



INTEGRITY DIVISION

DISCIPLINARY AND ETHICS UNIT

## **CASE LAW**

# **Control, Ethics and Disciplinary Body Appeals Body CFCB Adjudicatory Chamber**

WE CARE ABOUT FOOTBALL

January – June 2018

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NKING THE MAT



Foreword

Dear Sir or Madam,

I am pleased to provide you with the case law of the UEFA Control, Ethics and Disciplinary Body, the UEFA Appeals Body and the Club Financial Control Body (CFCB) Adjudicatory Chamber for the period January-June 2018.

According to Article 52 (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 ethics and disciplinary inspector, to publish an anonymized 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 and the CFCB Adjudicatory Chamber during this time period.

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.

Yours faithfully,

**UEFA**



**Angelo Rigopoulos**  
**Managing Director of Integrity & Regulatory**



Control Ethics and Disciplinary Body

## Decision of 9 and 23 February 2018

Football Association of Finland  
(Protest, Mistaken Identity, Direct Red Card)

### **Circumstances of the case**

The Finland Football Association lodged a protest against the referee's decision to award a red card to the player Anna Westerlund. In summary, the association holds that Anna Westerlund was nowhere near the incident for which she was shown the red card. Therefore, this is a clear case of mistaken identity.

**Legal framework** Article 55 and 57 UEFA Disciplinary Regulations and Article 9 UEFA Disciplinary Regulations

### **Decision**

In the present case, the Control, Ethics and Disciplinary Body (hereinafter also as "CEDB") took into account the video footage which was provided by the association and agreed with the latter that Mrs. Westerlund wearing number 16 was not involved in the incident, as she can be seen on the left side of the screen running back, watching the incident to which only number 5 and number 15 were close to. Therefore, by sending off Mrs. Westerlund, the referee committed an obvious error by mistaken the identities of the aforementioned players in the sense of Art. 9 (2) DR. In accordance with the first sentence of Art. 9 (2) DR, the CEDB decided to close the disciplinary proceedings against Mrs. Westerlund and to open disciplinary proceedings against the Finland player wearing number 15, Mrs. Natalia Kuikka, in accordance with the second sentence of Art. 9 (2) DR, who is the only player who potentially engaged in physical contact with the Israel player falling down in the incident under scrutiny. The CEDB then decided to suspend the Football Association of Finland player Naatlia Kuikka for one (1) UEFA competition matches in which she would be otherwise eligible.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairman:</u>	Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Larumbe Beain Kepa (SPA) Leal João (POR) Lorenz Hans (GER) Wolff Joël (LUX)

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

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body 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 January 2018, the Israel Women national team played a FIFA Women's World Cup 2019 Qualifying match against the Finland Women national team. During the match, the referee showed a red card to the player Anna Westerlund.
3. On 22 January 2018, the Finland Football Association lodged a protest against the above mentioned referee's decision. In summary, the association holds that Anna Westerlund was nowhere near the incident for which she was shown the red card. Therefore, this is a clear case of mistaken identity.

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

### A. UEFA's competence.

4. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body ("CEDB") is competent to deal with the case.
5. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

### B. The protest

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

6. According to Article 55 DR:

#### *1) Proceedings are opened by the UEFA administration:*

- a) on the basis of official reports;*
- b) where a protest has been lodged;*
- c) at the request of the UEFA Executive Committee, the UEFA President or the UEFA General Secretary;*
- d) at the request of an ethics and disciplinary inspector;*
- e) on the basis of documents received from a public authority;*
- f) where a complaint has been filed, subject to prior approval of an ethics and disciplinary inspector as per paragraph 2 below.*

- 2) *Where a complaint has been filed, an ethics and disciplinary inspector must evaluate such complaint. At his discretion, the ethics and disciplinary inspector may decide not to approve the opening of proceedings if there are no valid reasons to do so. Such a lack of valid reasons occurs, for instance, where the issue at stake could have been subject to a protest or where the party filing the complaint lacks a legal interest worthy of protection.*
- 3) *A decision by an ethics and disciplinary inspector not to approve the opening of proceedings can be appealed against before the Control, Ethics and Disciplinary Body within five days upon notification of the decision.*

7. According to Article 57 DR:

1) *A protest is admissible only if it is based on:*

- a) *an ineligible player's participation in a match as a consequence of that player not fulfilling the conditions defined in the relevant competition regulations;*
- b) *an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);*
- c) *an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error;*
- d) *an obvious violation of a rule by the referee that had a decisive influence on the final result of the match;*
- e) *any other significant incident that had a decisive influence on the final result of the match.*

2) *Protests may not be lodged against factual decisions taken by the referee.*

8. According to Article 9 DR:

- 1) *Decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.*
- 2) *In cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of that decision may be reviewed by the disciplinary bodies. In cases of mistaken identity, disciplinary proceedings may, in accordance with these regulations, be opened only against the person who was actually at fault.*

b) *The merits*

9. The 5th Law of the Game establishes that each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed. Besides, the standing practice is clear concerning decisions taken by the referee during the course of a match. In this regard, CEDB in decisions rendered on 5

December 2005, 11 May 2009 and 28 February 2011, considered that the decisions taken by the referee are not subject to re-examination, prevailing by that the authority of match officials mainly over incidents of sporting nature that may occur during the match.

10. The UEFA Disciplinary Regulations provides an exemption to the above by means of its Article 9 (2) DR. But this exemption has to be understood in the light of the above considerations and therefore dealt with extremely care and only be awarded in very exceptional circumstances, i.e. where a referee committed an obvious error such as mistaking the identity of the person penalized.
11. The association holds that the referee committed such an obvious error as she sent off a player who was not even close to the incident.
12. In the case at hand, the CEDB took into account the video footage which was provided by the association and agreed with the latter that Mrs. Westerlund wearing number 16 was not involved in the incident, as she can be seen on the left side of the screen running back, watching the incident to which only number 5 and number 15 were close to.
13. Therefore, by sending off Mrs. Westerlund, the referee committed an obvious error by mistaken the identities of the aforementioned players in the sense of Art. 9 (2) DR.
14. In accordance with the first sentence of Art. 9 (2) DR, the CEDB decided to close the disciplinary proceedings against Mrs. Westerlund and to open disciplinary proceedings against the Finland player wearing number 15, Mrs. Natalia Kuikka, in accordance with the second sentence of Art. 9 (2) DR, who is the only player who potentially engaged in physical contact with the Israel player falling down in the incident under scrutiny.

The CEDB decides to suspend the Football Association of Finland player Naatlia Kuikka for one (1) UEFA competition matches in which she would be otherwise eligible.

## Decisions of 22 February 2018 and 31 May 2018

FK Brodarac Youth  
(Racist behaviour)

### **Circumstances of the case**

The UEFA match delegate of the match FK Brodarac Youth against Manchester United FC Youth played on 7 February 2018 had reported that after the match, Mr. John Murtough, Head of Football Development of Manchester United, came to the delegate room, informing him that, according to their players, fans in the sectors behind the goal, to the right of the main stand behaved in a racist way. Allegedly, several times black players of Manchester United were called "black monkeys" and a "monkey song (hu hu hu)" was chanted. From the position on the main stand, the UEFA match delegate together with the referee observer did not hear racist chants. After the match, the situation was discussed with the referees. The referee team also did not hear any racist shouts."

**Legal framework** Article 31 (4) UEFA Disciplinary Regulations, Art 14 UEFA Disciplinary Regulations.

### **Decision**

The CEDB notes that the official report of the UEFA match delegate mentions a potential racist behavior by the supporters of FK Brodarac. Therefore, in accordance with Article 31 (4) DR, the CEDB deems that due to the amount of information and the seriousness of the incident reported by the UEFA official report, it shall, in this particular case, commission an UEFA Ethics and Disciplinary Inspector ("EDI") to conduct an investigation with regard to the present proceedings and the sanctions that may derive from them.

After having analyzed the complete video footage from the match, the EDI has found one potential example which could constitute racist chanting and hence recommended that the initiated disciplinary proceedings for a possible violation of Article 14 DR should be reopened. The CEDB was however not comfortably satisfied that the incident happened and hence in its decision decided to close the proceedings against FK Brodarac Youth.

Chairman: Partl Thomas (AUT)

Vice-Chairmen: Berzi Sándor (HUN)  
Hansen Jim Stjerne (DEN)

Members: Antenen Jacques (SUI)  
Gea Tomás (AND)  
Larumbe Beain Kepa (SPA)  
Leal João (POR)  
Lorenz Hans (GER)  
Řepka 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 official reports of the referee and the UEFA match delegate, can be summarized as follows:

### UEFA match delegate:

*"From my position on the main stand was everything excellent. But after the match Mr. John Murtough, Head of Football Development of Manchester United, came to the delegate room. He informed me that, according to their players, fans in the sectors behind the goal, to the right of the main stand behaved racistically. Several times they called some black Players of Manchester United as black monkeys and used a "monkey song" (hu hu hu). From the position on the main stand, I can confirm that we have not heard racist chants together with the referee observer. After the match, we also discussed the situation with the referees. The referees team also did not hear any racist shouts."*

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

### A. UEFA's competence.

3. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
4. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations ("DR") are applicable to these proceedings.

### B. The appointment of an UEFA Ethics and Disciplinary Inspector

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

5. According to Article 31 (4) DR, the UEFA Executive Committee, the UEFA President, the UEFA General Secretary and the disciplinary bodies may commission ethics and disciplinary inspectors to conduct investigations, either alone or in cooperation with other UEFA or non-UEFA bodies.

#### *b) Commission of a UEFA Ethics and Disciplinary Inspector*

6. The Control, Ethics and Disciplinary Body notes that the official report of the Delegate mentions a potential racist behaviour by the supporters of FK Brodarac.
7. Therefore, in accordance with Article 31 (4) DR, the Control, Ethics and Disciplinary Body deems that due to the amount of information and the seriousness of the incident reported by the UEFA official report, it shall, in this particular case, commission an UEFA Ethics and Disciplinary Inspector to conduct investigations with regard to the present proceedings and the sanctions that may derive from them.
8. In the light of the above considerations, the Control, Ethics and Disciplinary Body, in its decision dated 22 February 2018 decides to appoint an UEFA Ethics and Disciplinary Inspector to conduct an investigation regarding the alleged racist behaviour by the FK Brodarac supporters.
9. The Control, Ethics and Disciplinary Body, after thorough analysis of the video footage provided by the EDI, in its decision dated 31 May 2018, decided to close the proceedings against FK Brodarac Youth.

## Decision of 22 February 2018

### Malta (U-21) – Kyrian Nwoko (Doping)

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

On 20 November 2017, the player Kyrian Nwoko (the “Player”) underwent a doping control test after the UEFA European Under-21 Championship 2019 match between Malta and Turkey on 10 November 2017. The analysis of the Player’s A sample revealed the presence of a substance called “methylphenidate”. In conformity with the WADA Prohibited List 2017, the above substance is prohibited in-competition under the category S6.b. Specified stimulants. On 29 November 2017, UEFA notified the player of the finding and of the fact that this may result in a possible anti-doping rule violation. On 7 December 2017, disciplinary proceedings were instigated by UEFA against the player for Doping Offences (Art.13 DR).

**Legal framework** Article 2 (1) (a) of the UEFA Anti-Doping Regulations

#### **Decision**

The CEDB recognized that the player committed a mistake with regard to the failure to have a valid Therapeutic Use Exemption (“TUE”) for the use of the medication “concerta” that contained the prohibited substance methylphenidate at the time he was tested. The CEDB considered that the player was negligent and the fault of the player was not significant. The player did not check the UEFA rules and procedures regarding the TUE. The player was taking concerta for a treatment but had not obtained the approval of UEFA (i.e.TUE) to take this medical treatment. The player wrongly believed he was entitled to take methylphenidate because his National Anti-Doping Organisation (NADO) had granted him a TUE a year before. During the proceedings, the player was granted a TUE by UEFA, which proves that his medical condition was recognised and the treatment appropriate. Furthermore, the player recognised his fault and never tried to hide the fact that he was taking this treatment. Indeed, the player declared taking concerta (containing the prohibited substance) on the doping control form. The CEDB also examined the jurisprudence and the mitigating subjective factors in this case to determine if a lower suspension was justified. The player is already suffering physically and mentally from his pathology and due to his young age and little experience in international competitions, the CEDB considered that the most appropriate sanction was to give to Mr Kyrian Nwoko a warning.

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**I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (“CEDB”) on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the player and 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 20 November 2017, the player Kyrian Nwoko, hereafter also “the player”, was tested in-competition (“the doping control”) after the match at the UEFA European Under-21 Championship 2019, qualification round played between Malta and Turkey on 10 November 2017 (“the match”). On the Doping Control Form (DCF), the player declared under “3b. Declaration of medication” “ADHD (diagnosis), *concerta* (substance), 36 mg (dose), *p.o.* (route of administration), 1 year ago – *continuing* (Start and duration of treatment)”.
3. On 23 November 2017, the WADA-accredited laboratory of Seibersdorf reported an Adverse Analytical Finding (also “AAF”) for sample A 3326726. Methylphenidate was found in the sample. This substance is a specified stimulant according to the WADA Prohibited List, category S6.b.
4. On 28 November 2017, UEFA contacted the National anti-doping organisation (NADO) of Malta whether or not the player had a valid Therapeutic Use Exemption (TUE) for the medication declared in the DCF.
5. On 29 November 2017, UEFA contacted the Malta Football Association and, on the same day, sent the letter to the player informing him of the AAF and granting the player a deadline of 2 days to (a) confirm if he wanted his B sample to be analysed and (b) provide any other explanation he might have in relation to the result of his A sample.
6. On 30 November 2017, the player informed UEFA that he did not want the performance of the analysis of his B sample. He admitted he was taking the medication “concerta” described on the DCF because he suffers from ADHD (i.e. Attention deficit hyperactivity disorder). In this respect, the player explained that a TUE for the use of “concerta” (containing Methylphenidate) was granted on 23 September 2016, being valid for one year, enclosing the expired TUE. The player also mentioned he had an appointment planned for 6 December 2017 with his doctor and affirmed having received from the NADO of Malta a reminder for renewal of the expired TUE on 28 November 2017.
7. On 1 December 2017, UEFA informed the player that as long as he does not hold a valid TUE and continues his treatment, his participation to any matches (national or international) might be considered as a violation to the anti-doping rules. Considering he is an international-level player, he was due to participate in UEFA European Under-21 qualification matches in March 2018 and therefore, he had to submit his TUE request to UEFA and not the NADO. In case a TUE is granted by UEFA, it would be valid on international level and on national level as well.

8. On 5 December 2017, the Anti-doping unit forwarded the case to the Disciplinary unit.
9. On 7 December 2017, the Disciplinary unit informed the player that disciplinary proceedings were opened against him.
10. On 27 December 2017, the player informed the Disciplinary unit, through a letter dated 26 December, that a TUE was submitted to UEFA on 22 December 2017 with a request to grant the TUE retroactively. Since the potential grant of a retroactive TUE could have an influence on the outcome of the case, the player asked for the stay of the proceedings as long as the TUE procedure is pending.
11. On 18 January 2018, the CEDB Chairman accepted the request to stay of the proceedings.
12. On 19 January 2018, UEFA granted a TUE for the period of one year, valid as from 18 January 2018 until 17 January 2019.
13. On 29 January 2018, the Disciplinary Unit informed the player that the disciplinary proceedings are resumed and any further statement and evidence can be submitted in a deadline of 10 days. The player was also informed that the case would be decided on the next CEDB meeting on 22 February 2018.
14. On 1 February 2018, the player submitted a statement in which he explained his medical condition and recognized having committed a mistake.
15. On 1 February 2018, the player's club Valletta FC requested to participate in the proceedings as intervener, enclosing its statement. The club explains that the player was hired by Valletta FC in June 2017 and the parties have an employment contract registered at the Malta Football Association since 19 June 2017.

## **II. Summary of the Respondent's position**

16. The player does not challenge the AAF and for that reason does not wish for the B sample to be analysed.
17. The player confirms that, as declared in the DCF, he takes the medication "concerta" and have been doing so since September 2016, following the advice of his doctor to treat a disorder he suffers from, i.e. ADHD. He further details that the doctor prescribed the treatment with "concerta" for 3 years to the player. In this respect, he explains that following the diagnosis he has applied for a TUE at the NADO of Malta which was granted for one year and had been in place since 23 September 2016.
18. According to the player, he was not aware that the TUE had expired a few days before the match and was only informed by the NADO regarding such circumstance on 28 September 2017 and thus, after the doping control. He further states that there is currently a process to renew his TUE.

19. The player asks for understanding of his situation, a young player that has to deal with such medical condition. He states that his condition puts him in a vulnerable state and only thanks to the medication he is taking he can continue to play football. In this situation, he affirms that there was no bad faith from his part and that he declared the medication in the DCF before the doping control.
20. The player also accepts that he could have been more careful and seek a new TUE to cover the medication.
21. The player confirms that he takes 36 mg of “concerta” on the day of a match and daily in the weeks leading up to it. He emphasizes that he freely admitted taking the medication and never thought he was doing anything wrong.
22. The more detailed arguments made by the player in support of his written submissions are set out below as far as they are relevant.

### **III. Summary of Valletta FC’s position**

23. Valletta FC explains its interest in participating in the present proceedings as an intervener, stating that the club will be directly affected by its outcome considering the player is registered with the club.
24. Valletta FC’s request to participate in the present proceedings as an intervener was accepted, in accordance with Article 37 (2) of the UEFA Disciplinary Regulations (DR), and the club’s arguments contained in its statements are summarized below.
25. The club explains that the player had been granted a TUE valid for one year. However, considering that the player’s doctor had established that the duration of the treatment required for the player’s condition would be of 3 years, it is just logical that the player would have to continue using the prescribed medication for a further period of 2 years.
26. The club argues that it only became aware of the TUE granted to the player after the doping control as well as that it became clear that the player did not want to hide anything from the club, but was rather afraid that his condition could negatively affect his arrival at his new club.
27. The player takes the medication declared following the advice of his psychiatrist to treat his symptoms and control his diagnosed condition. Therefore, he evidently did not try to avoid any procedure in an attempt to benefit from any unfair advantage.
28. The player did not submit a new TUE application because he was expecting a notification from the NADO informing about the expiration, but the NADO only notified the player a few days following the relevant match. The club assumes that this occurred after UEFA issued the notification about the doping control result.

29. Finally, the club states that the granting of the new TUE by UEFA proves the genuine medical necessity of the player.
30. The club states that no disciplinary measure should be imposed on the player for the following reasons:
  - The player's intention was never to cheat or gain any sporting advantage from the medication he was taking;
  - The UEFA Anti-doping regulations in section 9.01(c) define the term "Intentional" in the offence category that the player's alleged violation could be categorized into as referring to "those players who cheat" and the player falls abundantly outside this definition;
  - The player has no previous record;
  - The player has been clear and genuine about his medical condition.

#### **IV. Merits of the Case**

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

31. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
32. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Anti-Doping Regulations are applicable to these proceedings.

##### B. Applicable legal framework and general remarks

33. The anti-doping rule violation the player committed results from a report of the WADA accredited laboratory, so the following provisions of the UEFA Anti Doping Regulations (ADR) version 2016 can be applied
34. According Article 2.01 a. ADR on the presence of a prohibited substance:

*The following constitute anti-doping rule violations:*

- (a) *Presence of a prohibited substance or its metabolites or markers in a player's sample*
  - i) *It is each player's personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the player's part be demonstrated in order to establish an anti-doping rule violation.*

- ii) *Sufficient proof of an anti-doping rule violation is established by any of the following: presence of a prohibited substance or its metabolites or markers in the player's A sample where the player waives analysis of the B sample and the B sample is not analysed; or, where the player's B sample is analysed and the analysis of the player's B sample confirms the presence of the prohibited substance or its metabolites or markers found in the player's A sample; or, where the player's B sample is split into two bottles and the analysis of the second bottle confirms the presence of the prohibited substance or its metabolites or markers found in the first bottle.*
- iii) *Excepting those substances for which a quantitative threshold is specifically identified on the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in a player's sample constitutes an anti-doping rule violation.*
- iv) *As an exception to the general rule of this paragraph 2.01a, the Prohibited List or international standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously.*

35. According to Article 5 ADR regarding Therapeutic Use Exemption (TUE):

*5.01 The presence of a prohibited substance or its metabolites or markers (paragraph 2.01a), and/or the use or attempted use (paragraph 2.01b), possession (paragraph 2.01f) or the administration or attempted administration (paragraph 2.01h) of a prohibited substance or prohibited method is not considered an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the UEFA TUE policy and the International Standard for Therapeutic Use Exemptions.*

*(...)*

*5.04 A player who already has a TUE granted by the NADO must ask UEFA for recognition of said TUE. UEFA will recognise it if it fulfils the criteria set out in the International Standard for Therapeutic Use Exemptions.*

36. The provisions related to the sanction applicable for such an anti-doping rule violation are the following:

- According to Article 9.01 ADR:

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

*The period of suspension for a first violation under paragraph 2.01a (presence of a prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or prohibited method) or 2.01f*

*(possession of a prohibited substance or prohibited method) is as follows, subject to any reduction or suspension of this period pursuant to paragraph 10.01, 10.02 or 10.03.*

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

*v) the anti-doping rule violation does not involve a specified substance (unless the player or other person can establish that it was not intentional); or*

*vi) the anti-doping rule violation involves a specified substance and UEFA can establish that it was intentional.*

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

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

37. According to Article 10.01 ADR, the period of suspension can be lifted in case it is established that there is no fault.

