbursed (in accordance with Article 44(2) DR).
37. 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.
38. In the present case, the costs of proceedings are €1,000.

## Decision of 12 January 2017

SK Rapid Wien

(throwing of objects, setting of fireworks, acts of damages)

### **Circumstances of the case**

It was reported that in the 46th minute of the match, the SK Rapid Wien supporters lit 27 Bengal flares (colour green with smoke) in the visiting sector. Initially these flares has been held in the hand. After approx. 30-40 seconds, the flares has been thrown in the direction of the pitch. Only one reached the pitch near the UEFA Respect board but didn't enter into the field of play. Three seats in the visiting sector were burned and damaged, as well as the UEFA Respect board. In the light of the seriousness and multiplicity of the offences committed and the club's previous record, the CEDB on deemed that a 29'000€ fine and to order the club to contact the home-club within 30 days for the settlement of the damages caused by its supporters as the appropriate sanction.

The club in its appeal admits the occurrence of the lighting of fireworks, but states that the fireworks were not thrown but only dropped into an empty sector not occupied by any supporters. Regarding the alleged recidivism, the Appellant argues that the last similar violation of Art. 16 (2) (c) DR was already four years ago, i.e. 25 matches were between the match under scrutiny and the last violation. Finally, the Appellant in its conclusions requests to apply a staying effect to the appeal, as well as to reduce the sanction imposed on the club.

**Legal framework** Article 16 (2) (b) (c) and (h) of the UEFA Disciplinary Regulations

### **Decision**

On 17 November 2016, the CEDB fined the Appellant € 29'000 and ordered the club to contact the home-club regarding the damages. The Appeals Body partially upheld the initial CEDB decision and reduced the fine to € 18'000.

Chairman: Pedro Tomás (ESP)

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

1. The elements set out below are a summary of the main relevant facts, as established by the Chairman of the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's decision of 17 November 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 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. On 3 November 2016, SK Rapid Wien played a Europa League 2016/2017 Group stage match against US Sassuolo Calcio.
3. Briefly, the most relevant facts as established by the UEFA delegate report at this match can be summarized as follows: In the 46<sup>th</sup> minute of the match, SK Rapid Wien (hereinafter: "Rapid" or "the Appellant") supporters set off 27 Bengal flares in the visiting sector. After approx. 30-40 seconds, the flares were thrown in the direction of the pitch, whereas only one reached the pitch near the UEFA Respect board without entering the field of play. Because of these flares being burnt off, three seats in the visiting sector were burned and damaged, as well as the UEFA Respect board.
4. No statements were submitted by the Appellant before the Control, Ethics and Disciplinary Body.
5. On 17 November 2016 the Control, Ethics and Disciplinary Body considered that such actions by the Appellant's supporters violated article 16 (2) (b) and (c) of the UEFA Disciplinary Regulations. The Control, Ethics and Disciplinary Body further assumed that the Appellant had already been sanctioned for the same violation previously, which is why the latter was punished with a € 29'000 fine.
6. The Decision with grounds was notified to the appellant on 25 November 2016.

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

7. On 28 November 2016, the Appellant announced its intention to appeal against the Decision.
8. On 1 December 2016, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
  - The Appellant admits the occurrence of the lighting of fireworks, but states that the fireworks were not thrown but only dropped into an empty sector not occupied by any supporters. Therefore, there was no risk or danger for anyone and the relevant report was wrong.

- Regarding the recidivism which was mentioned by the Control, Ethics and Disciplinary Body in its decision as an aggravating circumstance, the Appellant argues that the last similar violation of Art. 16 (2) (c) of the UEFA Disciplinary Regulations by the Appellant was already four years ago, i.e. 25 matches were between the match under scrutiny and the last violation. Therefore, such positive change of behaviour by the Appellant's supporters should be rather taken into account as a mitigating circumstance.
- The Appellant in its conclusions requests to apply a staying effect to the appeal, as well as to reduce the sanction imposed on the club.

### **III. Hearing**

9. The proceedings before the Appeals Body were conducted in writing as neither the Appellant nor an UEFA Ethics and Disciplinary Inspector requested a hearing.