38. In the 10.02 a) i) ADR if the substance concerned is a specified substance, which is the case here and the player can establish no significant fault or negligence, then the minimum sanction is a reprimand and no period of suspension and the maximum sanction two years of suspension, depending on the player’s degree of fault.

39. The definition of no fault or negligence contained in the Appendix E ADR is the following:

***No fault or negligence:*** *If the player or other person establishes that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method or otherwise violated an anti-doping rule. Except in the case of a minor, for any violation of paragraph 2.01a, the player must also establish how the prohibited substance entered his system.*

40. The definition of no significant fault or negligence contained in the Appendix E ADR is the following:

***No significant fault or negligence:*** *If the player or other person establishes that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the anti-doping rule violation. Unless he is a minor, for any violation of paragraph 2.01a the player must also establish how the prohibited substance entered his system. For cannabinoids, the player may establish that he bears no significant fault or negligence by clearly demonstrating that the use was not intended to enhance sporting performance or unrelated to sport.*

C. The case in hand

41. This case is about a player, Kyrian Nwoko, who tested positive for methylphenidate, after a UEFA European Under-21 Championship 2019 match played between Malta and Turkey on 10 November 2017. This substance is prohibited according to the WADA Prohibited List of 1 January 2017 at category S.6.b as “specified stimulant” and, for this reason, the player who needs to take it for medical reasons must ask UEFA authorization to use it through a TUE in order not to commit an anti-doping rule violation, In accordance with Article 5.01 ADR.
42. The player had declared on the DCF on the occasion of the doping control the treatment he is undergoing indicating in the section 3b. “declaration of medication” that he was taking the medication “concerta”, which contains the substance found by the WADA-accredited laboratory of Seibersdorf, methylphenidate. This treatment is needed to treat ADHD, the condition suffered by the player.
43. The player was granted a TUE by the NADO of Malta for the duration of one year, in September 2016. However, the TUE granted expired on 23 September 2017, thus one month and a half before the match and the doping control. The player had not asked for the renewal of the TUE to the NADO. In this respect, in line with the WADA TUE Guidelines, the TUE is granted for one year because the medical condition ADHD can evolve and change from year to year, especially with young people as the player.
44. Upon UEFA’s request, the NADO of Malta confirmed that, on 28 November 2017, the player had not requested a renewal of the TUE.
45. The CEDB highlights that even in the case the player had a valid TUE by his NADO at the time of the doping control, according to Article 5 ADR, the TUE is not valid on international level because it was not submitted to UEFA (or FIFA) for recognition. Considering the recognition of the TUE granted by the NADO is not automatic, the UEFA TUE Committee would have to review the whole file and receive recent documents regarding his medical file before deciding to grant/recognise the TUE.

46. Moreover, the TUE cannot be granted retroactively since retroactive TUEs can only be granted in accordance with WADA International Standard for TUE (WADA ISTUE), 4.3 if a) the treatment is an emergency or an acute medical condition b) exceptional reason (insufficient time to submit the TUE). In the present case, neither of these conditions are fulfilled, since the player's medical condition was known because it is a chronic disease and he was under treatment. Consequently, there is no "emergency" factor.
47. In this respect, the CEDB refers to the decision of the UEFA TUE Committee dated 19 January 2018 which did not grant a retroactive TUE as requested by the player.
48. Having remained undisputed during the proceedings before this UEFA disciplinary body that the player used a prohibited substance and considering that the player did not have a TUE granted by UEFA at the moment of the doping control, it is possible that an anti-doping rule violation was committed which has to be analysed by the CEDB.
49. Bearing the above in mind, the CEDB concludes that in this particular case there are mainly two legal questions that need to receive an answer.
  - Did the player demonstrated the source of the prohibited substance; and
  - What is the player's degree of fault
50. Again, this UEFA disciplinary notes that the more detailed arguments made by the player in support of his written submissions are set out below in as far as they are relevant.

**a. Did the player demonstrated the source of the prohibited substance?**

51. The question remains as if there are sufficient grounds to apply for lifting the period of suspension (i.e 2 years) or a reduction of that period in accordance with Article 10 UEFA Anti-Doping Regulations (ADR).
52. First and foremost, this UEFA disciplinary body wishes to highlight that from a legal perspective, the only way a player could apply for a reduction or a lifting of the standard sanction of two years, is by establishing "how the prohibited substance entered his body" (Appendix C of the UEFA ADR). Appellant must discharge his burden of proof based on a balance of probabilities.
53. The standard of balance of probabilities succinctly means that the accused must prove that his version of the facts is more likely than not to have occurred (CAS 2009/A/1926 ITF vs Gasquet, at para 5.9).

54. It is recalled that Methylphenidate metabolites is a substance prohibited in-competition under the WADA Prohibited List of 1 January 2017, category S.6.b. This substance is categorised as a “specified stimulant”.
55. According to the WADA International Standard for Therapeutic Use Exemptions, a player who needs to use a prohibited substance for therapeutic reasons must obtain a TUE before the use of such prohibited substance.
56. In this regard and in substance, the player holds that the origin of the prohibited substance is the use of the medication “concerta” which was prescribed by his doctor to treat his condition, i.e. ADHD. To sustain his position the player brings forward the medical diagnosis and prescription of the relevant treatment as well as the expired TUE granted by the NADO of Malta.
57. The CEDB also takes note that the TUE granted by the UEFA TUE Committee on 19 January 2018 confirms that the player suffers indeed by this pathology ADHD and needs treatment with the stimulant methylphenidate, 36 mg to be taken orally on a daily basis.
58. In particular, the CEDB acknowledges that the treatment granted by the UEFA TUE Committee is the same declared by the player in the DCF when tested in the doping control, i.e. 36 mg of methylphenidate (“concerta”) and is in line with the treatment described on the TUE granted by the NADO of Malta (10 mg of phenyphenidate, 4 times a day).
59. This UEFA disciplinary body accepts that the source of the substance was indeed the use of “concerta”.
60. Bearing in mind the above, this UEFA disciplinary body finds no reasons as to deviate from the position of the player, who, in substance has accepted having violated the Anti-doping Regulations.
61. With regard to the intention of the player, this UEFA disciplinary body deems that from the documents contained in the file and the circumstances of this case, the CEDB is satisfied that the use of this substance wasn’t intentional, meant here to identify those players who cheat (Article 9.01 ADR).
62. Consequently, this UEFA disciplinary body is persuaded that the player had no intention to cheat in the sense of Article 9.01(c) ADR and was straight-forward about his medical situation and the use of the medication from the start. The CEDB is satisfied that the medication was taken only with the aim to re-establish the player’s *normal* state of health and not to enhance his performance.

**b. What is the player’s degree of fault?**

*i. The fault of the player*

63. According to Article 9.01 a) of the UEFA ADR, the period of suspension for a first violation under inter alia Article 2.01 a) (presence of a Prohibited Substance or Prohibited Method) “is four years if the anti-doping rule violation does not involve a specified substance (unless the Player or other person can establish that it was not intentional)”.
64. According to Article 9.01 b) of the UEFA ADR, “if paragraph a) does not apply, the period of suspension is two years”.
65. According to Article 10.01 ADR (corresponding to Article 10.04 of the WADA Code), if a player or other person establishes in an individual case that he bears no Fault or Negligence, then the otherwise applicable period of suspension is lifted.
66. As regards the existence of Fault or Negligence, CAS has steadily concluded that utmost caution is required by the Player for finding no Fault or Negligence. In this regard, any breach of his duty of care or lack of it relating to his particular situation would already justify the existence of fault. This, again, in the context in which the Player is requested to implement the “utmost caution” (CAS 2016/A/4643 at para 74).
67. The regime of no fault or negligence is contemplated in both Article 10.01 (b) ADR and in Appendix E of this same regulations:

- According to Article 10.1 ADR:

*Lifting the period of suspension where there is no fault or negligence.*

*If a Player or other person establishes in an individual case that he bears no fault or negligence, then the otherwise applicable period of suspension is lifted.*

- According to Appendix E of the UEFA Anti-Doping Regulations:

**No fault or negligence:** *If the Player or other person establishes that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method or otherwise violated an anti-doping rule. (...)*

68. This disciplinary body recalls the content of the applicable CAS jurisprudence and the relevant provisions in this legal context, which required the player to apply utmost caution for finding no fault or negligence, with any breach of his duty of care or lack of it relating to his particular situation already justifying the existence of fault. In this regard, the UEFA ADR

in Appendix E precisely stipulate that for the concept of no Fault or Negligence to apply, it is the requirement that the player could not reasonably have known or suspected, even with the exercise of utmost caution, that he had been administered a prohibited substance.

69. The duty of utmost caution requires athletes to take at least reasonable steps to ascertain that their conduct does not constitute an anti-doping rule violation (cf. CAS 2008/A/1489 & 1510 Despres v. CCES).
70. In the case in hand, as accepted also by the player, the latter was at fault when using the substance without renewing the expired TUE and without requesting a TUE to UEFA. Also the player recognizes his fault.
71. Consequently, the CEDB concludes that the concept and regime of no fault or negligence does not apply in the present case, i.e. Article 10.01 UEFA ADR is not applicable. Therefore, the applicable sanction would be a two year suspension in accordance with Article 9.01 b) UEFA ADR, if the Player cannot establish on a balance of probabilities that there was no significant fault or negligence.
72. Following the above lines of argumentation, the question now is if the player has proven on a balance of probabilities the existence of no significant Fault or Negligence in which extent his fault is to be assessed in accordance with Article 10.02 ADR.

*ii. The existence of no significant fault or negligence*

73. Significant fault or negligence is contemplated in both Article 10.02 (b) ADR and in Appendix E of this same regulations:

- According to Article 10.2 (b) ADR:

*Application of no significant fault or negligence beyond the application of paragraph 10.02a*

*Where paragraph 10.02a does not apply, if a Player or other person establishes in an individual case that he bears no significant fault or negligence then, subject to any further reduction or lifting of the period pursuant to paragraph 10.03, the otherwise applicable period of suspension may be reduced based on the Player or other person's degree of fault, but the reduced period of suspension may not be less than half of the period of suspension otherwise applicable. If the otherwise applicable period of suspension is a lifetime, the reduced period under this paragraph may be no less than eight years.*

- According to Appendix E of the UEFA Anti-Doping Regulations:

***No significant fault or negligence:*** *If the Player or other person establishes that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the anti-doping rule violation. (...)*

74. For the sake of clarity, the CEDB recalls that CAS has recently established the way in which the significant fault or negligence shall be assessed and this in relation with the sanction to be imposed (CAS 2013/A/3327 Marin Cilic v. International Tennis Federation and CAS 2013/A/3335 International Tennis Federation v. Marin Cilic; CAS 2015/A/3876 James Stewart Jr. v. Federation Internationale de Motocyclisme).
75. Summarily, as recovered from the above CAS Case law, this UEFA disciplinary body distinguishes between different categories of negligence, i.e. light, normal and significant.
76. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.
77. Further, the objective element should be foremost in determining into which of the three relevant categories a particular case falls. In this regard, the CEDB shares the approach of the CAS Case law insofar at the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to using a prohibited method and/or substances could be prevented. In this regard, an athlete cannot be reasonably expected to follow all of the preventive steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances for prohibited methods.
78. The subjective element can then be used to move a particular athlete up or down within that category. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether.
79. Here it is noted that, in substance, the subjective element describes what could have been expected from the athlete, in light of his personal capacities. Whilst each case will turn on its own facts, the following examples of matters can be taken into account in determining the level of subjective fault (cf. also LA ROCHEFOUCAULD, CAS Jurisprudence related to the elimination or reduction of the period of ineligibility for specific substances, CAS Bulletin 2/2013, p. 18, 24 et seq.):

- a. An athlete's youth and/or inexperience (see CAS 2011/A/2493, para 42 et seq; CAS 2010/A/2107, para. 9.35 et seq.).
- b. Language or environmental problems encountered by the athlete (see CAS 2012/A/2924, para 62).
- c. The extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete) (see CAS 2012/A/2822, paras 8.21, 8.23).
- d. Any other "personal impairments" such as those suffered by:
  - i. an athlete is suffering from a high degree of stress (CAS 2012/A/2756, para. 8.45 seq.).
  - ii. an athlete whose level of awareness has been reduced by a careless but understandable mistake (CAS 2012/A/2756, para. 8.37).

*iii. The evaluation of the objective and subjective level of fault of the Player*

80. This UEFA disciplinary body considers that from both an objective and subjective perspective, the present case shows that the level of fault of the player was not significant.
81. The player holds, in substance, that he used this substance due to a medical treatment needed due to ADHD. He explains that he was not aware that the TUE granted by his NADO was expired and never had the intention to cheat.
82. This UEFA disciplinary body deems that the position submitted by the player is credible in the light of the particular circumstances of this case and the evidence at hand.
83. The CEDB considers, on the one hand, that indeed the player did not have a TUE valid at national level on the occasion of the doping control and also did not ask UEFA to grant a TUE even though he was participating in a UEFA competition before the doping control. On the other hand, the CEDB takes into account that the player was taking the medication "concerta" following a treatment that was approved a year before by his NADO and that was also approved by UEFA TUE Committee on a later stage after the doping control. Consequently, it is accepted that the player suffers from the ADHD and the treatment is appropriate and has not changed.
84. The CEDB understands that although the player was negligent while not checking the UEFA rules regarding the TUE, his fault was not significant.
85. The player is young (DOB 04.08.1997), being 20 years old on the occasion of the doping control, and is not very experienced as a professional player, having started participating in international competitions in 2014.
86. The CEDB considers that despite the fact the player attended a UEFA anti-doping education session and was supposed to read the anti-doping information given to all athletes, he is young and unexperienced.

87. The Control, Ethics and Disciplinary Body emphasises that the player never tried to hide any information, having duly indicated the medication used in the DCF and being honest during these proceedings. Also the player recognizes his fault and expresses his regrets.
88. The CEDB also takes into account the fact that the player suffers from a chronic condition and has to deal with this situation at a young age while trying to pursue his career playing football.
89. The prohibited substance was used for a medical condition that requires such use and the prohibited substance is part of the "specified substance" of the WADA Prohibited List.
90. Bearing the above in mind, the Control, Ethics and Disciplinary Body deems that the player has met the standard of proof required in these proceedings and has proven in the given standard that he bears no significant fault. Consequently the player is entitled to apply for a reduction of the standard sanction, which in this case is a two years suspension in accordance with Article 9 and 10 DR.
91. The CEDB considers that any suspension would be too harsh for a young player who is already suffering physical and mentally from his pathology. Indeed, such medical condition is already a factor that complicates relationships with others. Also this UEFA body deems that suspending the player could even worsen his medical condition. Practicing football is helping him in his integration in social life and could help in the evolution of his pathology.
92. In this context and considering all the particularities of the present case, the most appropriate sanction is to give the player a warning and no suspension at all. It is clear that the player is aware of his fault and will act with the utmost caution in the future.

## Decision of 22 March 2018

FC København

(Stairways blocked; Setting off of fireworks)

### **Circumstances of the case**

In the present case, it has been established by the UEFA match delegate in his official report that the Club's supporters ignited more than sixty fireworks inside the stadium throughout the match. Likewise, it was reported that during the match, at "B stand Low level" where the home-team supporters were situated, spectators were standing throughout the match leading to the blocking of stairways in said sector.

**Legal framework** Article 16 (2) (c) UEFA Disciplinary Regulations, Article 38 UEFA Safety and Security Regulations.

### **Decision**

The CEDB noted the Club's did not recognize the UEFA match delegate's statement regarding blocking of stairways, claiming that during and after the match, the stairs were manned by stewards to secure that no one was blocking the stairs and that there is not any evidence for the statement of blocking of stairs. The CEDB noted that the Club did not provide any arguments in the present case with regard to the setting off of fireworks, while acknowledging after a thorough analysis of the relevant photos provided by the Club, that the latter merely provided three screenshots from the surveillance camera material which show a few moments during the match. In view of this disciplinary body, this is obviously not sufficient to prove a potential inaccuracy of the official report from the UEFA match delegate. By applying Article 45 of the UEFA Disciplinary Regulations, recalling the previous record of the Club with regard to both violations, the CEDB decided that the Club had to be punished for both reported violations and deems that a total fine of € 58'000 as the adequate disciplinary measure.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairman:</u>	Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Leal João (POR) Lorenz Hans (GER) Wolff Joël (LUX)

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

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the "CEDB") on the basis of the official reports, the written submissions and the exhibits filed and the statements produced in the course of the CEDB proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by FC København (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 UEFA match delegate present at the UEFA Europa League 2017/2018 match between the Club and RB Leipzig on 15 February 2018 ("the match") can be summarized as follows:

*"Flares at home team ultras sectors, at the B stand, Low level:*

*1) Before kick-off – About 50 flares. They were not thrown. Nobody Injured.*

*2) Min 1 (directly after kick off) – 10 flares. They were not thrown. Nobody Injured.*

*3) Min 16 – 2 flares (after home team scored goal) .They were not thrown. Nobody Injured.*

*During the match at B stand Low level (home team spectators), spectators were standing through the match that leads to that stairs on stands were blocked."*

## **II. The Club's statements**

3. The Club in its statements dated 21 February 2018 essentially stated the following:
  - F.C. Copenhagen cannot recognize the UEFA Delegate's statement regarding blocking of stairs at the lower B stand. Before, during and after the match, the stairs were manned by stewards to secure that no one was blocking the stairs.
  - The delegate does not present any evidence for the statement of blocking of stairs so we must expect that this is a misunderstanding.
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 29 of the UEFA Disciplinary Regulations, the CEDB 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 ("DR") are applicable to these proceedings.

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

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

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

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

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

8. According to Article 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.
9. According to Article 45 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 is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
11. In the present case, it has been established by the UEFA match delegate in his official report that the Club’s supporters ignited more than sixty fireworks inside the stadium throughout the match.
12. Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the Club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).
13. Further, the Club did not provide any arguments in the present case with regard to the setting off of fireworks.
14. In light of the foregoing, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

C. Insufficient organization: blocking of stairways

- a) *Applicable legal framework and general remarks*

15. 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.
16. 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.
17. 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.”*
18. Moreover, under Article 45 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. 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.
20. 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).
21. In the case at hand, it was reported that during the match, at “B stand Low level” where the home-team supporters were situated, spectators were standing throughout the match leading to the blocking of stairways in said sector.
22. The CEDB takes into account the arguments provided by the Club, as well as the photo evidence submitted by it.
23. However, after a thorough analysis of the relevant photos, the CEDB acknowledges that the Club merely provided three screenshots from the surveillance camera material which show a few moments during the match. In view of this disciplinary body, this is obviously not sufficient to prove a potential inaccuracy of the official report from the UEFA match delegate.
24. In this regard, the CEDB emphasizes again that such report has the presumption of accuracy (cf. Art. 45 DR) and the burden of proof to indicate otherwise would have been on the Club, who failed to do exactly that.

25. In view of the above, the CEDB comes to the conclusion that the report of the UEFA match delegate with regard to the blocking of stairways was in fact correct and that 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**

26. Based on Article 23 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 specific circumstances.
27. In the present case, the CEDB identifies and took into account the following circumstances:
- the seriousness and multiplicity of the offences committed, especially with regard to the setting off of fireworks, noting that the Clubs' supporters ignited a very high number of fireworks, leading to an intolerable and potentially dangerous situation and images which have no place in football in general, and in UEFA competition matches in particular;
  - the content of Art. 6 (5) DR and Annex A (I) and (II);
  - the previous record of the Club with regard to both violations, i.e. the blocking of stairways and the setting off of fireworks.
28. In the light of the above considerations, the CEDB deems that a total fine of € 58'000 shall be deemed as the adequate disciplinary measure.