### **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 cases where the sanction imposed by the Control, Ethics and Disciplinary Body is a fine up to €50'000 referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
11. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
12. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The 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 Appeals Body**

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

13. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body was competent to deal with the case.
14. 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

15. The Chairman of the Appeals Body on a preliminary basis established that it remained undisputed that the Appellant's supporters had lit flares and fireworks during the relevant match under scrutiny, a behaviour which violated Article 16 (2) (c) of the UEFA Disciplinary Regulations. The Chairman of the Appeals Body however appreciates that the case at hand has to be put together with the question whether or not the Appellant's supporters had thrown such fireworks and therefore violated Article 16 (2) (b) of the UEFA Disciplinary Regulations or not.
16. The UEFA delegate of the given match reported that after approx. 30-40 seconds after the flares and fireworks had been set off, they were thrown in the direction of the pitch, whereas only one reached the pitch near the UEFA Respect board without entering the field of play.
17. The Chairman of the Appeals Body recalls that according to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate, and, in this regard emphasized that the aforementioned provision reverses the burden of proof and shifts it towards the Appellant.
18. With this being established, the Chairman of the Appeals Body further concluded that it was up to the Appellant to provide proof that the flares and fireworks were in fact not thrown by its supporters, contrary to what the UEFA match delegate had reported.
19. In this regard, the Chairman of the Appeals Body recalled the arguments of the Appellant who had argued that the fireworks were in fact not thrown by its supporters, but merely dropped into an empty sector not occupied by any supporters. Therefore, the Appellant concluded that there was no risk or danger for anyone and that the relevant report by the UEFA match delegate was wrong.
20. The Appellant having the burden of proof to breach the presumption of accuracy of the UEFA official report has not submitted any evidence, i.e. the Appellant neither provided photos nor video footage of the said incident which could have enabled the Chairman of the Appeals Body to draw a different conclusion than the one previously drawn by the UEFA match delegate. Therefore, the Chairman of the Appeals Body decided that it was not necessary to go into a detailed discussion whether the fireworks were in fact thrown or only dropped, and whether such a distinction would make any difference at all when it comes to the violation of Article 16 (2) (b) of the UEFA Disciplinary Regulations, as he could only conclude that the arguments of the Appellant did not breach the accuracy of the UEFA match delegate's report as established in Article 38 of the UEFA Disciplinary Regulations.
21. Bearing the above in mind, the Chairman of the Appeals Body is comfortable satisfied that the events occurred as they were described by the UEFA match delegate and that

the behaviour of the Appellant's supporters violated Article 16 (2) (b) and (c) of the UEFA Disciplinary Regulations.

22. It therefore remains for the 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 to fine the appellant € 29'000.

C. Determination of the disciplinary measure

23. 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, this partially applies here.
24. In this regard, the Chairman of the Appeals Body recalled that the Appellant in its appeal argued that regarding the recidivism which was mentioned by the Control, Ethics and Disciplinary Body in its decision as an aggravating circumstance, the last relevant disciplinary violation occurred already four years ago, which is why such positive change of behaviour by the Appellant's supporters should have been taken into account by the Control, Ethics and Disciplinary Body as a mitigating circumstance. Such failure by the Control, Ethics and Disciplinary Body would make the decision and in particular the actual sanction disproportional.
25. In this regard, the Chairman of the Appeals Body took into account the disciplinary record of the Appellant, and acknowledged that no disciplinary proceedings had been opened against the Appellant during the relevant period of two years in accordance with Article 19 (1) (c) of the UEFA Disciplinary Regulations for the same or a similar infringement.
26. In view of such circumstances, the Chairman of the Appeals Body concluded that by wrongfully taking into account a previous record of the Appellant, the Control, Ethics and Disciplinary Body therefore exceeded its broad powers of discretion. Therefore, considering the amount of € 29'000 by which the Appellant was fined, the decision of the Control, Ethics and Disciplinary Body decision did not comply with the principles of legality – to the extent of its power of appreciation – and proportionality.
27. Taking into account that the violation of Article 16 (2) (b) and (c) of the UEFA Disciplinary Regulations was established, it was up to the Chairman of the Appeals Body to analyse which sanction was appropriate for the behaviour of the Appellant's supporters, bearing in mind that the Appellant should have been regarded as a "first offender".
28. In this regard, the Chairman of the Appeals Body recalled the content of Article 6 (5) and Annex A (I) of the UEFA Disciplinary Regulations which contains a list of standard disciplinary measures which may be taken in consideration by the relevant disciplinary

body when rendering a decision. Taking into account that the total amount of 27 fireworks have been lit by the Appellant's supporters, while also recalling that the fireworks were thrown by the Appellant's supporters and have caused damages, which has to be regarded as an aggravating circumstance, the Chairman of the Appeals Body deemed that a fine of € 18'000 was the appropriate sanction in the case at hand.

29. On the basis of the above, the Chairman of the Appeals Body decided to partially uphold the appeal.

#### **VI. Costs**

30. 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).
31. Taking into account that the appeal was only partially upheld, the Chairman of the Appeals Body considered it justified to charge all of the costs of this case to the appellant, while limiting the costs of the proceedings to € 1'000, this minus the appeal fee which has already been paid by the Appellant.

## Decision of 12 January 2017

SK Rapid Wien

(illicit banner)

### **Circumstances of the case**

It was reported that the SK Rapid Wien supporters situated in sectors 15-18 during the match displayed two improper flags, directed against the Appellant's local rival club, Austria Wien. On one banner, it was written "Viola Merda" (which means violet shit), whereas on the other banner, a picture of a pig in violet colors was displayed. The UEFA match delegate noted that the traditional color of Austria Wien is violet. On 17 November 2016 the CEDB decided that such actions by the Appellant's supporters violated article 16 (2) (e) DR, and in view of the previous record of the club the latter was punished with a € 15'000 fine

The club in its appeal inter alia referred to the principle of freedom of speech, protected by means of Art. 13 of the European Convention on Human Rights and any action taken against the supporters would violate such principle without being objectively justified. Also, the club argued that a flag which merely makes reference to the colour violet cannot be regarded as illegal as it does not make reference to UEFA, the competition or the opponent. It also doesn't contain any provocative, religious, political, insulting or ideological content.

**Legal framework** Article 16 (2) (e) of the UEFA Disciplinary Regulations

### **Decision**

On 17 November 2016, the CEDB fined the Appellant € 15'000. The Appeals Body upheld the initial CEDB decision and rejected the Appeal of the Appellant.

Chairman: Pedro Tomás (ESP)

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

1. The elements set out below are a summary of the main relevant facts, as established by the Chairman of the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's decision of 17 November 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 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. On 20 October 2016, SK Rapid Wien played a Europa League 2016/2017 Group stage match against US Sassuolo Calcio in the SK Rapid Wien stadium, the Vienna Weststadion.
3. Briefly, the most relevant facts as established by the UEFA delegate report at this match can be summarized as follows: The SK Rapid Wien (hereinafter: "the Appellant" or "Rapid") supporters situated in sectors 15-18 during the match displayed two improper flags, directed against the Appellant's local rival club, Austria Wien. On one banner, it was written "Viola Merda" (which means violet shit), whereas on the other banner, a picture of a pig in violet colors was displayed. The UEFA match delegate noted that the traditional color of Austria Wien is violet.
4. Before the Control, Ethics and Disciplinary Body, as it was established in the relevant decisions by the first instance disciplinary body, the Appellant had argued that the flag or banner merely makes reference to a colour without any reference to UEFA, the competition or the opponent team and can hence not be regarded as a punishable behaviour. The Appellant had further argued that the flag only expressed an antipathy against the colour violet, whereas it cannot be deducted that by displaying this flag, Rapid's supporters wanted to send a message to Austria Wien. Finally, the Chairman of the Appeals Body noted that the Appellant had argued before the Control, Ethics and Disciplinary Body that the fact that proceedings had only be opened based on the principle of strict liability should be taken into account as a mitigating circumstance.
5. On 17 November 2016 the Control, Ethics and Disciplinary Body considered that such actions by the Appellant's supporters violated article 16 (2) (e) of the UEFA Disciplinary Regulations. The Control, Ethics and Disciplinary Body further assumed that the Appellant had already been sanctioned for the same violation previously, which is why the latter was punished with a € 15'000 fine.
6. The Decision with grounds was notified to the Appellant on 25 November 2016.