## Decision of 22 March 2017

SSC Napoli

(Stairways blocked; Setting off of fireworks)

### **Circumstances of the case**

In the present case, it has been established by the UEFA match delegate in his official report that the Club's supporters ignited more than ten fireworks inside the stadium throughout the match. Also, the Club's supporters in both the south stand and the north stand blocked the stairs throughout the game.

**Legal framework** Article 16 (2) (c) UEFA Disciplinary Regulations, Article 38 UEFA Safety and Security Regulations.

### **Decision**

The CEDB recalled that the arguments provided by the Club according to which, due to the number of fans in the two said sectors, it appears extremely difficult to imagine the stairways blocked and a dangerous situation for the security, because a limited number of supporters stayed temporary in the stairs. Regarding the setting off of fireworks, no flares was thrown in the pitch and an absolute harmless situation occurred. However, the CEDB underlined that setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden. Regarding the blocking of stairways, the CEDB noted that the Club did not put forward any arguments in the present case which would breach the accuracy of the official UEFA report which expressly refers to the setting off of fireworks and is presumed to be accurate under Article 45 DR. The CEDB took into account the precautions the Club apparently took, but could only acknowledge that they were apparently not enough to prevent such incidents from happening. Finally, the CEDB took into the previous record of the Club with regard to both violations, i.e. the blocking of stairways and the setting off of fireworks, while noting with regard to the fireworks set off by the Club's supporters that the fireworks were not thrown. In the light of the above considerations, the CEDB deemed that € 34'000 shall be deemed as the adequate disciplinary measure

**Chairman:** Partl Thomas (AUT)

**Vice-Chairmen:** Berzi Sándor (HUN)  
Hansen Jim Stjerne (DEN)

**Members:** Antenen Jacques (SUI)  
Gea Tomás (AND)  
Larumbe Beain Kepa (SPA)  
Leal João (POR)  
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 ("CEDB") proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by SSC Napoli (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 UEFA match delegate present at the UEFA Europa League 2017/2018 match between the Club and RB Leipzig on 15 February 2018 ("the match") can be summarized as follows:

*"Home team supporters in both Curva A (south stand) and Curva B (north stand) blocked the stairs throughout the game. It might be added, that both stands had lots of free space as the stadium was far from full, but the supporters still decided on being close together thus blocking the stands.*

*1st minute, flare lit, not thrown in Curva A, gates A05-A06; 32min, flare lit, not thrown in Curva A, gates A05-A06; 32min, strobo light lit, not thrown in Curva A, gates A05-A06; 52min, flare lit, not thrown in Curva B, gates B05-B06; 67min, flare lit, not thrown in Curva B, gates B05-B06; 71min, flare lit, not thrown in Curva A, gates A05-A06; 81min, big banger or similar detonated behind Curva A section, no smoke visible in stadium\* 84min, big banger or similar detonated behind Curva A section, no smoke visible in stadium\* 88min, two flares lit, not thrown in Curva B, gates B05-B06; +4min after match ended, flare lit, Curva A, gates A05-A06.*

*The sound of the explosion was heard very loud inside the stadium. The SO informed me after the game that the big bangers were detonated outside the stadium, in the immediate surrounding of stands of Curva A."*

## **II. The Club's statements**

3. The Club in its statements dated 22 February 2018 essentially stated the following:
  - In its official report, the UEFA match delegate defined the organization of the security by the Club as "satisfactory".
  - The total number of spectators that attended the match was only 14'554, so the stadium was far from full, as indicated by the said delegate report. The security situation was very calm and no accidents occurred. The flow of spectators, therefore, was quite low, so the security and control activities were absolutely satisfactory.
  - Due to the number of fans in the two said sectors, it appears extremely difficult to imagine the stairways blocked and a dangerous situation for the security, because a limited number of supporters stayed temporary in the stairs.
  - Regarding the setting off of fireworks, no flares was thrown in the pitch and an absolute harmless situation occurred. Therefore, the Club predisposed all the necessary measures to contrast any infringement of UEFA disciplinary rules, implementing the security

operations related to the match. Moreover, SSC Napoli spread public announcement through the speaker in order to avoid the use of flares by the supporters.

- In the light of the above, strict liability of the Club for the fans' behaviour shall be mitigated and temperate, taking into account the huge efforts done by the Club in order to ensure safety and security to spectators as well as all the other exposed elements and circumstances.

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 29 of the UEFA Disciplinary Regulations, the CEDB 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 ("DR") are applicable to these proceedings.

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

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

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

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

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

8. According to Article 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.
9. According to Article 45 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 is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
11. In the present case, it has been established by the UEFA match delegate in his official report that the Club's supporters ignited more than ten fireworks inside the stadium throughout the match.
12. The CEDB also noted that apparently, some sort of pyrotechnics were also ignited outside the stadium, as it was also noted by the UEFA match delegate's report. Said devices were however not taken into account by this disciplinary body.
13. Applying the principle of strict liability as described in Articles 8 and 16(2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).
14. Further, the Club did not put forward any arguments in the present case which would breach the accuracy of the official UEFA report which expressly refers to the setting off of fireworks and is presumed to be accurate under Article 45 DR. The CEDB took into account the precautions the Club apparently took, but could only acknowledge that they were apparently not enough to prevent such incidents from happening.
15. Likewise, the usage of public speaker announcement, reminding the supporters about the fact that what they had just done was not allowed, does not change such assessment. The CEDB also emphasized that fireworks don't need to be thrown in order to pose a threat and risk to safety and security in the stadium.
16. In light of the foregoing, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

C. Insufficient organization: blocking of stairways

*a) Applicable legal framework and general remarks*

17. 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.
18. 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.

19. 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.”*
20. Moreover, under Article 45 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*

21. 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.
22. 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*).
23. In the case at hand, it was reported that the Club’s supporters in both the south stand and the north stand blocked the stairs throughout the game.
24. The CEDB noted that the Club did not provide any arguments or evidence which would put in doubt the accuracy of the official reports. The CEDB recalled the Club’s arguments that the stadium was far from being full and the flow of spectators hence quite low, which is why it allegedly appears difficult to imagine a dangerous situation from occurring.
25. This disciplinary body can however not agree with such argumentation. In this regard, the CEDB is convinced that whenever certain sectors and areas are overcrowded without cleared stairways, it is significantly more difficult to clear such sectors in case of an emergency, i.e. it is more problematic for emergency services to get access to an injured or sick person as it is more challenging to evacuate such person from overcrowded stands. The fact that other sectors around the relevant blocked sectors are more or less empty or the fact that the overall attendance was rather low has no influence on such assessment.
26. In view of the above, the CEDB came to the conclusion that 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**

27. Based on Article 23 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 v specific circumstances.

28. In the present case, the CEDB identified and took into account the seriousness and multiplicity of the offences committed as well as the content of Art. 6 (5) DR and Annex A (I) and (II). Also, the CEDB took into the previous record of the Club with regard to both violations, i.e. the blocking of stairways and the setting off of fireworks, while noting with regard to the fireworks set off by the Club's supporters that the fireworks were not thrown.
29. In the light of the above considerations, the CEDB deems that € 34'000 shall be deemed as the adequate disciplinary measure.

## Decision of 22 March 2018

Atalanta BC

(Racist behaviour; setting off of fireworks; throwing of objects; stairways blocked)

### **Circumstances of the case**

In the present case, the supporters of Atalanta BC ignited a large number of fireworks and some of them were thrown on the pitch. Likewise, it was reported that the stairs were blocked throughout the match and fans were even seating in the stairs during the match, while the stewardess did not try to clear the stairs and free the passageways. In addition to that, the official reports stated that in the 76<sup>th</sup> minute into the match, the Dortmund player Michy Batshuayi was racially abused by Atalanta home-supporters imitating monkey noises when the player was next to the Dortmund goals following a stop in the game. Apparently, such monkey noises were audible in the TV broadcasting of the match.

**Legal framework** Article 16 (2) (b) and (c) UEFA Disciplinary Regulations, Article 14 (1) and (2) UEFA Disciplinary Regulations, Article 38 UEFA Safety and Security Regulations.

### **Decision**

The CEDB reviewed the video evidence and noted that the Club has neither denied the incidents nor contested the accuracy of the official UEFA report, which expressly refers to the setting off/throwing of fireworks and blocking of stairways, is very detailed and is presumed to be accurate under Article 45 DR. Regarding the reported racist behavior by the Club's supporters, the Club stated that there is not sufficient evidence in order to reach a reasonable certainty that the infringement actually happened, as the UEFA Appeal Body already stated in previous cases such as the elements at hand do not provide sufficient evidence to reach the standard of proof of comfortable satisfaction. The Club emphasized that the UEFA delegate himself was doubtful about having actually heard the chants and he could not find any actual confirmation through the referee, the additional report or the Venue Director, but only de relato by the opposing team, which does not seem to be a reliable source for the purpose of establishing an infringement of such significance. The Club deems that the reports do not "clearly" describe the relevant disciplinary conduct and are not supported by further reliable evidence. The CEDB any claim related to racist incidents need to be accompanied by sufficient evidence that may lead to fulfil the requirement of the standard of proof of comfortable satisfaction, which is already low in comparison with the "beyond reasonable doubt" standard. Bearing in mind the above, having analysed the arguments and evidence in the present case, the CEDB concluded that there is no sufficient evidence to reach the standard of comfortable satisfaction that may prove the existence of the alleged racist chants.

Chairman: Partl Thomas (AUT)

Vice-Chairmen: Berzi Sándor (HUN)  
Hansen Jim Stjerne (DEN)

Members: Antenen Jacques (SUI)  
Gea Tomás (AND)  
Larumbe Beain Kepa (SPA)  
Leal João (POR)  
Wolff Joël (LUX)

**I. Facts Of The Case**

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body ("the CEDB") on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the Control, Ethics and Disciplinary Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by Atalanta BC 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 UEFA match delegate present at the UEFA Europa League 2017/2018 match between Atalanta BC ("the Club") and Borussia Dortmund, on 22 February 2018 ("the match"), can be summarized as follows:

*Setting off of fireworks.*

*2 Minutes - As both teams and Officials entered the field of play 6 Bengal Lights were ignited by the Atalanta BC fans in the South Tribune. One of these Bengal Lights was allowed to burn under a giant banner unfurled by the home fans. All of these were allowed to burn out, none thrown.*

*There was no intervention by either the Police or Stewards.*

*In conjunction with the above event fireworks were ignited just outside the South Tribune in the car park, this was choreographed by the home fans and the Venue Director highlighted this issue at the Match Day Organisational meeting and the Police said that would put in place efforts to combat this which were ignored.*

*12<sup>th</sup> Minute - 6 Bengal Lights ignited, five of which were ignited in the South Tribune, one was ignited in the East Tribune all by fans of Atalanta BC, all of these were allowed to burn out, there was no intervention by Police or Stewards.*

*One of the Bengal Lights ignited in the South Tribune was thrown but only reached the perimeter of the pitch and was allowed to burn out, this Bengal did not hit anybody. No intervention by Stewards or Police.*

*14<sup>th</sup> Minute - 1 Bengal Light ignited in the South Tribune by the home fans, not thrown and allowed to burn out, no intervention by Stewards or Police.*

*15<sup>th</sup> Minutes - One Bengal Light ignited in the South Tribune by the home fans thrown on to the pitch and landed on the six yard line just behind the away goalkeeper not hitting him, it was allowed to burn out causing a delay of around twenty seconds in the match, a fireman removed the casing from the pitch, there was not intervention by Stewards or Police.*

*20<sup>th</sup> Minute - One Bengal Light ignited in the South Tribune, it was allowed to burn out, not thrown, no intervention by Police or Stewards.*

*64<sup>th</sup> Minute - One Bengal Light ignited in the South Tribune, it was allowed to burn out, not thrown, no intervention by Police or Stewards.*

*90<sup>th</sup> Minute - One Bengal Light ignited in the South Tribune, it was allowed to burn out, not thrown, no intervention by Police or Stewards.*

*Blocking of entry and exit points and stairways.*

*From the start to the finish of the game all seven stairways in the South Tribune were blocked by the home fans as well the two main entry points to the tribune, please note there seem to be no Police or Stewards in this tribune to enforce clearing same.*

*In the East Tribune in the top two sectors of the southern end home fans were sitting on the stairs though out the game, the stewards in these sectors made no effort to clear them.*

*Racist's Chanting.*

*In the 90th minute the 4th Official indicated that there would be 3 three additional minutes to be played. In the 94th minute two Borussia Dortmund players were protecting the ball at the corner flag in the South West area of the stadium, one of the Dortmund players was the ex – Chelsea player Micky Batshuayl in an effort to run down the clock. The Referee awarded a free kick to Dortmund much to the annoyance of the Atalanta BC fans and from my position in the West Tribune I thought I heard the home fans in the South West corner of the South Tribune direct "Monkey Chants" at Micky Batshuayl, some seconds later the Match Referee blew the full time whistle.*

*About fifteen minutes after the teams had left the pitch I went in to the Referees dressing room and asked the Referee and the Additional Assistant if they at heard the "Monkey Chants" both replied that they were so engrossed in the game they did not hear the chants.*

*I contacted an Official from Borussia Dortmund outside their dressing room and asked him if he could ask the Dortmund player Michy Batshuayl if he heard the chants at the end of the game. The Official confirmed that Michy had heard the "Monkey Chants" and that two other players and the Team Manager also confirmed they heard these as well.*

*In my debrief with the Venue Director I informed him of this incident, he confirmed he heard the chants but was not 100% if they were "Monkey Chants" but agreed with my assessment.*

3. Moreover, according to the FARE report, the most relevant facts related to the incident regarding racist's chants are the following:

*In the 76<sup>th</sup> minute into the game, Dortmund player Michy Batshuayi was racially abused by Atalanta home supporters imitating monkey noises when the player was next to the Dortmund goals following a stop in the game. The monkey noises were audible in the TV broadcasting of the match.*

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

4. The Club in its statements dated on 2 March 2018 affirms, on the one side, having put its best efforts to prevent any infringement of its supporters. On the other side, the Club argues the absence of any responsibility attributable to the Club, at least in respect of the reported "fireworks ignited just outside the South Tribune in the car park", considering the Club tried to prevent such infringement and relied on the cooperation of the public authorities. Moreover, the Club affirms that the incidents did not affect the match in any way.
5. Regarding the incidents related to racist behaviour, Atalanta BC believes that not only the actual behaviour is uncertain in its description and allocation within the game, but also that

there is no sufficient level of certainty in relation to the actual commission of the contested violation, if any.

6. In fact, according to the Club, none of the subjects appointed by UEFA to control over the correct running of the match and to report violations of the Regulations have been able to detect any discriminatory chant.
7. In such context, the Club affirms that there are no sufficient evidence in order to reach a reasonable certainty that the infringement actually happened, as the UEFA Appeal Body already stated in previous cases such as "*the elements at hand do not provide sufficient evidence to reach the standard of proof of comfortable satisfaction*" (Linfield case, July 2016).
8. This uncertainty is even more relevant considered that "*this kind of chant is one of the most instantly recognizable and repugnant forms of racist chant*" (Sparta Praha, October 2016).
9. The Club emphasizes that the UEFA delegate himself was doubtful about having actually heard the chants and he could not find any actual confirmation through the referee, the additional report or the Venue Director, but only *de relato* by the opposing team, which does not seem to be a reliable source for the purpose of establishing an infringement of such significance. The Club deems that the reports do not "clearly" describe the relevant disciplinary conduct and are not supported by further reliable evidence.
10. In light of the above, taken into account all elements and footage available, the Club asks the closure of the file related to racist behaviour.
11. The Club also points to the following mitigating circumstances:
  - The organizational and precautionary efforts made by the Club itself, which were praised by the Reggio Emilia Chief Police.
  - The Club has no previous record for disciplinary offences related to racist behavior.
12. 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.**

13. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is 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. The improper conduct of supporters: the setting off/throwing of fireworks

*a) Applicable legal framework and general remarks*

15. 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 a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
- f) *acts of damage;*
- g) *causing a disturbance during national anthems;*
- h) *any other lack of order or discipline observed inside or around the stadium.*

16. 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.

17. According to Article 45 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*

18. 17. Setting off fireworks and throwing them are very serious offences because not only they can disrupt the orderly running of the match but also, and more importantly, because they can endanger the physical integrity of the perpetrator(s), 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 such devices are strictly forbidden.

19. In the present case, the Club's supporters ignited a large number of fireworks and some of them were thrown on the pitch.

20. The Club argues having put its best efforts to avoid the incidents and that it relied on the public authorities for the area outside the stadium. However, the Club has neither denied the incidents nor contested the accuracy of the official UEFA report, which expressly refers to the setting off/throwing of fireworks, is very detailed and is presumed to be accurate under Article 45 DR.

21. The arguments presented by the Club do not exclude the risk that lighting fireworks and throwing them represent and the fact that the setting off/throwing of fireworks is strictly forbidden. Consequently, it does not exclude the Club's responsibility for this violation.

22. Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the Club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven).
23. Hence, the Club is responsible for any violation conducted by its supporters against the UEFA Disciplinary Regulations, which includes the setting off/throwing of fireworks in accordance to Article 16 (2) DR (CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia).
24. 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) (b) and (c) DR and must be punished accordingly.

C. Insufficient organization: blocking of stairways

*a) Applicable legal framework and general remarks*

25. 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.
26. 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 purpose, several provisions concerning spectator control are included in the regulations.
27. 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.”*
28. Moreover, under Article 45 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*

29. Under Article 2 of the UEFA Safety and Security Regulations, the purpose 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.
30. 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).

31. In the case at hand, it was reported that the stairs were blocked throughout the match and fans were even seating in the stairs during the match. Moreover, it was noted that the stewardess did not try to clear the stairs and free the passageways.
32. The Club does not dispute that the incidents took place and does not provide any arguments or evidence which would put in doubt the accuracy of the official reports.
33. In view of the above, the CEDB came to the conclusion that the Club as the host and match organiser violated Article 38 of the UEFA Safety and Security Regulations and must be punished accordingly.

D. The racist behaviour

*a) Applicable legal framework and general remarks*

34. 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.
35. 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.
36. 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 is punished with a minimum of a partial stadium closure.
37. According to Article 45 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*

38. Article 14 DR is a special rule taking over the principle set out in Article 8 DR which stipulates that clubs are responsible for the racist conduct of their supporters. 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').
39. The fight against racism is an extremely high priority for UEFA. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Any racist behaviour is considered a serious offence under the DR and shall be punished with regard to the circumstances and the relevant club's previous record with the utmost severe sanctions.
40. The Control, Ethics and Disciplinary Body recalls that allegations on racist incidents is a serious claim to be addressed against the subject who will bear the legal consequences –

here the Atalanta BC, since it will not only have an impact on the participation of teams at UEFA competitions, but also have an impact on the image of this team towards football spectators, and eventually their potential stakeholders. This is why any claim related to racist incidents need to be accompanied by sufficient evidence that may lead to fulfil the requirement of the standard of proof of comfortable satisfaction, which is already low in comparison with the “beyond reasonable doubt” standard.

41. Bearing in mind the above, having analysed the arguments and evidence in the present case, the CEDB concluded that there is no sufficient evidence to reach the standard of comfortable satisfaction that may prove the existence of the alleged racist chants.
42. Consequently, based on the evidence in hand the Control, Ethics and Disciplinary Body closes the disciplinary proceedings opened against the Club related to Article 14 DR.

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

43. Based on Article 23 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 v specific circumstances.
44. In the present case, the Control, Ethics and Disciplinary Body identified and took into account:
  - the seriousness and multiplicity of the offences committed;
  - the high number of fireworks set;
45. Consequently, the CEDB decides to fine Atalanta BC € 34'000 and to close the disciplinary proceedings opened for racist or discriminatory behaviour.