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

7. On 28 November 2016, the Appellant announced its intention to appeal against the Decision.

8. On 1 December 2016, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
- The Appellant argues that in Austria, the freedom of speech is protected by means of Art. 13 of the European Convention on Human Rights (hereinafter "*ECHR*"). Such basic right must also be guaranteed during football games and it can be excluded that such basic right ends during UEFA competition matches. The Appellant argued that would it be forced to enforce such a rule by removing the relevant spectators from the stadium, such an infringement would certainly not be justified by any objective reason. Since the Appellant would therefore risks being held liable for enforcing the rule before national courts, such behaviour cannot be demanded from it by UEFA. In this regard, the Appellant pointed to a decision of the German Constitutional Court ("*Bundesverfassungsgericht*") in which even a message such as "*ACAB – All cops are bastards*" was protected by the freedom of expression.
  - Moreover, a flag which merely makes reference to the colour violet cannot be regarded as illegal as it does not make reference to UEFA, the competition or the opponent. It also doesn't contain any provocative, religious, political, insulting or ideological content.
  - Likewise, the Appellant held that the Control, Ethics and Disciplinary Body chose a very negative translation of the term "*viola merda*", translating it into "*violet shit (Scheisse)*", whereas shit can also be translated as "*Mist*". Also, the UEFA match delegate did not state any reasons or explanations why he would think that the message would be insulting pro provocative. Further, the Control, Ethics and Disciplinary Body only regarded it as unlikely that such a flag could have a different interpretation as the one which was given by the UEFA match delegate. However, such a likelihood cannot be regarded as sufficient to impose such a fine.
  - Finally, the Appellant states that Art. 16 (2) of the UEFA Disciplinary Regulations specifies so clearly which kind of flags and messages are regarded as illicit as well as not fit for a sports event, and, taking into account that the flag displayed by the Appellant's supporters did not fall within the examples given by the provision, such an extensive interpretation as it was given by the Control, Ethics and Disciplinary Body is not acceptable. Consequently, the Appellant requests that such mitigating circumstances and the absence of aggravating factors need to be taken into account, and therefore to overturn the decision of the Control, Ethics and Disciplinary Body in its entirety or to change the sanction into a warning. The Appellant also requests to apply a staying effect.

### **III. Hearing**

9. The proceedings before the Appeals Body were conducted in writing as neither the Appellant nor a UEFA Ethics and Disciplinary Inspector requested a hearing.

#### **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 cases where the sanction imposed by the Control, Ethics and Disciplinary Body is a fine up to €50’000 referred to it directly by the Chairman of the Control, Ethics and Disciplinary Body.”
11. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
12. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The 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 Appeals Body**

##### A. The legal framework.

13. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations, the Control, Ethics and Disciplinary Body was competent to deal with the case.
14. 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

15. The Chairman of the Appeals Body on a preliminary basis recalled that the UEFA delegate of the given match reported that the Appellant’s supporters in sectors 15-18 of the Vienna stadium regularly displayed two improper flags during the match, both flags directed against the Appellant’s rival club from Vienna, Austria Wien. It remained undisputed that on one flag it was written “Viola Merda”, translated as “violet shit” by the UEFA match delegate, whereas on the other flag a picture of a violet pig was displayed. In this regard, the UEFA match delegate had noted that the official or traditional colour of Austria Wien is violet.
16. With this being established, the Chairman of the Appeals Body noted that according to Article 38 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate, and, in this regard emphasized that the aforementioned provision reverses the burden of proof and shifts it towards the Appellant.