## Decision of 22 March 2018

Paris Saint-Germain

(Setting off of fireworks; Stairways blocked; Use of laser pointer; Lack of body searching;  
Incidents of a non-sporting nature)

### **Circumstances of the case**

According to the report of the UEFA security officer, the passageways in the North and South stands behind both goals were blocked for the entire match and would have *“prevented emergency services*. Also, the Club’s supporters ignited an extremely large number of fireworks, at times too many to even count them and, in the 68<sup>th</sup> of the match, a laser was pointed to one player of Real Madrid who was lying on the pitch. According to the official reports, the laser was pointed from the west stand, i.e. the sector where the home-team supporters were placed. Equally, the officials concluded from this circumstance that the large number of fireworks witnessed during the match indicates that the body searching was unsatisfactory. Finally, the UEFA match delegate had reported that at the north stand, during the ceremony before kick-off, home-team supporters posted a big banner with the Champions League trophy and logo of the Club incorporated. According to said report, the Club was informed before the match that such kind of choreography is not allowed.

**Legal framework** Articles 11 (2) and Article 16 (2) (b) and (d) UEFA Disciplinary Regulations, Articles 33 (2) (b) and 38 UEFA Safety and Security Regulations.

### **Decision**

Regarding the blocking of stairways, the CEDB took into account the efforts the Club made in connection with safety and security, while however stressing that these efforts are expected from the latter since they merely constitute the Club’s obligations pertaining to safety and security in the stadium. Merely claiming that in case of an emergency medical services would have been able to do their job unhindered is clearly not sufficient with regard to Art. 45 DR. As to the setting off of fireworks, applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the Club shall be held liable for the conduct of its supporters, even if it is not at fault itself (cf. page 12, CAS 2002/A/423 PSV Eindhoven). Further, the CEDB has to acknowledge that the Club did not put forward any arguments in the present case which would breach the accuracy of the official UEFA report which expressly refers to the setting off of fireworks, just as it was the case regarding the usage of a laser pointer by its supporters. However, with regard to the reported inadequate body searching, the CEDB is not comfortably satisfied that the organization of the match concerning the body searching was not correctly implemented and decides to close the disciplinary proceedings against the Club in this aspect. As regards the choreography, the CEDB however holds that, even though the Club should ensure in future matches that the instructions given by match officials are being respected, the actual banner as it was displayed by the Club’s supporters, in the context of the UEFA Champions League match, did not violate any rules of basic conduct. In view of all of the above, the CEDB decided to order the partial closure of the Club’s during the next (1) UEFA competition match in which it would play as the host club, and, in particular the North Stand of the Stadium, and to fine Paris Saint-Germain € 43’000 while closing the disciplinary proceedings opened for lack of body searching and for incidents of non-sporting nature.

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

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

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (the "CEDB") on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by Paris Saint-Germain (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 official reports of the referee, the UEFA match delegate and UEFA security officer of the UEFA Champions League 2017/2018 match between the Club and Real Madrid CF played on 6 March 2018 (the "match") can be summarized as follows:

*Huge number of pyrotechnics. In some moments it was very difficult to say exact number (in one moment over 50). Before kick-off: 20,10h- one bang, 20,13h-one bang, 20,15h-one bang, 20,40-one bang, 20,43h-two firecrackers, 20,44h-4-5 smoke bombs + one flash light+5 firecrackers. First half: 10 flares, 4 sound bombs. In a second half, after smoke bomb in min. 46 there were more then 50 flares-Bengal lights (47. minute). Smoke bomb (53.m.), red flare (57.m.), flare (64.m.), 7 flares (72.-73.m.), smoke bomb (78.m.). smoke bomb and 12 flares (84.m), bang and 4 flares and smoke bomb (87.m.), flare and bang (89.m.), flare (90.min.). Additional time: flare and 3 bangs.*

*After final whistle: 5 flares and 1 bang. Referee stopped the game two times because of the pyrotechnics and lot of smoke. Min. 47 (50 seconds) and 71.min. (20 seconds). He asked for message through public address system which have been done. Speaker asked spectators at North stand to stop fireworks unsuccessfully.*

*Referees and referee observer told me that in minute 68. laser was pointed to one player of Real Madrid, who was lying on the pitch. Laser was pointed from West stand (sector with home team supporters), close to position of 1st assistant referee.*

*At north stand, during the ceremony before kick off home team supporters posted big banner with trophy of Champions League and with logo of PSG incorporated.*

*The passageways in the North and South stands (behind both goals) were blocked for the entire match and would have prevented emergency services..*

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

3. The Club in its statements dated on 14 March 2018 essentially states the following:

### Blocking of stairways:

- The stands allegedly blocked by the supporters are those occupied by the "*collectif des ultras parisiens*" (CUP) who participate in the animation during the match by means of chants, gestures and other supporting conducts. Also the medical and security services could freely pass through the stairs to perform their duties.
- The Club made a great effort to comply with the rules deploying great security personnel at each match.

### Fireworks:

- The Club hasn't been sanctioned for this type of incidents in the last seasons.
- It has been done in a particular context in which the Club still ensures the implementation of security and the prohibition to introduce any of this objects inside the stadium.
- In particular, the Club refers to the nature of the measures deployed and notes the implementation of a relevant security workforce, i.e. over 1'000 security agents, out of which 168 were specifically deployed in the sector occupied by CUP, police dogs, video screening.
- Also the Club addresses to the content of the exceptional dispositive implemented. In substance a specific program of activities had been implemented during the previous days and before the match. These operations have provided the arrestment of seven persons who tried to introduce fireworks inside the stadium. The Club has filed different complaints against these persons.
- With regard to the incident itself, the Club notes that the ignition of fireworks occurred despite the efforts of the Club to avoid it. The identification of the perpetrators has been very difficult due to the evading actions of these spectators. The club still examines the video footage to recognize these persons.

### Laser pointer:

- The Club refers to the same measures it implemented for the fireworks. It has been able to identify the perpetrator and informed the police authorities accordingly.

### Insufficient organization:

- The system put in place to avoid the introduction of fireworks has been extraordinary. The extension and the seriousness of the measures implemented demonstrate that PSG has indeed respected the security rules.

Choreography:

- The “tifos” are not designed by the Club but by the fans. The UCL trophy is the inspiration of the banner and the motivation of the teams and professionals. Consequently, the club did not misused the brand of the Champions League, but instead exposed its respect to this competition.
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 29 of the UEFA Disciplinary Regulations (the “DR”), the CEDB is competent to deal with the case.
6. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

B. Insufficient organization: blocking of stairways

*a) Applicable legal framework and general remarks*

7. According to Article 49 of the UEFA Safety and Security Regulations (the “SSR”), any breach of the said regulations may be penalised in accordance with the DR.
8. As stated in Article 2 SSR, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.
9. Of particular relevance for the present case is Article 38 SSR which provides that *“the match organiser must take measures to ensure that all public passageways, corridors, stairs, doors, gates and emergency exit routes are kept free of any obstructions, which could impede the free flow of spectators.”*
10. Moreover, under Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

*b) The responsibility of the Club*

11. Under Article 2 SSR, the purpose of the regulations is to maintain the safety and security of everyone present at the match. In order to achieve this goal the SSR contain several provisions concerning spectator control at the stadium, including Article 38 SSR.

12. 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*).
13. In the case at hand, according to the report of the UEFA security officer, the passageways in the North and South stands behind both goals were blocked for the entire match and would have “prevented emergency services”.
14. The CEDB takes note of the Club’s arguments which, in substance, admitted that the stairways and passageways are usually blocked by its ultra-supporters, particularly after a goal was scored by the Club, while insisting that the medical services could access the relevant sectors and move through them freely during the match, since said points were reinforced in the Club’s effort to comply with the regulations.
15. The CEDB takes into account the efforts the Club made in connection with safety and security, while however stressing that these efforts are expected from the latter 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.
16. Likewise, the CEDB notes that the Club did not provide any further evidence which would indicate a potential inaccuracy of the official reports where it is clearly stipulated that the passageways in the North and South stands behind both goals were blocked during the entirety of the match – i.e. not only after goals were scored as suggested by the Club - and would have prevented emergency services from accessing and moving through the relevant sectors. Merely claiming that in case of an emergency medical services would have been able to do their job unhindered is clearly not sufficient with regard to Art. 45 DR and the burden of proof which would have been on the Club to provide documentary evidence, providing proof for its explanations (cf. *CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v UEFA, paras. 80ff*).
17. Consequently, the CEDB comes to the conclusion that the arguments provided by the Club did not break the accuracy of the UEFA security officer’s report, which is why the Club as the host and match organiser violated Article 38 SSR and must be punished accordingly

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

a) *Applicable legal framework and general remarks*

18. 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 a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
- f. *acts of damage;*
- g. *causing a disturbance during national anthems;*
- h. *any other lack of order or discipline observed inside or around the stadium.*

- 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. According to Article 45 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*

- 21. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
- 22. In the present case and according to the UEFA official, it was reported that the Club's supporters ignited an extremely large number of fireworks, at times too many to even count them.
- 23. Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the Club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).
- 24. Further, the CEDB has to acknowledge that the Club did not put forward any arguments in the present case which would breach the accuracy of the official UEFA report which expressly refers to the setting off of fireworks and is presumed to be accurate under Article 45 DR. The CEDB hence notes that the violation of Article 16 (2) (c) DR is undisputed.
- 25. Hence, the Club is responsible for any violation conducted by its supporters against the DR. It includes the setting off of fireworks in accordance to Article 16 (2) (c) DR (cf. *CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia*).
- 26. In light of the foregoing, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

D. The use of laser pointers

*a) Applicable legal framework and general remarks*

27. 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.”*

28. 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.

29. According to Article 45 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*

30. 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.

31. In the case at hand, it was reported that in the 68<sup>th</sup> of the match, a laser was pointed to one player of Real Madrid who was lying on the pitch. According to the official reports, the laser was pointed from the west stand, i.e. the sector where the home-team supporters were placed.

32. The Club in its statements repeated its deliberations with the regard to the preparations and the organization of the match, merely referring to the precautions taken by the Club in order to avoid and prevent violations of the DR and SSR from occurring. In addition to the foregoing, the Club also stressed and explained that it conducted its own investigation, managed to identify the perpetrators and informed the police authorities accordingly, possibly leading to criminal proceedings against the said offenders.

33. 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*).

34. 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. Consequently, the Club is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

D. The inadequate body searching

*a) Applicable legal framework and general remarks*

35. 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.
36. According to Article 33 (2) (b) SSR, final screening and searches must be carried out by security personnel outside the turnstile entrances to ensure that spectators do not bring any objects/substances into the stadium that are likely to be used in acts of violence, or alcohol or fireworks of any kind.
37. According to Article 45 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*

38. The purpose of the UEFA Safety and Security Regulations is to maintain the safety and security of everyone present at the match (cf. Article 2 SSR). In order to achieve this goal there are several provisions concerning spectator control at the stadium.
39. In the present case, the officials concluded from this circumstance that the large number of fireworks witnessed during the match indicates that the body searching was unsatisfactory.
40. The CEDB however recalls that the club implemented a high number of security measures. In addition, no official reports witnessed insufficient body searches before the game. In this regard, the CEDB comes to the conclusion that it cannot agree, in the specific circumstances with the logic applied by the UEFA match delegate and the UEFA security officer connecting the high number of fireworks in the stadium with an insufficient body searching. Even though it is obviously very regrettable that such a large number of fireworks could enter the stadium - and the CEDB stresses that the Club should increase its efforts to avoid having a similar situation in the future the mere presence of fireworks in the stadium does not automatically allow the conclusion that the host club has violated Art. 33 (2) SSR.

41. In the light of the above circumstances, the CEDB is not comfortably satisfied that the organization of the match concerning the body searching was not correctly implemented and decides to close the disciplinary proceedings against the Club in this aspect.

E. Incidents of a non-sporting nature (Choreography non-authorized)

*a) Applicable legal framework and general remarks*

42. According to Article 11 (1) DR, 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..

43. According to Article 11 (2) (f) DR, a breach of these principles is committed by anyone who does not comply with instructions given by match officials.

44. According to Article 45 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*

45. In the present case, the UEFA match delegate had reported that at the north stand, during the ceremony before kick-off, home-team supporters posted a big banner with the Champions League trophy and logo of the Club incorporated. According to said report, the Club was informed before the match that such kind of choreography is not allowed.

46. The CEDB however holds that, even though the Club should ensure in future matches that the instructions given by match officials are being respected, the actual banner as it was displayed by the Club's supporters, in the context of the UEFA Champions League match, did not violate any rules of basic conduct. In this regard, this UEFA disciplinary body is satisfied with the explanation provided by the club with regard to the banner.

47. In the light of the above circumstances, the CEDB decides to close the disciplinary proceedings against the Club for the alleged violation of Art. 11 (2) (f) DR.

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

48. Based on Article 23 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 setting off of fireworks, referring to Art. 6 (5) DR and Annexe A (I), the CEDB identifies and takes into account the following concrete circumstances:

- the seriousness and multiplicity of the offences committed;
- the uncountable number of fireworks ignited during the match;

- the high risk deriving from the setting off of fireworks for spectators and other present at the match, particularly in such dimensions as at this match under scrutiny;
  - the fact that the match had to be stopped twice, due to the smoke coming from the lit and burnt out fireworks;
  - the previous record of the Club which has been punished already twice for the same offence.
50. Regarding the blocking of stairways, the CEDB refers to Art. 6 (5) DR and Annexe A (II) and takes into account the seriousness of the offence, the risks connected to the blocking of stairways in cases of emergency, as well as the previous record of the Club who has been punished already five times for the same offence.
51. Regarding the usage of lasers, the CEDB takes into account the seriousness of the offence as well as Art. 6 (5) DR and Annexe A (I) which provides for standard sanctions.
52. In view of all of the above, the CEDB deems that a mere financial sanction is not sufficient for the abovementioned violations of the DR and SSR, and particularly in view of the extremely high number of fireworks set off by the Club's supporters, the blatant violation of the DR and the obvious disregard shown by the Club's supporters regarding the rules and regulations in general and the basic rules of conduct in particular.
53. In this regard, the CEDB recalls the previous record of the Club and noted that the Club has been punished in numerous previous instances before with increasing fines for the same violations, this however without any positive effect on the behaviour of the Club's supporters. UEFA cannot and will not tolerate such dangerous behaviour which is tarnishing the image of UEFA's most prestigious competition, the UEFA Champions League, and which puts the health and safety of spectators at risk.
54. Consequently, the CEDB decided to order the partial closure of the Paris Saint-Germain Stadium during the next (1) UEFA competition match in which Paris Saint-Germain would play as the host club, and, in particular, this disciplinary body deems that Paris Saint-Germain shall close the North Stand of the Paris Saint-Germain Stadium, i.e. the part of the stadium from where the majority of the reported violations originated from which were the sectors 111, 112, 113, 114, 311, 312, 313, 314, 411 and 414.
55. Further, in view of all of the abovementioned violations, i.e. taking into account the setting off of fireworks, the usage of laser pointers as well as the blocking of stairways committed by the Club and its supporters, the CEDB deems an additional financial sanction of €43'000 as appropriate.

## Decision of 22 March 2018

Austrian Football Association

(Protest – Unfit field of play)

### **Circumstances of the case**

In its protest, in substance, the association holds that despite the several statements of the team's captain and the team officer regarding the unfit field of play and the connecting risks, the referee decided to allow for playing the match. It points to the fact that already at the arrival of the team, it had warned about the conditions of the field of play. In addition, the day of the match, only after several approaches of the association to the organizers two persons started to clean up the field of play of snow thrown. On the day of the match and on several occasions the team officer and the team manager insisted on the bad situation of the field of play.

**Legal framework** Articles 55 (b) and 57 (1) (b) UEFA Disciplinary Regulations, Article 9 (5) UEFA Disciplinary Regulations, Article 47 UEFA Women's Under-17 Championship Regulations.

### **Decision**

The CEDB noted that there are mainly two questions that need to be assessed, first whether the protest filed by the association is admissible, and second whether the protest has any merits. The CEDB understands that in order for a protest to be admissible there are some conditions enshrined in the DR that need to be respected, i.e. a specific deadline imposed by the specific competition regulations to lodge a protest and the conditions (Article 55 DR). The CEDB deems that none of these conditions is fulfilled by the association. The association filed its protest one day after the end of the match, i.e. more than 12 hours after. Consequently, the protest is not admissible already on this basis. Further, Article 57 DR, establishes that a protest is admissible only if it is based on an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match). It derives from the case file that the association by means of an unknown official did state to the referee that the pitch was not fit to play. This is confirmed by the referee. However, the official also noted that the association's representative did not identified himself and that the captains of both team were not present in these discussions. In addition, no written notification contemplating the association's intention to file a protest had been submitted to UEFA before the match. Specifically, she refers to the fact that the condition established in Article 57 (1) (b) DR of a written statement wasn't complied. Additionally, the CEDB considered that the protest also lacks of any merits due to the fact that nothing in the case file sustains the grounds of the protest. The referee confirms the fact that they ensured that the field of play was fit to play. They tested its playability by using a ball on site and also implemented some measures like marking the lines with a different colour and play the match with an orange ball to anticipate any negative circumstances. Bearing all the above circumstances of this case, the CEDB deems that the protest has also no merits and is to be dismissed.

Ad hoc Chairman: Berzi Sándor (HUN)

**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 in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 19 March 2018, the Austrian Football Association (the "association" or "AFA") played against the Turkish Football Federation (TFF) a UEFA Women's Under-17 Championship 2018 match.
3. On 20 March 2018, the association filed a protest on the basis of Article 57 (1) (b) DR claiming an unfit field of play.
4. In substance, the association holds that despite the several statements of the team's captain and the team officer regarding the unfit field of play and the connecting risks, the referee decided to allow for playing the match. It points to the fact that already at the arrival of the team, it had warned about the conditions of the field of play. In addition, the day of the match, only after several approaches of the association to the organizers two persons started to clean up the field of play of snow.
5. On 21 March 2018, the association submitted a video footage regarding the above mentioned match to support its position.
6. On 22 March 2018, the UEFA delegate and the referee made the following assertions:
  - The delegate:

*It is well-known that in the two weeks the weather is rather bad and also snow has fallen in many countries of Europe, including in Bosnia and Herzegovina. Thinking that, because of the snow could be helpful, the RLO brought at the stadium a red ball. It is indeed difficult for all people involved in a MT to meet this kind of situations but, in for this venue we really tried our best the matches to be played.*

*When we arrived at the stadium, a gentleman from the Austrian delegation (who did not present himself but I suppose to be the team manager) approached me and the referee telling that he consider the pitch is dangerous the match to be played on. He claimed that the pitch was slippery because of the snow and can be dangerous for the players. Following the discussion we had with the match referee, I can confirm that the captain of the Austrian team did not come and talk to her about the quality of the field.*

*There on the pitch was indeed snow because the organizers, even tried, they cleaned the pitch just partially and the snow layer was for about 3 to 5 cm. Please find attached the photos taken by me at the stadium.*

*Of course we took into consideration the received complain and, together with the referee went to the pitch to play the ball so that we to decide if the pitch is indeed so bad and if playing the match represents a danger for the players. The pitch was sloppy but not frozen and, the referee and I decided that the pitch does not represent a danger for the players and the match can be played.*

*I must add that, neither before or during the match, we did not receive any kind of complains regarding the pitch from the representatives of the Turkish delegation/team.*

- The referee

*When we, my referee team + the observer/delegate, arrived at the stadium the Austria team directly shouted, from a distance, towards us that the field of play wasn't safe enough to play on.*

*We said we would first place our bags in the dressing room, and then check the field of play.*

*With a ball we walked over the pitch, to look if it was safe and satisfactory enough to play on. The ball was rolling even over a bigger distance. Yes there was snow on big parts the pitch, however this was only a slight layer. Furthermore the snow was soft and there was no ice or pointy parts. In consultation with the observer/delegate we found that the field of play was not dangerous to play on.*

*When we left the pitch there was no official complaint of Austria and/or Turkey that the field of play was dangerous. Referring to article 57B I received no writing of the problem. Also before/during and after the match, there was no orally comment by a team captain in presence of the captain of the opponent team.*

*After our inspection of the pitch we went to the dressing room and started our match preparation. The entire time (during warm up, first half, half time, second half and after the match) no recognized team officials, of both teams, mentioned any word to us about dangerous circumstances.*

*By making the field markings in a different colour, red, and starting and ending the play with an orange ball we anticipated on the circumstances.*

7. On the same date, the TFF filed its submissions. In substance, it addressed to the following circumstances:

- The reason for protest was unfit field of play due to the snow on the pitch. The protest was filed the day after the match, on 20.03.2018 by the AFA. However, under the Article 57/1"b" of UEFA Disciplinary Regulations, in order a protest to be admissible for an unfit field of play, either the referee must be informed in writing before the match or must be informed orally by the captain of protesting team, in the presence of the captain of the opposing team, during the match. Neither written information was given to the referee before the match nor the referee was informed orally by the captain of protesting team

in the presence of the Turkish team captain. Therefore, the referee did not report any such protest.