17. The Chairman of the Appeals Body further recalled the arguments of the Appellant which could be summarized as follows: the messages displayed by its supporters on the two flags under scrutiny were not provocative and in violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations, but even if those messages could be subsumed under the said provision, such expressions of opinion should be protected by Art. 13 of the European Convention on Human Rights, which is incorporated in Austrian statutory law and confirmed by national courts and jurisprudence in Austria and Germany. Moreover, given that it was not the Appellant's fault but only the misbehaviour of its supporters which was sanctioned due to the principle of strict liability, the relevant sanction at least needs to be reduced.
18. Regarding the first argument of the Appellant that the Control, Ethics and Disciplinary Body erroneously assumed that the two flags were in violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations, the Chairman of the Appeals Body could not concur with such an interpretation.
19. The Chairman of the Appeals Body on the one hand agreed with the argument of the Appellant that not every message which is not directly connected with sport has to be regarded as illicit and in violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations, and he agreed with the Appellant that positive messages like "No to racism" which *per se* have no direct relation to a football match are not worthy of a sanction. However, Article 16 (2) (e) of the UEFA Disciplinary Regulations *inter alia* clearly stipulates that only messages which are not fit for a sports event due to their provocative or offensive nature should be disallowed, i.e. the said provision contains the necessary corrective to exclude an overly harsh interpretation.
20. Turning to the flags under scrutiny, the Chairman of the Appeals Body could only confirm the interpretation given to these banners by the Control, Ethics and Disciplinary Body. He was convinced that these two flags were clearly aimed and directed at insulting or provoking the rival team from Vienna.
21. In this regard, the Chairman of the Appeals Body was comfortably satisfied that by displaying a violet pig and the message "viola merda", the Appellant's supporters did not want to express their disliking of the colour violet. Such an interpretation is extremely far-fetched and the Chairman of the Appeals Body was convinced that football fans usually do not express their opinion towards certain colours, and in particular not during football matches, and that the latter was also not the case here. Said argument had to be merely regarded as both a defence strategy as well as a protection assertion.
22. Likewise, the alternative translation proposed by the Appellant could not convince the Chairman otherwise. Irrespective of whether the appropriate translation of the term "merda" would be "shit" or "Mist", the provocative and insulting nature of the said message would still be unquestionable. In this regard, the Chairman of the Appeals Body could also not concur with the argument that the Control, Ethics and Disciplinary Body imposed a sanction for the relevant behaviour after finding the interpretation of the UEFA match delegate "rather likely", given that the comfortable satisfaction is the applicable

standard of proof in these proceedings, cf. Article 18 (2) of the UEFA Disciplinary Regulations.

23. In view of the above, again recalling that the traditional colours of the Appellant's local rival from Vienna, Austria Wien, are violet, taking into account that the Appellant's supporters were displaying flags with the message "violet merda" as well as a violet pig, the Chairman of the Appeals Body confirmed the view of the Control, Ethics and Disciplinary Body that the two flags were supposed to provoke and insult Austria Wien and its supporters, which clearly violates Article 16 (2) (e) of the UEFA Disciplinary Regulations.
24. Regarding the argument that such messages in the stadium should be protected by the Appellant's supporter's right of freedom of expression, the Chairman of the Appeals Body could equally not agree with such argumentation.
25. The Chairman of the Appeals Body in this regard noted that under Swiss law, the constitutional rights, and in particular the fundamental freedom rights such as the freedom of expression which is also incorporated in Article 16 of the Swiss Federation Constitution, have to be regarded as defensive freedom rights protecting the individual against the state<sup>1</sup>. In other words: the basic and fundamental freedoms are designed to protect individuals against any kind of oppression from the state or from a similar governmental interference. However, given the nature of these fundamental freedoms, the same rights cannot be invoked in disputes and conflicts between private persons or organizations<sup>2</sup>. Therefore, and as it is well established in the relevant Swiss jurisprudence, there is no direct horizontal effect of the fundamental freedoms<sup>3</sup>.
26. As it has already been pointed out by the established jurisprudence of the Court of Arbitration for Sport (CAS), under Swiss law – as under most legal systems – associations, and in particular sporting associations, possess the power (i) to adopt rules of conduct to be followed by their direct and indirect members; and (ii) to apply disciplinary sanctions to members who violate those rules, on condition that their own rules and certain general principles of law – such as right to be heard and proportionality – be respected. In this regard, several CAS awards have admitted that the authority by which a sporting association may set its own rules and exert its disciplinary powers on its direct or indirect members does not rest on public or penal law but on civil law. Therefore, UEFA is generally and equally not bound by national court decisions which dealt with citizens invoking the right of freedom of expression against state authorities.
27. The same applies also by considering the ECHR. In fact, as CAS case law has highlighted, the ECHR, which was invoked by the Appellant is:

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

<sup>2</sup> Aubert, Mahon, *ibid*, note 9 ad Art. 35 Cst.; the only few exceptions under Swiss law are those explicitly mentioned in the Swiss Federal Constitution, like for instance the right for a woman to claim the same salary as a man (cf. Art. 8 para. 3 of the Swiss Constitution).