- Further, according to the UEFA Delegate Report playability of the pitch condition is marked as satisfactory. No protest for an unfit field of play was mentioned in the delegate report as well.

8. Finally, the Austrian Football Association following the indications of UEFA granting the latter with the possibility to supplement its original position, filed in substance the following submissions:

- The association emphasizes the fact that on the day of the match and on several occasions the team officer and the team manager insisted on the bad situation of the field of play.
- The players were also concerned about the situation of the pitch. These are very young players and other standards need to be implemented.
- An additional protest coming from the captain of the team was in these circumstances not necessary nor aimed specific.
- It is also noted that another match played at the same time had been properly cleaned up by the adequate number of staff.
- There were no UEFA officials at the field of play before 90 minutes of kick off and it was uncertain if the referees would examine the field of play until close to kick off.

9. The more detailed arguments made by the parties in support of their written submissions are set out below in as far as they are relevant.

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

### A. UEFA's competence.

10. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.

11. 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*

12. According to Article 9 DR:

*1. Decisions taken by the referee on the field of play are final and may not be reviewed by the UEFA disciplinary bodies.*

*2. In cases where a decision by the referee involves an obvious error (such as mistaking the identity of the person penalised), only the disciplinary consequences of*

*that decision may be reviewed by the disciplinary bodies. In cases of mistaken identity, disciplinary proceedings may, in accordance with these regulations, be opened only against the person who was actually at fault.*

*3. A protest against a caution or expulsion from the field of play after two cautions is admissible only if the referee's error was to mistake the identity of the player.*

*4. In cases of serious misconduct, disciplinary action may be taken even if the referee and his assistants did not see the event in question and were therefore unable to take any action.*

*5. The provisions of these regulations relating to protests against match results affected by a referee's decision that was an obvious violation of a rule remain applicable.*

13. According to Article 55 DR:

*Proceedings are opened by the UEFA administration:*

- a) on the basis of official reports;*
- b) where a protest has been lodged;*
- c) for reported offences falling within the scope of these regulations;*
- d) at the request of the UEFA Executive Committee, the UEFA President or the UEFA General Secretary;*
- e) at the request of an ethics and disciplinary inspector;*
- f) on the basis of documents received from a public authority;*
- g) where a complaint has been filed.*

14. According to Article 57 DR:

*1. A protest is admissible only if it is based on:*

- a) an ineligible player's participation in a match as a consequence of that player not fulfilling the conditions defined in the relevant competition regulations;*
- b) an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match);*
- c) an obvious error by the referee as defined by Article 9 of these regulations, in which case the protest may be directed only at the disciplinary consequences of the referee's obvious error;*
- d) an obvious violation of a rule by the referee that had a decisive influence on the final result of the match;*

*e) any other significant incident that had a decisive influence on the final result of the match.*

2. *Protests may not be lodged against factual decisions taken by the referee.*

*b) The responsibility of the club*

15. The Control, Ethics and Disciplinary Body notes that the case in hand deals with the protest of one team, the Austrian Football Association, who deemed that the conditions of the field of play for its U17 Women European Championship match were not appropriate to play. It is noted that the game was played. Neither the referee nor the delegate deemed that the pitch didn't fulfilled the criteria to host a football match.
16. Bearing the above in mind, this UEFA disciplinary body considers that there are mainly two questions that need to be assessed:
  - Is the protest filed by the association admissible?
  - Has the protest any merits?
17. It is again recalled that UEFA disciplinary body has considered all 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.

#### **Is the protest filed by the association admissible?**

18. This UEFA disciplinary body understands that in order for a protest to be admissible there are some conditions enshrined in the UEFA Disciplinary Regulations that need to be respected, i.e. a specific deadline imposed by the specific competition regulations to lodge a protest and the conditions (Article 55 DR). The Control, Ethics and Disciplinary Body deems that none of these conditions is fulfilled by the association.
19. First, according to Article 47 UEFA Women's Under-17 Championship Regulations, participating associations are entitled to protest against the validity of a match result within 12 hours of the end of the match in question in accordance with the relevant provisions of the UEFA Disciplinary Regulations. It follows the association had 12 hours after the end of the match to file its intention to protest, if considered that this protest is aimed against the validity of the match.
20. The factual circumstances of this case show that the association filed its protest one day after the end of the match, i.e. more than 12 hours after. Specifically, the match started at 15:00 and ended up at 16:46h according to the UEFA delegate's report. The case file shows also that the protest had been filed on 20 March 2018 at 15:07, i.e. beyond the above mentioned 12 hours.
21. Bearing the above in mind, the association did not respect the deadline imposed in the competition regulations of 12 hours. Consequently, the protest is not admissible already on this basis.

22. Second, Article 57 DR, establishes that a protest is admissible only if it is based on an unfit field of play, as long as the referee was informed as soon as the problem was reported or observed (whether in writing before the match, or orally by a team captain, in the presence of the captain of the opposing team, during the match).
23. It derives from the case file that the association by means of an unknown official did state to the referee that the pitch was not fit to play. This is confirmed by the referee. However, the official also noted that the association's representative did not identify himself and that the captains of both teams were not present in these discussions. In addition, no written notification contemplating the association's intention to file a protest had been submitted to UEFA before the match.
24. In particular, the referee confirmed the fact that neither Austria nor Turkey filed an official complaint. Specifically, she refers to the fact that the condition established in Article 57 (1) (b) DR of a written statement wasn't complied. In addition to that, before, during and after the match, there was no verbal comment by a team captain in the presence of the captain of the opponent team, and, finally, the entire time (during warm up, first half, half time, second half and after the match) no recognized team officials, of both teams, mentioned any word to the referees team about dangerous circumstances witnessed over the field of play.
25. The association, in substance, addresses to the fact that on several occasions before the match they did complain about the conditions of the pitch. They confirm the fact that after having protested on several occasions before the match, an additional protest coming from the captain of the team was in these circumstances not necessary nor aimed specific.
26. This UEFA disciplinary body can't comply with the assertions of the association. It derives clearly from the factual circumstances of this case that the conditions enshrined in Article 57 (1) (b) DR were not fulfilled. These are mandatory, regardless of the fact that the association may have communicated its concerns about the situation of the field of play before - by unidentified persons.
27. Again, according to the specific circumstances of the case, the association did not fulfil with the conditions enshrined in Article 57 DR, such as the written protest before the match or the fact that the team captain in the presence of the opponent captain notified the protest to the referee. Therefore, also on these grounds the protest must be declared inadmissible.

### **Has the protest any merits?**

28. Succinctly, and regardless from the fact that the association did not comply with the conditions to lodge a protest, this UEFA disciplinary body wishes also to address to the merits of this case. In sum, this UEFA disciplinary body considers that the protest also lacks of any merits due to the fact that nothing in the case file sustains the grounds of the protest.
29. This conclusion derives mainly from the assertions made by the UEFA officials, but also from those of the association throughout the disciplinary proceedings.

30. The referee confirms the fact that they ensured that the field of play was fit to play. They tested its playability by using a ball on site and also implemented some measures like marking the lines with a different colour and play the match with an orange ball to anticipate any negative circumstances.
31. Also the delegate confirms that she discussed with the referee about the condition of the pitch and reinstated the conclusion that the match was fit to play.
32. The above added to the fact that none of the teams complaint about the field of play during entire game, i.e. during warm up, first half, half time, second half and after the match, speak certainly against the fact the field was unfit to play.
33. It is noted that the association submits a video footage that should demonstrate that the field of play wasn't fit to play. However, and also for the above mentioned reasons, the footage doesn't provide any valuable evidence as regards the state of the pitch. It only shows a pitch with snow, which in itself doesn't sustain the decision to declare the field not fit to play. Here again, it is recalled that the referees tested the pitch on site before the kick off and decided that it complied with the rules. None of the teams before, during or after the match complaint about the pitch.
34. Bearing all the above circumstances of this case, this UEFA disciplinary body also deems that the protest has also no merits.

## Decision of 5 January 2018

### Football Club Zenit

(Acts of Damages; Setting off of fireworks; Throwing of objects)

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

Several incidents have been reported by the UEFA officials, including here the referee, that relate to infringements of the UEFA DR: setting off of fireworks, throwing of objects, crowd disturbances and acts of damages. In the present case, the Club's supporters in Gate 9 section set off approximately 20 flares, three Bengal lights, further throwing seats over the barrier towards the pitch. It was discovered in an initial inspection that 26 seats were damaged or removed from their attachments to the stand and four were seen in the space between the section barrier and the pitch, with a couple on the side of the pitch. Before the delegate left the stadium, he was advised that after further inspections by their staff members the number of damaged seats had increased to 40. Likewise, one of the Clubs supporters attempted unsuccessfully to climb the barrier separating the away and home fans to get at the home fans. The stewards tried to intervene and the Police arrived quickly and formed a line between the barrier and home fans in the adjacent section.

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

#### **Decision**

The CEDB deems that such an incident is an obvious example of a lack of discipline from the Club's supporter. Such attitudes go against the spirit of fair play and respect several times defended by UEFA in its Statutes, regulations and outside the strictly legal context. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided, which in this particular case has not been done by the Club with regard to neither of the reported incidents. Delegate incorporated to his report a pictures of the incidents. The CEDB specifically recalls that the Club's argumentation merely relies on the security failures of the home team whilst preparing the match. CEDB took into account the seriousness and multiplicity of the offences committed, the club's previous record who has already been punished for the improper of its supporters, and, in particular, several times for the setting off of fireworks, throwing of objects and for crowd disturbances, the violent attitude showed by the club's supporters towards the police authorities trying to overcome the barrier segregating them from the home supporters, the dangerous situation attached to the ignition of fireworks as those ignited during the match that could have harmed any person present inside the stadium as well as the disrepute of UEFA's image caused by the events. The CEDB emphasizes that it has been tempted to impose a harsher sanction than a fine, e.g. banning from selling tickets or even a match behind closed doors, but wishes to give the club the benefit to react to this dramatic situation and improve the security mechanisms relating to control its supporters. Hooliganism is completely unacceptable in football and the club must take its share of responsibility in educating and preventing these attitudes. CEDB decided to fine Football Club Zenit € 30'000 and to contact Real Sociedad de Fútbol within 30 days for the settlement of the damages caused

Chairman: Partl Thomas (AUT)

Vice-Chairman: Berzi Sándor (HUN)

Member: Larumbe Beain Kepa (SPA)

## 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:

*No controversial banners or standing blocking the stairways but I witnessed the FC Zenit fans in Gate 9 section set off approximately 20 flares, three bengal lights (please see separate below) and, in around 84th minute, one FC Zenit fan attempted, but unsuccessful, to climb the barrier separating the Away and Home fans to get at the Home fans. The stewards tried to intervene and the Police arrived quickly and formed a line between the barrier and Home fans in the adjacent section. The Police also moved the Home fans away from the barrier -- most of this Home section was vacated by 86th minute and completely by 88th minute. I was advised by the Venue Director after the match that, during the FC Zenit fans' disturbances, he saw a seat being thrown over the barrier towards the pitch (not towards the Home fans) but did not hit anyone. I did not witness this and whilst I have discovered after the match from the TV footage that the Referee stopped the match for approximately 40seconds during the pyrotechnics, the incident involving throwing of the seat(s) did not affected the match (there is a running track and large open area behind the goal) between the spectators and the pitch.*

*After the match, I inspected this Away supporters section (Gate 9) together with Mr Igor Pavlovich of FC Zenit and Mr Guillermo Amilibia of Real Sociedad. It was discovered from this initial inspection that 26 seats / chairs were damaged or removed from their attachments to the stand and four were seen in the space between the section barrier and the pitch, with a couple on the side of the pitch (over the barrier). Before I left the stadium, I was advised by Mr Amilibia that after further inspections by their staff members that the number of damaged seats had risen to 40.*

(UEFA's delegate report)

*In the Zenit supporters zone, behind the left goal, in minute 79, around 20 flares were thrown and at least 3 bengals were lit.*

(UEFA's referee's report)

## II. The Respondent's position

3. The Club in their statements dated on 14 December 2017, argues that excessive and inconsistent prohibitions of home club aimed at FC Zenit supporters. It also insists that at

the entrance gate to the visiting sector, stewards imposed a number of arbitrary prohibitions.

4. The club stresses that there were insufficient personnel at the entrance gate. In accordance with the delegate's report, there were 636 visiting fans at the match.
5. The home club, however, deployed only 4 stewards – three men and 1 woman – to the visiting entrance gate. The lack of personnel at the gate created havoc, demonstrated by a video footage provided by the club. This havoc eventually led to a superfluous check of the fans.
6. On the video, the club points to numerous violations committed by the home fans. FC Zenit fully understands that neither the failure of Real Sociedad de Futbol to provide adequate security measures nor illegitimate and irresponsible behavior of home fans may serve as justification for infringements committed by Zenit fans; these infringements cannot be tolerated. At the same time, those facts, being factors contributing to the context surrounding the infringements by Zenit fans, cannot be ignored either
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 29 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 improper conduct of supporters:

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

10. 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."*

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. According to Article 45 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. According to the official reports several incidents have been reported by the UEFA officials, including here the referee, that relate to infringements of the UEFA DR: setting off of fireworks, throwing of objects, crowd disturbances and acts of damages.

C. Setting off of fireworks

14. Setting off fireworks is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can endanger the physical integrity of the persons who are lighting the fireworks, other spectators, officials and even the players on the pitch. For this reason, the use of pyrotechnic devices in stadiums is strictly forbidden.
15. In the present case, FC Zenit fans in Gate 9 section set off approximately 20 flares, three bengal lights.
16. Applying the principle of strict liability as described in Articles 8 and 16(2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven).
17. Further, the club did not put forward any arguments in the present case which would breach the accuracy of the official UEFA report which expressly refers to the setting off of fireworks and is presumed to be accurate under Article 45 DR.
18. In light of the foregoing, the club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

D. The throwing of objects

19. Generally speaking, throwing objects is a very serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can potentially endanger

the physical integrity of the perpetrator(s), other spectators, officials and even the players on the pitch. For this reason, throwing objects in stadiums is strictly forbidden.

20. Furthermore, UEFA cannot allow that violent actions, commonly known as “hooliganism” take place at football stadiums. Such attitudes go against the spirit of fair play and respect several times defended by UEFA in its Statutes, regulations and outside the strictly legal context.
21. 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.
22. 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).
23. In the present case, FC Zenit fans threw seats over the barrier towards the pitch.
24. The Control, Ethics and Disciplinary Body deems that such an incident is an obvious example of a lack of discipline from the club’s supporter.
25. Consequently, in light of the foregoing and applying Articles 8 and 16 (2) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

E. The crowd disturbance

26. 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.
27. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided, which in this particular case has not been done by the Club. It is recalled that the delegate incorporated to his report a pictures of the incidents.
28. Briefly the delegate reported that in around 84th minute, one FC Zenit fan attempted, but unsuccessful, to climb the barrier separating the away and home fans to get at the home fans. The stewards tried to intervene and the Police arrived quickly and formed a line between the barrier and home fans in the adjacent section. The Police also moved the home fans away from the barrier -- most of this home section was vacated by 86th minute and completely by 88th minute.
29. The Control, Ethics and Disciplinary Body can’t justify the attitude of the supporters. Again, the above described incidents which involve an oblique confrontation between supporters and police authorities, have to be qualified as acts of hooliganism and are considered as particular serious offences. Such behaviour is all the more unacceptable as it tarnishes the image of football and UEFA.

30. Bearing the above in mind, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (h) DR and must be punished accordingly.

F. The damages

31. As established by the above provision, acts of damages are to be considered as a reproachful and regretful act of vandalism, which are completely against the spirit and objectives of the organisation of sports events.
32. In the case in hand, after the match, the delegate inspected the away supporters section (Gate 9) together with Mr Igor Pavlovich of FC Zenit and Mr Guillermo Amilibia of Real Sociedad. It was discovered from this initial inspection that 26 seats / chairs were damaged or removed from their attachments to the stand and four were seen in the space between the section barrier and the pitch, with a couple on the side of the pitch (over the barrier). Before the delegate left the stadium, he was advised that after further inspections by their staff members the number of damaged seats had increased to 40.
33. Again, the Control, Ethics and Disciplinary Body recalls that according to Article 8 DR, which stipulates the principle of strict liability, clubs and member associations are to be held liable for the conduct of their supporters, players, etc., even if they are themselves not at fault. Art. 16 (2) (f) DR picks up on this principle.
34. The Control, Ethics and Disciplinary Body recalls that according to Article 45 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. Such evidence has not been brought forward as the Respondent's argumentation merely relies on the security failures of the home team whilst preparing the match.
35. The Control, Ethics and Disciplinary Body considers that the action perpetrated by the club's supporters opposes to the principle and values of UEFA.
36. Bearing in mind the above, the club is to be held responsible for the improper conduct of its supporters and must be punished accordingly.

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

37. Based on Article 23 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. 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: the club has already been punished for the improper of its supporters, and, in particular, several times for the setting off of fireworks, throwing of objects and for crowd disturbances.
- The episodes of real violence witnessed before and during the match in which the club fans have played a main role.
- The violent attitude showed by the club's supporters towards the police authorities trying to overcome the barrier segregating them from the home supporters.
- The dangerous situation attached to the ignition of fireworks as those ignited during the match that could have harmed any person present inside the stadium.
- The disrepute of UEFA's image caused by the events.

39. This Control, Ethics and Disciplinary Body takes this opportunity to strongly advise the club to implement the appropriate disciplinary measures to avoid incidents of the same nature to occur again. It is of no relevance that the host team could have committed any failings whilst the aggressive and violent attitude of the club's supporters is of an extreme gravity and completely unacceptable.

40. This UEFA disciplinary body has been tempted to impose a harsher sanction than a fine, e.g. banning from selling tickets or even a match behind closed doors, but wishes to give the club the benefit to react to this dramatic situation and improve the security mechanisms relating to control its supporters. It is recalled that hooliganism is completely unacceptable in football and the club must take its share of responsibility in educating and preventing these attitudes.

## Decision of 31 May 2018

### Liverpool FC

(Setting off of fireworks; Acts of Damages; Crowd disturbances; Throwing of objects)

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

According to the official reports, at the occasion of a meet and greet, the Manchester City FC team bus was attacked by supporters of the Club at Anfield Road when the bus approached the stadium. Apparently, between six and eight windows were broken, caused by the Club's supporters who used pyrotechnical devices and threw the devices into the direction of the arriving team coach. In addition, the reports noted that several other missiles (bottles, coins, cans etc.) were thrown. Furthermore, according to the official UEFA reports, it was reported that the Club's supporters ignited fireworks at numerous occasions during the match

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

#### **Decision**

Regarding the attack on the bus, the Club stresses that the incident did not take place inside and around the stadium within the meaning of Art. 16 DR, the jurisdiction is however limited to those areas given that the Club has no authority over public highways and other properties where the incidents took place. The CEDB however notes that the scope of responsibility of the UEFA disciplinary bodies is not restricted to the stadium as it is clearly established in the relation of Article 16 (1) DR with Article 16 (2) (h) DR, when it refers to incidents occurred "inside or around the stadium". the CEDB stresses that it does not deem it necessary in the case at hand to determine the exact extent and the limitations of the scope of Article 16 (2) (h) DR and the detailed interpretation of the open term "around the stadium", for the reasons stated below. The CEDB recalls that in a previous incident which occurred on 5 May 2016, almost the exact same violations have already been committed by the Club's supporters, having resulted in disciplinary proceedings and a decision of the CEDB of 19 May 2016 regarding this matter. In the respective decision the CEDB explained that it is "therefore, advisable that the club revises its security protocols designed for the arrival of away teams at the stadium as to prevent incidents of the same kind from happening again. (...) If this occurs again it could point out that there is a non-solved security problem issue and that prima facie no measure has been implemented to avoid it." Taking all of the above into account, the CEDB has to note that exactly such circumstances appear to have occurred before, given that the attack on the team bus of Villarreal CF was of the almost exact same nature at a similar occasion, i.e. not in the direct vicinity of the stadium but nonetheless fairly close to it at Anfield Road. It hence appears that the security issue related to such incidents which already became evident during the incident in 2016 has not been solved yet and the Club has not implemented the necessary security measures in order to prevent such incidents from occurring, despite the clear message given by the CEDB to solve such problems. The CEDB identified and took into account the seriousness and multiplicity of the offences committed as well as the dangerous situation deriving from these violent acts of hooliganism displayed by the Club's supporters, leading to damages, putting safety of players, officials and innocent bystanders at risk in a blatant violation of the principles of fair-play. Finally, the CEDB decided to fine Liverpool FC € 20'000 and to contact Manchester City FC within 30 days for the settlement of the damages caused by its supporters.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) 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 (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. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the Liverpool FC (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 UEFA match delegate and the UEFA security officer present at the UEFA Champions League 2017/18 match between the Club and Manchester City FC played on 4 April 2018 (the "Match"), can be summarized as follows:

UEFA match delegate:

*The Manchester City bus was attacked by Liverpool fans (or persons dressed as such) at Anfield Road when the bus approached the stadium. 6-8 windows were broken. The Security Officer reported that there were several dangerous situations in the meet and greet area, including extensive use of smoke devices. I refer to his report for details.*

*min 13: Red smoke from a smoke device at the Anfield Road Stand, sector 125, Liverpool fans; min 21: Red smoke from a smoke device at The Kop, sector 106, Liverpool fans; min 77: Red smoke from a smoke device at The Kop, sector 106, Liverpool fans after the final whistle: Red smoke from a smoke device at The Kop, sector 107, Liverpool fans.*

UEFA security officer:

*At a meet and greet the day before the match, the number of spectators attending was much greater than expected. Many supporters used pyrotechnical devices and "Unfortunately numerous supporters threw the devices into the direction of the arriving team coach. In addition several other missiles (bottles, coins, cans etc.) were thrown. It was within the reach difficult to breathe and to look because of the smoke. Numerous damages were later to identify (counted at minimum 6 windows of the coach were slivered (damaged) but not broken! It was to identify which missiles caused exactly the damages of the coach!"*

*“Not only the massive throwing and smoke was dangerous but after the second bus took his way to the stadium nearly all supporters removed or climbed over the fences and followed the coaches to the stadium.*

*In that moment thousands of supporters were nearly blocking the complete Anfield Rd. and because of the fact that some supporters were at the same time walking in the opposite direction the situation was from my perspective very dangerous and not to control. Finally nobody fell down to the ground - which could cause serious problems - because all kind of supporters were using in this moment the street. There was no chance to influence the crowd and the whole situation was not to overlook.*

## **II. The Club’s position**

3. The Club in its statements dated on 24 April 2018 admits the charges relating to the setting off of fireworks within in the stadium, despite the Club’s strenuous and extensive efforts to discourage the usage of fireworks and detect their presence in advance. The Club also notes that the fireworks did not cause any harm or cause an interruption of the match.
4. Regarding the attack on the bus, the Club stresses that the incident did not take place inside and around the stadium within the meaning of Art. 16 DR, the jurisdiction is however limited to those areas given that the Club has no authority over public highways and other properties where the incidents took place. In support of such explanation, the Club provided documents from the Police confirming that. Hence, the Club stresses that it cannot get punished for such incidents.
5. Nonetheless, the Club condemns these attacks which were performed by a relatively small group of fans, and apologizes to UEFA and Manchester City FC for the incidents.
6. Further, the Club states that if a fine should be imposed for the attack on the Manchester City bus, which would constitute the most severe infringement of the DR in the case at hand, the Club argues that it should be a moderate fine only, as it was decided in previous cases by the CEDB (e.g. the decision of 19 May 2015 against Chelsea FC where a fine of €12’000 was imposed for crowd disturbances charges), considering the positive track record of the Club.
7. In any case, the Club holds that the CEDB should also consider a suspension of parts or the entirety of any fine, as it is within the discretion of the CEDB according to Art. 23 DR in conjunction with Art. 20 (1) & (2) DR.
8. The more detailed arguments made by the Club in support of its written submissions are set out below in as far as they are relevant.

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

### **A. UEFA’s competence.**

9. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (the “DR”), the CEDB is competent to deal with the case.
10. 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, acts of damages

a) *Applicable legal framework and general remarks*

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

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

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

12. According to Article 8 DR, which stipulates the principle of ‘strict liability’, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters, even if it might not be at fault itself.
13. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

b) *The responsibility of the Club*

14. According to the official reports, at the occasion of a meet and greet, the Manchester City FC team bus was attacked by supporters of the Club at Anfield Road when the bus approached the stadium. Apparently, between six and eight windows were broken, caused by the Club’s supporters who used pyrotechnical devices and threw the devices into the direction of the arriving team coach. In addition, the reports noted that several other missiles (bottles, coins, cans etc.) were thrown.
15. Applying the principle of strict liability as described in Articles 8 and 16(2) DR, the club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case CAS 2002/A/423 PSV Eindhoven).

16. The above mentioned facts were not disputed by the Club which, however, contests the fact that the principle of strict liability enshrined in Article 16 (2) DR contemplates incidents happening outside the perimeter of the stadium. In this regard, the Club argued that the exact location where the incidents occurred is deliberately and expressly under the jurisdiction and responsibility of the Merseyside Police and over which Liverpool FC cannot sensibly exercise control.
17. First, this disciplinary body notes that the scope of responsibility of the UEFA disciplinary bodies is not restricted to the stadium as it is clearly established in the relation of Article 16 (1) DR with Article 16 (2) (h) DR, when it refers to incidents occurred "inside or around the stadium".
18. Bearing this in mind, the CEDB recalls that the scope of open legal terms such as "around the stadium" - which is in fact open to analysis - has been already scrutinized in previous decisions taken by the CEDB in a constant way (cf. decisions of the CEDB taken on: 22 October 2015, Lech Poznan; 10 November 2016, Legia Warszawa; 20 July 2017, Atlético Madrid), while this disciplinary body however emphasizes that the exact interpretation of such terms obviously depends on the circumstances of the individual case.
19. Nonetheless, acknowledging the arguments provided by the Club in this particular matter, the CEDB stresses that it does not deem it necessary in the case at hand to determine the exact extent and the limitations of the scope of Article 16 (2) (h) DR and the detailed interpretation of the open term "around the stadium", for the reasons stated below.
20. At this point, the CEDB recalls that in a previous incident which occurred on 5 May 2016 before a UEFA Europa League match against Villarreal CF, almost the exact same violations have already been committed by the Club's supporters, having resulted in disciplinary proceedings and a decision of the CEDB of 19 May 2016 regarding this matter. In the aforementioned incident, it was reported that *"a big crowd met Villarreal CF (team B) team bus few hundred meters outside the stadium. Their bus was hit by loads of cans and other items thrown by this crowd."*
21. In the respective decision in which the CEDB, explained in the decision that it is *"therefore, advisable that the club revises its security protocols designed for the arrival of away teams at the stadium as to prevent incidents of the same kind from happening again."*
22. The CEDB in said decision of 19 May 2016 then further decided that *"the fact that in this particular case the club has not been held responsible for this incident does not mean that the club is not responsible at all if something similar occurs again, mainly because if this occurs again it could point out that there is a non-solved security problem issue and that prima facie no measure has been implemented to avoid it."*
23. Taking all of the above into account, the CEDB has to note that exactly such circumstances appear to have occurred before, given that the attack on the team bus of Villarreal CF was of the almost exact same nature at a similar occasion, i.e. not in the direct vicinity of the stadium but nonetheless fairly close to it at Anfield Road. It hence appears that the security

issue related to such incidents which already became evident during the incident in 2016 has not been solved yet and the Club has not implemented the necessary security measures in order to prevent such incidents from occurring, despite the clear message given by the CEDB to solve such problems.

24. In light of the foregoing, recalling that the Club has been warned to find solutions for the obvious security issues which had already been addressed by the CEDB in the past as it was discussed above, the Club is to be held responsible for the improper conduct of its supporters pertaining to the attacks on the team bus of Manchester City FC and should be punished accordingly for the related throwing of objects and acts of damages.

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

a) *Applicable legal framework and general remarks*

25. 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 a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
- f. *acts of damage;*
- g. *causing a disturbance during national anthems;*
- h. *any other lack of order or discipline observed inside or around the stadium.*

26. 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.

27. According to Article 45 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*

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

29. In the present case and according to the official UEFA reports, it was reported that the Club's supporters ignited fireworks at numerous occasions during the match.
30. Applying the principle of strict liability as described in Articles 8 and 16 (2) DR, the Club shall be held liable for the conduct of its supporters, even if it is not at fault itself. Indeed, it has long been established in case law that strict liability applies regardless of fault (in this regard, see page 12 of the Court of Arbitration for Sport case *CAS 2002/A/423 PSV Eindhoven*).
31. Further, the CEDB has to acknowledge that the Club acknowledged the setting off of fireworks by its supporters. The CEDB hence notes that the violation of Article 16 (2) (c) DR is undisputed.
32. Hence, the Club is responsible for any violation conducted by its supporters against the DR. It includes the setting off of fireworks in accordance to Article 16 (2) (c) DR (cf. *CAS 2013/A/3047 FC Zenit St. Petersburg vs Football Union of Russia*).
33. In light of the foregoing, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (c) DR and must be punished accordingly.

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

34. Based on Article 23 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 CEDB identified and took into account the following concrete circumstances:
  - the seriousness and multiplicity of the offences committed;
  - the Club's previous record: the club has already been punished for the improper of its supporters, and, in particular, several times for the setting off of fireworks.
  - The dangerous situation deriving from these violent acts of hooliganism displayed by the Club's supporters, leading to damages, putting safety of players, officials and innocent bystanders at risk in a blatant violation of the principles of fair-play.
36. This CEDB takes this opportunity to strongly advise the club to implement the appropriate disciplinary measures to avoid incidents of the same nature to occur again. The violent attitude of the Club's supporters display during the incident is of an extreme gravity and completely unacceptable.
37. In view of all of the above, the CEDB deems a fine of €20'000 as the appropriate sanction for the abovementioned violations of the UEFA disciplinary regulations.

38. Further, the Club is held to contact Manchester City FC within 30 days for the settlement of the damages caused by its supporters.

## Decision of 31 May 2018

Manchester City FC

(Dismissal from bench; Improper conduct of officials)

### **Circumstances of the case**

It was reported that in the half-time while the refereeing team was still on the pitch, the Club's coach, Mr. Joseph Guardiola was sent off because he entered to the field of play to protest some of referees' decisions with words and gestures. Further, the official report of the UEFA match delegate for the Match states that Mr. Guardiola communicated with his team's bench after being dismissed.

**Legal framework** Article 11 (1) and 15 (1) (d) UEFA Disciplinary Regulations.

### **Decision**

The CEDB wishes to stress that according to the 5 Law of the FIFA Laws of the Game, each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed. In this regard, the referee takes action against team officials who fail to conduct themselves in a responsible manner and may, at his discretion, expel them from the field of play and its immediate surroundings. Likewise, Law 12 of the FIFA Laws of the Game stipulates that the referee has the authority to take disciplinary sanctions from the moment he enters the field of play until he leaves the field of play after the final whistle, i.e. he is entitled to dismiss a coach during halftime. In this sense, the CEDB stresses that it would be nonsensical to assume that the authority, the required respect for the refereeing team and the application of Article 15 DR, protecting the referees, would come to a halt during halftime. The CEDB noted that according to the referee, the Club's coach Joseph Guardiola continuously protested against the referee's decisions which as a matter of fact and for the reasons explained above this CEDB considers it to be within the scope of Article 15 (1) (a) (iii) DR. Recalling that Mr. Guardiola communicated with his team's bench after being dismissed, the CEDB concluded that Mr. Guardiola's behavior following his dismissal directly contravened Article 69 (1) DR and he must therefore be sanctioned for such behavior.

The CEDB wishes to point out that the coach as a leading and highly exposed figure in football matches bears a higher standard of responsibility as regards to his actions in compliance with the values of respect and fair play constantly remarked by UEFA. In the light of the circumstances of this case, the one-match suspension contemplated for dissenting in Article 15 (1) (a) (iii) DR shall be deemed as the adequate disciplinary measure. However, the CEDB recalls that following his dismissal, Mr. Guardiola kept communicating with the team bench, giving instructions, e.g. regarding substitutions. In this regard, the CEDB notes that such behavior started even after the Club's team manager had particularly made an inquiry whether or not such behavior was admitted and was denied such request, i.e. the Club's coach violated Art. 69 (1) DR willingly and knowingly despite having been warned not to do it, which has to be regarded as an aggravating circumstance. In the light of the above considerations, the CEDB suspends the Club's coach Joseph Guardiola for two (2) UEFA competition match in which he would otherwise participate.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Larumbe Beain Kepa (SPA) 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. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by Manchester City FC (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 referee and the UEFA match delegate present at the UEFA Champions League 2017/18 match between Liverpool FC and the Club played on 10 April 2018 (the "match") can be summarized as follows:

*In the half-time while we still were on the pitch Man City coach Pep Guardiola was sent off because he entered to the field of play to protest some of referees decisions with words and gestures.*

*The Coach of Manchester City was sent off by the referee after the final whistle of the first half. During half time Manchester City's Team Manager Marc Boixasa came to the delegate's room and asked if the Manchester coach could communicate with the team bench. The VD and I informed Mr. Boixasa that this is not allowed. Either directly or indirectly.*

*Mr. Guardiola took a seat in the VIP-Tribune during the second half. Three rows in front of me I realized that Mr. Guardiola was talking to his seat-neighbour and after the short conversation this person left his seat and went off the VIP-Tribune. Two minutes after this a substitution for Manchester took place.*

*The Venue Director was near the Manchester bench during half time. He made the following observations:*

*"During the second half it became obvious that the club's assistant coaches were receiving messages from Guardiola. One of the Man City physios was sitting in the stands behind the Manchester City team bench. He was carrying a walkie-talkie. Twice I witnessed him speaking into the walkie-talkie and it was clear that he was communicating to the team doctor who was sitting on the Manchester City bench. This team doctor sat next to their*

*assistant coach Mikel Arteta. After the physio spoke into the walkie-talkie, the team doctor would say something to Arteta. Manchester City's Team Manager Marc Boixasa was standing next to me (UEFA VD) during the match. Just before the 70th minute he was speaking on his mobile phone and after that he said something to the bench. The only thing I understood was "Gündogan." Shortly after this, in the 74th minute, Gündogan was substituted."*

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

3. The Club in its statements dated on 24 April 2018 stated the following:
  - The coach entered the pitch to escort off some of his players who were arguing with the referee regarding certain decisions, which was reasonable. The coach then made a comment towards the referee regarding a goal which was not given in the first half, i.e. an important incident in an important match.
  - The coach did not approach the referee in an insulting, aggressive or offensive way. The referee explained to the coach after the match that he didn't expel him for what or how he said it, but for the fact that this incident took place on the pitch.
  - The coach shouldn't have been sent off in the first place as Law 5 (3) of the IFAB Laws of the Game don't apply for what happens during half-time pertaining to walking onto the pitch. Since the main goal of the coach was to take players off the pitch, one cannot say that he "failed to act in a responsible manner".
  - No provision of Art. 15 DR is applicable here, which explains why in the disciplinary notice opening the proceedings against the coach didn't specify such details. The present actions and decisions of the referee should rather be discussed under the premises of Art. 9 (2) DR and the disciplinary consequences of the mistake made by the referee should be reviewed.
  - Regarding the communication with the bench after the dismissal, the club does not deny that some comments made the coach to those sitting around him made their way indirectly to Manchester City personnel who remained within the technical area.
  - However, taking into account that the decision to dismiss the coach was erroneous in the first place, it would be unfair and prejudicial in the extreme to further punish the manager for failing to comply with additional restrictions.
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 29 of the UEFA Disciplinary Regulations (the "DR"), the CEDB is competent to deal with the case.

6. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

B. The unsporting conduct of Mr. Guardiola

*a) Applicable legal framework and general remarks*

7. According to Article 11 (1) DR, 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.

8. 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;*

9. Under Article 69 (1) DR (emphasis added), "a team manager/coach who is sent off or suspended from carrying out his function may not be in the technical area or communicate directly or indirectly with the team's players and/or technical staff during the match".

*b) The responsibility of the coach*

10. In the case in hand, it was reported that In the half-time while the refereeing team was still on the pitch, the Club's coach, Mr. Joseph Guardiola was sent off because he entered to the field of play to protest some of referees decisions with words and gestures.
11. It shall be recalled, here again, that according to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
12. As expressed above, the CEDB wishes to stress that according to the 5 Law of the FIFA Laws of the Game, each match is controlled by a referee who has full authority to enforce the Laws of the Game in connection with the match to which he has been appointed. In this regard, the referee takes action against team officials who fail to conduct themselves in a

responsible manner and may, at his discretion, expel them from the field of play and its immediate surroundings.

13. Likewise, Law 12 of the FIFA Laws of the Game stipulates that the referee has the authority to take disciplinary sanctions from the moment he enters the field of play until he leaves the field of play after the final whistle (emphasis added), i.e. he is entitled to dismiss a coach during halftime. In this sense, the CEDB stresses that it would be nonsensical to assume that the authority, the required respect for the refereeing team and the application of Article 15 DR, protecting the referees, would come to a halt during halftime.
14. Taking the above for granted, the referee has evidently the authority and the discretion to decide which attitudes are within the scope of the DR and which, as in the case in hand, are to be considered as a dissent in the sense provided by Article 15 (1) (a) (iii) DR.
15. According to the referee, the Club's coach Joseph Guardiola continuously protested against the referee's decisions which as a matter of fact and for the reasons explained above this CEDB considers it to be within the scope of Article 15 (1) (a) (iii) DR.
16. Further, the official report of the UEFA match delegate for the Match states that Mr. Guardiola communicated with his team's bench after being dismissed.
17. None of the arguments presented by the Club breach the accuracy of the UEFA match delegate's report which clearly states how such communication occurred and which is, of course, presumed to be accurate under Article 45 DR.
18. On this basis, the CEDB concludes that Mr. Guardiola's behavior following his dismissal directly contravened Article 69 (1) DR and he must therefore be sanctioned for such behavior.

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

19. Based on Article 23 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.
20. Regarding the sending off of the Club's coach Joseph Guardiola, the CEDB recalls that the sanction contemplated in Article 15 (1) (a) (iii) DR constitutes the minimum punishment. Should the circumstances so dictate, the relevant disciplinary body may extend the duration of this suspension (Article 23 DR)
21. This UEFA disciplinary body wishes to point out that the coach as a leading and highly exposed figure in football matches bears a higher standard of responsibility as regards to his actions in compliance with the values of respect and fair play constantly remarked by UEFA.

22. In the light of the circumstances of this case, the one-match suspension contemplated for dissenting in Article 15 (1) (a) (iii) DR shall be deemed as the adequate disciplinary measure.
23. However, the CEDB recalls that following his dismissal, Mr. Guardiola kept communicating with the team bench, giving instructions, e.g. regarding substitutions. In this regard, the CEDB notes that such behavior started even after the Club's team manager had particularly made an inquiry whether or not such behavior was admitted and was denied such request, i.e. the Club's coach violated Art. 69 (1) DR willingly and knowingly despite having been warned not to do it, which has to be regarded as an aggravating circumstance.
24. In the light of the above considerations, the CEDB suspends the Club's coach Joseph Guardiola for two (2) UEFA competition match in which he would otherwise participate

## Decision of 31 May 2018

Juventus Football Club

(Insulting / Molesting acts – Red car)

### **Circumstances of the case**

In the case in hand and according to the referee's report, in the stoppage time of the Match after the latter had awarded a penalty to Real Madrid CF, the player Gianluigi Buffon had stormed in the direction of the referee, touching him, yelling at him while pointing with his index fingers directly in the face of the referee. Likewise, as it was noted by the EDI in the report provided by the latter following the incidents, having evaluated the relevant media and social media coverage of the Match, the Player had made derogatory and insulting comments about the referee in an interview after the Match, referring to him as an animal, having a bag of rubbish for a heart.