<sup>3</sup> Aubert, Mahon, *ibid*, note 9 ad Art. 35 Cst; decision of the Swiss Federal Tribunal 111 II 245.

*"...meant to protect the individuals' fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities."*

28. This is the same approach adopted by the Swiss Federal Tribunal concerning a disciplinary decision passed by the UEFA disciplinary bodies. On this occasion, the federal court held that:

*"The Appellant invokes Article 27 of the [Swiss] Constitution and 8 ECHR. However, he was not the subject of a measure taken by the State, with the result that these provisions are, as a matter of principle, inapplicable."*

29. Therefore, on the basis of well-established jurisprudence of CAS and of the Swiss Federal Tribunal, one can only come to the conclusion that Appellant cannot hold the right for freedom of expression of its supporters.
30. Finally, the Chairman of the Appeals Body stressed that despite of what the Appellant had argued, the match organizer and host of an UEFA competition match has more possibilities of punishing supporters who violate the UEFA Disciplinary Regulations apart from the *ultima ratio* of a stadium ban or the order to leave the stadium, such as orders and directives or warnings, and there is no reason to assume why the Appellant could not have exercised such rights as the host of a private event. As for the displaying of banners who are in violation of the UEFA Disciplinary Regulations, its Article 17 even provides for the possibility to reduce a disciplinary imposed on a club in case of offences related to Article 16 (2) (e) of the UEFA Disciplinary Regulations, if the host club reacts immediately to the violation and removes the relevant flag or banner. Obviously, none of this applied here as the Appellant did not take any action whatsoever.
31. Bearing the above in mind, the Chairman of the Appeals Body is comfortable satisfied that the events occurred as they were described by the UEFA match delegate and that the behaviour of the Appellant's supporters violated Article 16 (2) (e) of the UEFA Disciplinary Regulations, as it was correctly decided by the Control, Ethics and Disciplinary Body in its decision of 17 November 2016.
32. It therefore remains for the 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 to fine the appellant € 15'000.

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.

34. In the opinion of the Chairman of the Appeals Body, none of this applies in the present case with regard to the Article 16 of the UEFA Disciplinary Regulations offences.
35. In this regard, the Chairman of the Appeals Body recalled that the Appellant in its appeal argued that the fact that no further aggravating circumstances occurred during the match under scrutiny should be taken into account positively when determining the applicable disciplinary measure. However, the Chairman of the Appeals Body recalled the established jurisprudence of the UEFA disciplinary bodies that the absence of aggravating circumstances can generally not be regarded as a mitigating circumstance, given that compliant behaviour with respect to the UEFA Disciplinary Regulation is always to be expected from the Appellant and shall not be specifically rewarded by the disciplinary bodies of UEFA.
36. Finally, turning to the last argument of the Appellant, the Chairman of the Appeals Body noted that the fact that a disciplinary measure had been imposed on the Appellant based on the principle of strict liability is not a mitigating circumstance. Obviously, the disciplinary proceedings have been opened and the disciplinary measure has been imposed on the Appellant for the behaviour of its supporters. However, such an approach has been confirmed by the CAS on numerous occasions, i.e. the principle of 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).
37. As a conclusion, taking into account that the Appellant did not provide any further arguments or evidence regarding a potential disproportionality of the sanction imposed by the first instance disciplinary body, the Chairman of the Appeals Body decided that the decision of the Control, Ethics and Disciplinary Body of 17 November 2017 complied with the principles of legality and proportionality.
38. On the basis of the above, the Chairman of the Appeals Body decided to dismiss the appeal of the Appellant on all grounds.

## **VI. Costs**

39. 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).
40. 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.
41. In the present case, the costs of proceedings are €1,000.



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