**Legal framework** Articles 11 and 15 (1) UEFA Disciplinary Regulations.

### **Decision**

The EDI in his report had stressed that the Player's behavior after the penalty was awarded, along with his comments to the press, violate the principles of ethical conduct, loyalty, integrity and sportsmanship and had requested that the Player must be suspended for four UEFA competition matches. The CEDB, after analyzing the official reports and the evidence provided by the EDI, agrees that the Player's unsporting behavior breached the general principles of conduct. In this regard, any individual must comply with the principles of ethical conduct, loyalty, integrity and sportsmanship. The Player clearly dissented in an aggressive manner with the referee's decision and made insulting comments about him after the Match. 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. The actions of the Player as described by the referee and the EDI report constitute a misconduct under the terms of Article 11 (2) (b) as well as Article 15 (1) (b) DR and needs to be punished accordingly. The CEDB then took into account the aggravating and mitigating circumstances provided by both the Player and the EDI. In this regard the CEDB notes that usually, such disrespect shown towards a match official on two separate occasions, not only during the Match and in the "heat of the moment", but also after a cooling down phase, when the strongest emotions should have already calmed down, does not allow a plea of mitigation. Further, the CEDB acknowledges that the Player in his long career and in more than 200 UEFA competition matches was never sent off and only received seven yellow cards since 1995, i.e. he was rarely sanctioned by UEFA for his behavior despite his long career in which he regularly competed in UEFA competition matches, which has to be regarded as remarkable. Likewise, the CEDB accepts that the Player with his personality and his behavior shown as a Player and a public figure served as a real role model for sportsmanship and integrity, on and off the pitch. In the light of the above considerations, the CEDB concludes that on a very exceptional basis, a suspension for three (3) UEFA competition matches for which he would be otherwise eligible shall be deemed as the adequate disciplinary measure.

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## **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. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by Juventus FC (the "Club") and Mr. Gianluigi Buffon (the "Player") in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts of this case as established by the official reports provided by the referee present at the UEFA Champions League 2017/18 match between Real Madrid CF and the Club on 11 April 2018 (the "Match") can be summarized as follows:
  - According to the referee's reports:

*Minute 90 - Red Card issued to Gianluigi Buffon (Juventus) following the award of a penalty to Real Madrid. He was dismissed for his reaction to me which included running a distance to complain in a manner which was overly aggressive, intimidating and making physical contact with me. He was also aggressively pointing his finger towards my face in a very insulting manner coming close to make physical contact with my face.*

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

3. In accordance with Article 55 of the UEFA Disciplinary Regulations (the "DR"), based on the official reports, disciplinary proceedings were opened against the Player on 11 May 2018.
4. In application of Article 31 (3) DR, the UEFA Ethics and Disciplinary Inspector (the "EDI") initiated disciplinary investigations regarding the behavior reported by the referee of the Match as well as pertaining to comments made by the Player following the Match.
5. On 8 May 2018, the EDI provided his report with regard to the investigation conducted by him, essentially stating the following:
  - A. The incidents

- During the Match, the referee awarded a penalty to Real Madrid CF during stoppage time, i.e. in the 93<sup>rd</sup> minute.
- Following the referee's decision, the Player rushed towards the referee and acted in an aggressive and angry manner, pointing his right index finger near the referee's face. This aggressive behavior is evident in the various photographs and videos published on the internet.
- After being contacted by the EDI, the referee via e-mail dated 26 April 2018 added that although he did not know what the Player had said because he did not speak Italian, his words had been clearly aggressive and angry in tone. The Player made physical contact with him on two occasions, also pointing his finger at him, very close to his face.
- The Player's post-match interviews are shown in a number of videos available on social networks and covered in various press articles. In them, the Player viciously criticized the referee's decision-making and, in particular, his character.<sup>1</sup>
- The Player described the referee as an "animal" and said that he had a "bag of rubbish for a heart". These words, referring directly to the referee's character, are insulting and worthy of punishment.
- It is clear that the Player's behavior after the penalty was awarded, along with his comments to the press, violate the principles of ethical conduct, loyalty, integrity and sportsmanship. This is not merely a matter of preventing people from criticizing specific refereeing decisions. In the case at hand, the Player not only criticized the referee's decision, but also attacked his character using insulting words.

B. Determination of the appropriate sanction

- The Player's conduct towards the referee on the pitch and his comments to the media fall under the scope of Article 11 (2) (b) DR for which he must be punished.
- After the penalty was awarded, the Player directed abusive language at the referee within the meaning of Article 15 (1) (b) DR. Under this provision, a suspension for two matches is applicable.
- The words used by the Player in his media interviews, and in particular the words "animal" and "bag of rubbish for a heart", constitute insults directed at a match official within the meaning of Article 15 (1) (d) DR, which are subject to a three-match suspension.
- Whether the referee's decision to award a penalty was correct or not is irrelevant. Even if it was incorrect, it could never justify the Player's behavior.
- However, the Player's career and the image he has built up over many years may be taken into account as a mitigating circumstance. The fact that he has never previously received a red card in the countless UEFA competition matches in which he has played, constitutes a mitigating circumstance.
- Yet, these mitigating circumstances cannot hide a number of aggravating factors. Indeed, these events took place during a Champions League quarter-final, a match that received a huge amount of media coverage, enabling large numbers of people to watch

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<sup>1</sup> [https://www.eurosport.fr/football/ligue-des-champions/2017-2018/trois-jours-apres-real-juve-buffon-ne-change-pas-d-avis-sur-le-penalty-de-madrid\\_sto6713552/story.shtml](https://www.eurosport.fr/football/ligue-des-champions/2017-2018/trois-jours-apres-real-juve-buffon-ne-change-pas-d-avis-sur-le-penalty-de-madrid_sto6713552/story.shtml);  
<https://www.youtube.com/watch?v=ZPn2AKNHjB4>.

matches such as this, directly benefits the clubs and players involved, both financially and in terms of their public profile. It is therefore appropriate to expect the players who participate in these matches to behave in an exemplary manner and to show respect, especially towards the match officials.

- It is a well-known fact that when a player with the reputation of the Player insults a referee, such behavior is imitated thousands of times at grassroots level all over the world. Children and young players in particular, as well as adults, copy their idols' behavior, which they see on television. For this reason, the image conveyed by the Player and his comments to the media are totally unacceptable.
- It should also be noted that the Player spoke to the media after leaving the dressing room, i.e. after he had showered and changed. Furthermore, several days after the match, he refused to apologize and stood by his comments. This is also an aggravating circumstance.
- In view of all the above reasons and circumstances, the EDI requested that the Player must be suspended for four UEFA competition matches.

### **III. The Player's position**

6. The Player in his statements provided on 17 May 2018 stated the following:

- In his football career, since the 1995/96 season, he played around 160 matches in UEFA club competitions and 59 matches in UEFA national team competitions, during the course of which he was only sanctioned 7 times with yellow cards, while he was never sent off.
- Obviously, such previous clean record does not justify his actions during the Match.
- He is sorry that he reacted in such away against the decision of the referee to award a penalty as well as for his comments made after the match.
- He apologizes to the referee and has done the same in a press conference held on the same day, hoping the referee can accept such apology.
- Contrary to what the EDI stated, it was not his intention so serve as a bad example for young players as he has given many more important examples for correctness on and off the pitch.
- The incredible stress of the match and the agonistic trance of the same did not allow him to maintain the right self-control, also due to the timing of a last-minute decision against his Club, putting an end to an extraordinary comeback.
- For the abovementioned reasons, the Player hopes that the CEDB can mitigate the sanctions to be applied to him with respect to the EDI report

7. The more detailed arguments made by the Player in support of his written submissions are set out below in as far as they are relevant.

**IV. Merits of the Case**

C. UEFA's competence.

8. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 DR, the CEDB is competent to deal with the case.
9. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

D. The dismissal of the Player

*a) Applicable legal framework and general remarks*

10. According to Article 11 (1) DR, 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) (b) DR:

*i. 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.*

13. Regarding Article 23 DR, the competent disciplinary body determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking account of both aggravating and mitigating circumstances.
14. According to Article 45 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*

15. In the case in hand and according to the referee's report, in the stoppage time of the Match after the latter had awarded a penalty to Real Madrid CF, the Player had stormed in the direction of the referee, touching him, yelling at him while pointing with his index fingers directly in the face of the referee.
16. Likewise, as it was noted by the EDI in his report, having evaluated the relevant media and social media coverage of the Match, the Player had made derogatory and insulting

comments about the referee in an interview after the Match, referring to him as an animal, having a bag of rubbish for a heart.

17. The Player in his statements refers to an alleged extreme level of emotional distress of due to the extraordinary situation of a UEFA Champions League quarter-final match return leg, including an emotional comeback with was put to an end when the referee awarded the last-second penalty, eventually ensuring the Club's elimination from the competition.
18. It shall be recalled that according to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided. In this regard, the arguments raised by the Player do not breach the accuracy of the referee's report, as the Player admitted the occurrence of the incidents on the pitch, which were reported by the referee, and off the pitch, which were established by the EDI in his investigation.
19. Hence, the CEDB, after analyzing the official reports and the evidence provided by the EDI, considers that the Player's unsporting behavior breached the general principles of conduct. In this regard, any individual must comply with the principles of ethical conduct, loyalty, integrity and sportsmanship. The Player clearly dissented in an aggressive manner with the referee's decision and made insulting comments about him after the Match. 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 Player as described by the referee and the EDI report constitute a misconduct under the terms of Article 11 (2) (b) as well as Article 15 (1) (b) DR and needs to be punished accordingly.

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

21. With regard to the conduct of the Player, based on Article 23 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 aggravating as well as mitigating circumstances.
22. The CEDB takes into account the highly aggressive behaviour displayed by the Player towards the referee. Not only did the Player, as stated by the referee in his official report, show a completely unacceptable attitude, approaching the referee, pointing to his face from a close distance, but added to it, he verbally attacked the official of the match, shouting at him.
23. This disciplinary body also notes that following the Match, after having calmed down in the locker-room and having taken a shower, the Player made insulting comments about the referee in an interview, which have to be regarded as absolutely unacceptable.
24. The CEDB then took into account the aggravating and mitigating circumstances provided by both the Player and the EDI. In this regard the CEDB notes that usually, such disrespect

shown towards a match official on two separate occasions, not only during the Match and in the “heat of the moment”, but also after a cooling down phase, when the strongest emotions should have already calmed down, does not allow a plea of mitigation.

25. Consequently, the CEDB agrees with the explanations given by the EDI that imposing a suspension of at least four matches would certainly be justified, again recalling that the Player had shown gross disrespect towards the referee on two separate occasions and has hence violated not only Article 15 (1) (b) DR but also Article 11 (2) (b) DR.
26. In this regard, the CEDB emphasizes that it is established jurisprudence of UEFA’s disciplinary bodies that having a clean previous record cannot be regarded as a mitigating circumstance, given that such behaviour in accordance with the applicable rules and regulations has to be expected from players and officials participating in the UEFA competitions. Hence, only under very exceptional circumstances a clean previous record can be taken into account by the relevant disciplinary body in application of Article 23 DR, when assessing the character of the perpetrator, again provided that his law-abiding behaviour was exceptional. However, this treatment should be applied with caution in case it results in unequal treatment (cf. ATF 136 IV 1 – 6B\_390/2009).
27. With this being established, the CEDB acknowledges that the Player in his long career and in more than 200 UEFA competition matches was never sent off and only received seven yellow cards since 1995, i.e. he was rarely sanctioned by UEFA for his behaviour despite his long career in which he regularly competed in UEFA competition matches, which has to be regarded as remarkable. Likewise, the CEDB accepts that the Player with his personality and his behaviour shown as a Player and a public figure served as a real role model for sportsmanship and integrity, on and off the pitch.
28. In the light of the above considerations, the CEDB concludes that on a very exceptional basis, a suspension for three (3) UEFA competition matches for which he would be otherwise eligible shall be deemed as the adequate disciplinary measure.

## Decision of 31 May 2018

Royal Belgian Football Association

(Improper conduct of officials - Art. 11 (2) DR)

### **Circumstances of the case**

In the 81<sup>st</sup> minute of the match when the association was leading 0-4, the player Nicolas Raskin received a yellow card, which was perceived by the referee and the UEFA match delegate to be received intentionally by the player. After the match, the UEFA venue director confirmed that it was given a clear indication from the association coach to a player to get a yellow card in order to be suspended from the coming match, as he had heard such instructions himself. It was further reported that in the very moment when the abovementioned player received the yellow card, the bench from Belgium, including technical staff, started laughing and joking. The CEDB on 11 May 2018 decided to suspend the Royal Belgian Football Association Under-17 player Raskin Nicolas for two (2) UEFA competition matches for which he would be otherwise eligible and to open disciplinary proceedings against the Royal Belgian Football Association Under-17 coach Thierry Siquet.

**Legal framework** Article 11 (2) UEFA Disciplinary Regulations; Article 15 (1) (c) UEFA Disciplinary Regulations.

### **Decision**

The CEDB recalls that Article 11 (1) DR stipulates that association officials need to always comply with the principles of loyalty, integrity and sportsmanship. In paragraph 7 of the chapter I on the "Definition of terms" of the UEFA Statutes, 'Fair play' means acting according to ethical principles which, in particular, oppose the concept of sporting success at any price, promote integrity and equal opportunities for all competitors, and emphasize respect of the personality and worth of everyone involved in a sporting event. In the same sense, said provision describes the sporting ideal that UEFA endeavors to protect in its competitions, according to which the objective of football, like other sports, is not solely to win titles. It can and should play a very important social role, which is recognized by state partners and the European institutions (cf. European Commission White Paper on Sport 2008), in promoting values such as respect for the game, the rules, the referee and the opponent. By getting a yellow card on purpose to control the moment as of when a player wants to be suspended, a player violates the abovementioned principles and – as it occurred in the case of Mr. Nicolas Raskin – gets sanctioned by UEFA's disciplinary bodies in accordance with Art. 15 (1) (c) DR. The CEDB then turned to the special role the coach of a team plays. Generally speaking, the head coach of a club or association is the highest authority of the team before, during and after the game. Within the context of youth matches and youth teams, the coach of e.g. a U-17 team has the additional role of serving as a role model and educator to his players, teaching and living the values of fair-play to the young players he is responsible for. The CEDB finds that it was not only Mr. Siquet who has violated the abovementioned rules, but that the same goes for the technical staff which was present on the association's bench during the match under scrutiny, who had applauded the intentional foul committed by the player and the intentional yellow card the latter had received for such behaviour, praising him for it. For the coach, a two-match suspension contemplated shall be deemed as the adequate disciplinary measure. Further, the CEDB imposes a fine of €2'500 on the association for the behaviour of its technical staff.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) 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 (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. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the Royal Belgian Football Association (the "association") 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 referee, the UEFA match delegate and the UEFA venue director present at the European Under-17 Championship 2018 match between Bosnia and Herzegovina and the association played on 8 May 2018 (the "match") can be summarized as follows:

### Referee

*The nr. 6 of Belgium in my opinion got himself deliberately cautioned because of a booking from the previous match. He thanked me for cautioning him after the game. I believe this was against the spirit of fair play.*

### UEFA match delegate

*On min 81, when the result was 0-4 for Belgium, the player nr 6 of Belgium (Raskin) received a yellow card, which seemed to be intentional. After the match we discussed with the VD, who confirmed that it was given a clear indication from the technical staff to the player to get a yellow card in order to be suspended from the coming match. He had witnessed it himself. The moment that the player received the yellow card, the bench from Belgium started laughing and joking.*

### UEFA venue director

*During half-time (around 65th-70th minute), the Belgian coach asked in French one of the players (not identified) to "tackle the referee to get a yellow card". At that time, I thought it was only a joke as BEL was leading 3-0.*

*On 80+1 minute, when BEL #6 took a yellow card, he took his position back and then smiled and showed his thumb up to the bench. Some staff/players on the bench laughed and said in French "well done" or "that's it Nico".*

*From my position, and considering the words used a few minutes before and the reactions of the player and the bench after the yellow card, I believe that this yellow card was taken on purpose by #6 in order to be suspended for the last match of the group.*

3. In view of the above circumstances, the CEDB on 11 May 2018 decided to suspend the Royal Belgian Football Association Under-17 player Raskin Nicolas for two (2) UEFA competition matches for which he would be otherwise eligible and to open disciplinary proceedings against the Royal Belgian Football Association Under-17 coach Thierry Siquet.

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

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

4. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (the "DR"), the CEDB is competent to deal with the case.
5. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

### **B. The unsporting conduct of Mr. Thierry Siquet**

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

6. According to Article 11 (1) DR, 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.
7. According to Article 15 (1) DR:

*The following suspensions apply for competition matches:*

*c) suspension for two competition matches or a specified period for clearly receiving a yellow or red card on purpose;*

#### *b) The responsibility of the coach and the association officials*

8. In the case in hand, it was reported that in the 81<sup>st</sup> minute of the match when the association was leading 0-4, the player Nicolas Raskin received a yellow card, which was perceived by the referee and the UEFA match delegate to be received intentionally by the player. After the match, the UEFA venue director confirmed that it was given a clear indication from the association coach to a player to get a yellow card in order to be suspended from the coming match, as he had heard such instructions himself. It was further reported that in the very moment when the abovementioned player received the yellow card, the bench from Belgium, including technical staff, started laughing and joking.

9. It shall be recalled, here again, that according to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
10. Likewise, the CEDB recalls that Article 11 (1) DR stipulates that association officials need to always comply with the principles of loyalty, integrity and sportsmanship. Likewise, in paragraph 7 of the chapter I on the "Definition of terms" of the UEFA Statutes, 'Fair play' means acting according to ethical principles which, in particular, oppose the concept of sporting success at any price, promote integrity and equal opportunities for all competitors, and emphasise respect of the personality and worth of everyone involved in a sporting event.
11. In the same sense, said provision describes the sporting ideal that UEFA endeavours to protect in its competitions, according to which the objective of football, like other sports, is not solely to win titles. It can and should play a very important social role, which is recognised by state partners and the European institutions (cf. European Commission White Paper on Sport 2008), in promoting values such as respect for the game, the rules, the referee and the opponent.
12. In this regard, the CEDB recalls that by getting a yellow card on purpose to control the moment as of when a player wants to be suspended, a player violates the abovementioned principles and – as it occurred in the case of Mr. Nicolas Raskin – gets sanctioned by UEFA's disciplinary bodies in accordance with Art. 15 (1) (c) DR.
13. With this being established, the CEDB turns to the special role the coach of a team plays. Generally speaking, the head coach of a club or association is the highest authority of the team before, during and after the game. However, the CEDB also notes that within the context of youth matches and youth teams, the coach of e.g. a U-17 team has the additional role of serving as a role model and educator to his players, teaching and living the values of fair-play to the young players he is responsible for.
14. The CEDB hence concludes that by giving the direct order to one of his youth players to commit to receive a yellow card on purpose, i.e. by instructing him to ignore and violate the rules of fair-play and sportsmanship, the association's coach Thierry Siquet has shown a clear disregard for such values enshrined in Article 11 (1) DR.
15. However, the CEDB finds that it was not only Mr. Siquet who has violated the abovementioned rules, but that the same goes for the technical staff which was present on the association's bench during the match under scrutiny, who had applauded the intentional foul committed by the player and the intentional yellow card the latter had received for such behaviour, praising him for it.
16. On this basis, the CEDB concludes that Mr. Siquet's behavior as well as the following behavior from the association's technical staff contravened Article 11 (1) DR and he must therefore be sanctioned for such conduct.

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

17. Based on Article 23 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.
18. Regarding the association's coach Thierry Siquet, the CEDB wishes to point out that the coach as a leading and highly exposed figure in football matches bears a higher standard of responsibility as regards to his actions in compliance with the values of respect and fair play constantly remarked by UEFA, this in the particular context of a youth team and youth players, who are supposed to look up to their coach as a role model and ambassador of fair-play and sportsmanship, taking into account that a youth player is much more likely to be susceptible to instructions coming from his coach.
19. In the light of the circumstances of this case, a two-match suspension contemplated shall be deemed as the adequate disciplinary measure.
20. With regard to the technical staff and its behavior, the CEDB recalls that also their behavior is intolerable as it praises and applauds the illicit behavior of the association coach and the relevant player, giving validity and a sense of "having accomplished something good", which is obviously not the case here and the CEDB emphasizes that such conduct is not acceptable.
21. In the light of the above considerations, the CEDB imposes a fine of €2'500 on the association for the behaviour of its technical staff.

## Decision of 31 May 2018

### Sporting CP

#### (Throwing of Objects)

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

Objects were thrown by the Club's supporters in the direction of the referees on two occasions. As it was reported, the assistant referee Danilo Grujc was hit in the face by a lighter.

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

#### **Decision**

Throwing objects is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can potentially endanger the physical integrity of other spectators, officials and even the players on the pitch. For this reason, the throwing of objects in stadia is strictly forbidden. As it was reported, the assistant referee was hit in the face by a lighter thrown by the Club's supporters. The offence is clearly described by the UEFA match delegate and by the referee in their official reports which, according to Article 45 DR, carry the presumption of accuracy. The CEDB considers that such incidents a lack of discipline from the Club's supporters and wishes to stress that here is an inherent risk to health and safety when objects are thrown in stadia. In this sense, the CEDB stresses that it is particularly despicable that such objects have been thrown in the direction of the referee, even hitting a referee in the face. According to Article 16 (2) (b) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalized accordingly. With regard to the adequate sanction for the throwing of objects offence, the CEDB identifies and takes into account the Club's previous record, noting that it has already been punished for a similar offence on one previous occasion, as well as the dangerous nature of the offence, noting that throwing at football matches creates a serious risk for the safety of spectators, officials and players. The CEDB notes that is particularly unacceptable that the Club's supporters targeted the refereeing team with their inexcusable throwing of objects. Take all of the above into account, the CEDB comes to the conclusion that imposing a mere financial sanction is not sufficient for such behavior. In order to target such behavior, the CEDB finds is appropriate to order the partial closure of the Club during the next UEFA competition match in which the Club would play as the host club. In particular, the Club is ordered to close the sector(s) from where the objects have been thrown, and shall inform at least 30 days prior to the match, the sector(s) to be closed, which shall at least comprehend 3'000 seats.

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## 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. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in this decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. The facts of this case, as established by the official reports of the referee and the UEFA match delegate present at the UEFA Europa League 2017/2018 match between Sporting Clube de Portugal (the "Club") and Atlético de Madrid on 12 April 2018 (the "Match"), can be summarized as follows:

*"After the final whistle on the way to the tunnel somebody from the main stand has thrown lighter and hit AAR2 Danilo Grujc to the face.*

*The 2nd additional assistant referee (Danilo Grujic) was hit by a red lighter on his nose when the referee team left the field (when they entered the tunnel) after the end of the game. A second black lighter was thrown at this moment but missed the referees narrowly."*

## II. Merits of the Case

### A. UEFA's competence.

3. Pursuant to Article 52 of the UEFA Statutes, as well as Article 23 of the UEFA Disciplinary Regulations (the "DR"), the CEDB is competent to deal with this case.
4. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The throwing of objects

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

5. 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; ..."*

6. According to Article 45 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*

7. Throwing objects is a serious offence because not only can it disrupt the orderly running of the match but also, and more importantly, it can potentially endanger the physical integrity of other spectators, officials and even the players on the pitch. For this reason, the throwing of objects in stadia is strictly forbidden.
8. Furthermore, UEFA cannot allow that violent actions, commonly known as “hooliganism” take place at football stadiums. Such attitudes go against the spirit of fair play and respect several times defended by UEFA in its Statutes, regulations and outside the strictly legal context.
9. In the present case, objects were thrown by the Club’s supporters in the direction of the referees on two occasions. As it was reported, the assistant referee Danilo Grujc was hit in the face by a lighter.
10. The offence is clearly described by the UEFA match delegate and by the referee in their official reports which, according to Article 45 DR, carry the presumption of accuracy.
11. The CEDB considers that such incidents a lack of discipline from the Club’s supporters and wishes to stress that here is an inherent risk to health and safety when objects are thrown in stadia. In this sense, the CEDB stresses that it is particularly despicable that such objects have been thrown in the direction of the referee, even hitting a referee in the face.
12. According to Article 8 DR, which stipulates the principle of ‘strict liability’, and Article 16 (2) DR, which builds on this principle, a club is to be held responsible for the improper conduct of its supporters even if it might not be at fault itself.
13. Consequently, according to Article 16 (2) (b) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

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

14. Based on Article 23 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.
15. With regard to the throwing of objects offence, the CEDB identifies and takes into account the Club’s previous record, noting that it has already been punished for a similar offence on one previous occasion, as well as the dangerous nature of the offence, noting that throwing at football matches creates a serious risk for the safety of spectators, officials and players.
16. The CEDB notes that is particularly unacceptable that the Club’s supporters targeted the refereeing team with their inexcusable throwing of objects.

17. Take all of the above into account, the CEDB comes to the conclusion that imposing a mere financial sanction is not sufficient for such behavior. In order to target such behavior, the CEDB finds it appropriate to order the partial closure of the Club during the next UEFA competition match in which the Club would play as the host club. In particular, the Club is ordered to close the sector(s) from where the objects have been thrown, and shall inform at least 30 days prior to the match, the sector(s) to be closed, which shall at least comprehend 3'000 seats.

## Decision of 31 May 2018

FC Salzburg

(Throwing of objects; Field invasion by supporters; Improper conduct of officials; kit infringement)

### **Circumstances of the case**

The following incidents were stated in the official reports: 1) objects were thrown onto the pitch in the direction of players and the referees. The CEDB recalls that in the 11th minute when Olympique de Marseille was about to take a corner in front of the Salzburg sector, an object was thrown in the direction of the French player. The object, which appeared to be a shoe, did not hit him. FC Salzburg stewards identified the suspect and brought him out. Likewise, in the 81st minute of the Match some paper was thrown from the Salzburg sector towards the French player taking a corner, again not hitting him. After the match when the referees went to the tunnel, two more objects were thrown towards the referees. 2) Just after the final whistle, the president of FC Salzburg, Harald Lürzer, pushed the 4th official with his hands to the back. 3) One person came over the boarding to attack the referees. He was stopped by the stewards and taken away. 4) Players wore a branded chest top of the tracking system on top of their training shirt with the advertisement of the company being visible.

**Legal framework** Articles 11 (2) and 16 (2) UEFA Disciplinary Regulations; Article 55.01 UEFA Europa League Regulations.

### **Decision**

The CEDB noted regarding the throwing of objects, the question as if those objects were in fact dangerous or hit anyone are irrelevant when assessing the responsibility of the Club for the misconduct contemplated in Article 16 (2) (b) DR. Objects were also thrown in the direction of the referees, a behavior which is particularly unacceptable. As to the pitch invasion, the Club had explained that it was in fact an employee who had jumped over the boarding in an attempt to intervene in a confrontation. The Club did not provide any evidence which would discharge its burden of proof contemplated in Article 45 DR. The Club in its statements has explained that contrary to the official report, its Official only slightly touched the 4th official from the side so he could get his attention to complain to him about the events which had taken place on the pitch, and in particular the decisions taken by the referee at the end of the match. Article 15 (1) (h) DR specifically protects the referee and his team against all physical attacks from players and officials, notably against act which would involve aggressive contact. CEDB stresses that at no point before, during, or after the match, there could be any reason why players or officials would get in physical contact with a referee, touching him in an aggressive way, besides respectful handshakes. CEDB forms the belief that particularly in view of the very long suspension and the *ratio legis* behind said provision, applying Article 15 (1) (h) DR should be reserved for physical attacks of a certain intensity, i.e. not every physical contact made with a match official should be punished with a 15 match suspension. As to the kit infringement, the CEDB has to conclude that the Club violated the above provisions and needs to be punished accordingly. CEDB decided to fine FC Salzburg € 13'000, to suspend the FC Salzburg official Harald Lürzer for three (3) months from carrying out his function during UEFA competition matches in which he would otherwise participate, starting from FC Salzburg's first UEFA competition match of the 2018/2019 season, and to warn FC Salzburg for the kit infringement.

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## **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. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by FC Salzburg (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 referee, the UEFA match delegate, the UEFA security officer and the UEFA venue director present at the UEFA Europa League 2017/18 match between the Club and Olympique de Marseille played on 3 May 2018 (the "Match") can be summarized as follows:

### Referee

*Just after final whistle, Club President of FC Salzburg Harald Lürzer pushed with his hands 4th official of the match to the back, near to the tunnel for entering to the pitch.*

### UEFA match delegate

*Players wore a branded chest top of the tracking system on top of their training shirt. Advertisement of the company was visible. Club was made aware, but did not wanted to change or tape.*

*11th minute a shoe was thrown in direction of the 2nd assistant. He was not hit. In the 74th minute two plastic cups were thrown in direction of the 2nd assistant. He was not hit. After the match two plastic cups with ice cubes were thrown at the referees, nobody was hit.*

### UEFA security officer

*11th minute: corner for Marseille and from the Salzburg sector (North stand) an object was thrown in the direction of the French player. It did not hit him. It appeared to be a shoe. Salzburg stewards took the suspect and brought him out.*

*81st minute: corner in front of the South stand: some paper was thrown from the Salzburg sector towards the French player that took the corner. It did not hit him.*

*After the match, when the referees went to the tunnel 2 objects were thrown towards the referees and some Salzburg fans around the tunnel shouted at the referees when they went in. I did not observe this, but the VD told me that 1 person came over the boarding to attack the referees. He was stopped by the stewards and taken away. There was also some improper conduct by 2 Salzburg officials. It did not observe that. The VD told me that.*

UEFA venue director

*Post-match FC Salzburg president Harald Lürzer pushed the 4th official, the FC Salzburg chef (Team cook) attacked the 4th official and myself verbally in an aggressive matter.*

*MD-1 Training session FC Salzburg: 4 players wore a branded chest top of the tracking system on top of their training shirt. Advertisement of the company was visible. Club was made aware, but did not want to change or tape.*

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

3. The Club in its statements dated on 8 May 2018 preliminarily explains that everybody was very emotional after the referees made unbelievable mistakes, strongly contributing to the elimination of the club in the Europa League Semi-Final.
4. With regard to the thrown paper cup, the Club states that at no point was any danger deriving from such item. Both individuals were nonetheless expelled from the stadium.
5. Regarding the kit infringement, the Club explains that the very small logo of the tracking system producer was not covered as it could have potentially infringed the functionality of the entire system.
6. As regards the conduct of Mr. Lürzer, the Club holds that it is indeed true that he slightly touched the referee from the side to attract his attention and addressed him in an emotional way. After a short and intensive discussion, Mr. Lürzer immediately left the relevant area and turned to talk to his players and to calm the situation. When the official realized that he overacted, he wanted to go back to apologize to the referee but unfortunately didn't manage to find him. The official therefore wishes to present his excuses to the referee.
7. As far as the pitch invasion is concerned, the Club stressed that it conducted an investigation to find out what happened but could not confirm the reported incident. The only thing happening was an accredited employee jumping over the barricades to help calming the situation in the tunnel. Such circumstances were confirmed by all present club employees and TV station employees.
8. Taking into account the very particular circumstances of this case, including the very understandable emotional reaction of all acting individuals, further acknowledging the minor nature and severity of the incidents during the course of which nobody was harmed, the Club requests the CEDB to refrain from any punishment.

9. 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.

10. 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.
11. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.

#### B. The inappropriate behaviour of supporters:

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

12. 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."*

13. 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.

14. According to Article 45 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*

#### C. Throwing of objects

15. 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.

16. Furthermore, UEFA cannot allow that violent actions, commonly known as “hooliganism” take place at football stadiums. Such attitudes go against the spirit of fair play and respect several times defended by UEFA in its Statutes, regulations and outside the strictly legal context.
17. In the case at hand, at numerous occasions during the Match, objects were thrown onto the pitch in the direction of players and the referees. The CEDB recalls that in the 11<sup>th</sup> minute when Olympique de Marseille was about to take a corner in front of the Salzburg sector, an object was thrown in the direction of the French player. The object, which appeared to be a shoe, did not hit him. FC Salzburg stewards identified the suspect and brought him out. Likewise, in the 81<sup>st</sup> minute of the Match some paper was thrown from the Salzburg sector towards the French player taking a corner, again not hitting him. And finally, the CEDB notes that after the match when the referees went to the tunnel, two more objects were thrown towards the referees.
18. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided, which in this particular case has not been done by the club.
19. Generally, the Club holds that none of the objects thrown by its supporters hit anyone or was dangerous at all, emphasizing that each of the perpetrators was expelled from the stadium anyway.
20. This UEFA disciplinary body deems that none of the arguments put forward by the Club contests the fact that indeed objects were thrown against the player.
21. The questions as if those objects were in fact dangerous or hit anyone are irrelevant when assessing the responsibility of the Club for the misconduct contemplated in Article 16 (2) (b) DR. This can eventually play a role when determining the appropriate disciplinary measure.
22. The CEDB has to note however that objects were also thrown in the direction of the referees, a behaviour which is particularly unacceptable.
23. Bearing the above in mind, the CEDB recalls that clubs and member associations are to be held liable for the conduct of their supporters, even if they are themselves not at fault. Consequently, the Club is to be held responsible for the improper conduct of its supporters in accordance with Article 16 (2) (b) DR and must be punished accordingly.

D. The field invasion

24. Because of the potential risk of invasions for security reasons, as nobody is aware of the real intentions of the intruders at the time of the incident, as well as the possible disturbances that may be attached with such conducts, invasions are strictly forbidden.

25. It is however not necessary that any person is injured or any further security issue may result from these actions, before a sanction can be taken. In addition, both the attempt of field invasion as well as the field invasion in itself are under the scope of action of Article 16 (2) DR.
26. In the case in hand, it was reported that one person came over the boarding to attack the referees. He was stopped by the stewards and taken away.
27. The above mentioned facts have been established by the UEFA delegate in his report. In view of Article 45 DR, said report is presumed to be accurate and the burden of proof to establish the contrary is shifted onto the Club.
28. The Club in its statements explained that it conducted an investigation to find out what happened but could not confirm the reported incident. According to the Club, the only thing happening was an accredited employee jumping over the barricades to help calming the situation in the tunnel, a circumstance which was confirmed by all present Club employees and TV station employees.
29. The CEDB cannot concur with such explanation. First of all, as stated above, it would have been the legal obligation of the Club to provide evidence for such justifications, whereas in the present proceedings, it merely present such explanation without any documentary evidence for it, hence not discharging of its burden of proof contemplated in Article 45 DR.
30. Likewise, the official report clearly stipulates that the person who had jumped down to the tunnel tried to attack the referee and was taken away by stewards. If the person would have really been a Club representative with accreditation, neither of the aforementioned events would have taken place.
31. Consequently, the arguments of the Club cannot be accepted. Hence, the Club is strictly liable for the misconducts committed by its supporter and in accordance with the above provisions shall be sanctioned accordingly.

E. The inappropriate behaviour of Mr. Harald Lürzer

*a) Applicable legal framework and general remarks*

32. According to Article 11 (1) DR, 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.
33. 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.
34. 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". (...)

(h) suspension for fifteen competition matches or a specified period for assaulting a match official.

35. According to Article 45 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 Official*

36. According to the official reports, just after the end of the Match, the Club's president, Mr. Harald Lürzer (the "Official") pushed the 4<sup>th</sup> official of the Match with his hands to the back. Such incident took place close to the tunnel from where one can enter the pitch.

37. The Club in its statements has explained that contrary to the official report, its Official only slightly touched the 4<sup>th</sup> official from the side so he could get his attention to complain to him about the events which had taken place on the pitch, and in particular the decisions taken by the referee at the end of the match.

38. Having acknowledged the above, the CEDB on a preliminary basis emphasizes that within the DR, there are several provisions which are aimed to protect the position and authority of the referee and his/her team at UEFA competition matches. In this regard Article 11 (2) DR and Article 15 DR should be understood as an attempt by UEFA to protect officials who, in the context of a match, exercise a function that warrants particular respect. This obviously includes the referee and assistant referees.

39. The need to protect these people and ensure they are respected by the players, teams and officials therefore justifies appropriate disciplinary measures under Article 11 (2) DR and Article 15 DR. This is the only way to ensure that such match officials can perform their duties, which are fundamental to the orderly running of matches.

40. In this sense, the CEDB emphasizes that Article 15 (1) (h) DR specifically protects the referee and his team against all physical attacks from players and officials, notably against act which would involve aggressive contact such as slapping, head butted, kicking, punching, shaking, pushing, pinching, hitting, spitting. At this point, the CEDB stresses that at no point before, during, or after the match, there could be any reason why players or officials would get in physical contact with a referee, touching him in an aggressive way, besides respectful handshakes.

41. With this being established, the CEDB recalls that while the official report stipulates that the Official pushed the 4<sup>th</sup> official in the back, the Club stated that he merely touched him from the side to get his attention.

42. As it was noted above, Article 45 DR stipulates that official reports are presumed to be accurate. In strict application of such provision, acknowledging that the Club has not presented any evidence which would break the accuracy of the official reports, the CEDB concludes that by pushing the 4<sup>th</sup> official from behind, as it was reported by the referee and the UEFA venue director, the Official would have violated Article 15 (1) (h) DR which would be punishable with a fifteen match suspension or a specified period.
43. However, the CEDB forms the belief that particularly in view of the very long suspension and the *ratio legis* behind said provision, applying Article 15 (1) (h) DR should be reserved for physical attacks of a certain intensity, i.e. not every physical contact made with a match official should be punished with a 15 match suspension.
44. Nonetheless, the CEDB states that the attitude shown by the Official is very regretful and such behavior has to be regarded as absolutely unacceptable, violating the basic principles of fair-play and decent conduct, thereby violating Article 11 (2) (b) DR and needs to be punished accordingly.

F. The kit infringement

*a) Applicable legal framework and general remarks*

45. According to Article 60.04 UEFA Kit Regulations, *“sponsor advertising is only allowed in accordance with paragraph 31.03 UEFA Kit Regulations”*.
46. According to Article 31.03 UEFA Kit Regulations, *“Sponsor advertising on equipment defined in Articles 60 and 61 is only allowed in the different UEFA competitions as follows:*  
(...)  

<i>UEFA Europa League</i>	<i>Qualifying and play-off matches”</i>
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47. According to Article 55.01 UEFA Europa League Regulations, *“From the group stage, all items worn by players and club officials which do not form part of the playing attire (shirt, shorts and socks) must be free of sponsor advertising”*.
48. According to Article 45 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*

49. In the case in hand as reported by the UEFA match delegate in his report that players wore a branded chest top of the tracking system on top of their training shirt with the advertisement of the company being visible. According to the report, the Club was made aware, but did not wanted to change or tape.

50. In this respect, the Club has admitted the kit infringement, however explaining that covering the miniature logo of the tracking system company would have tampered with the functionality of the system.
51. Since the Club admitted the incident, the CEDB has to conclude that the Club violated the above provisions and needs to be punished accordingly.

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

52. Based on Article 23 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.
53. Regarding the behaviour of the Club's supporters, i.e. the throwing of objects and the pitch invasion, the CEDB identified and took into account the following concrete circumstances:
  - the seriousness and multiplicity of the offences committed;
  - the Club's previous record: the club has already been punished for the inappropriate behaviour of its supporters, and, in particular, for the throwing of objects;
  - the fact that the Club's supporters threw objects towards on multiple occasions during the match;
  - The fact that some of these objects did not pose any apparent danger;
  - the fact that some of the incidents were directed against the match officials, i.e. both the throwing of objects as well as the pitch invasion;
  - the content of Article 6 (5) DR and Annex A (I) which stipulates standard sanctions, *inter alia* for the invasions of the field of play.
54. In view of the above, the CEDM deems that a fine of €13'000 is the appropriate sanction for the abovementioned violations.
55. Regarding the improper conduct of the Club's official, the CEDB identified and took into account the following concrete circumstances:
  - the seriousness of the offence committed;
  - the fact that the Official acted in a very disrespectful way, even pushing the 4<sup>th</sup> official from behind, a behaviour which is intolerable and has to be taken into account as a serious aggravating circumstance.
56. In view of the abovementioned, the CEDB deems that the intolerable behaviour displayed by the Official requires a harsh punishment. Hence, the CEDB decides to suspend the Official Harald Lürzer for three (3) months from carrying out his function during UEFA competition matches in which he would otherwise participate, starting from the Club's first UEFA competition match of the 2018/2019 season.
57. Since the sanctioned behaviour occurred in the tunnel area, the CEDB particularly orders that the Official may not be in the technical area or communicate directly or indirectly with

the team's players and/or technical staff during the match and may not enter the dressing room or tunnel before or during the match.

58. Regarding the kit infringement, the CEDB noted that it was in fact a very minor infringement and only occurred in a training session. While asking the Club to take the necessary measures to avoid the same infringement in the future, applying Article 6 (5) DR and its Annex A (V), a warning shall be deemed the appropriate sanction.

## Decision of 31 May 2018

Sporting Clube de Portugal

(Setting off of fireworks; racist behaviour)

### **Circumstances of the case**

It was reported by the UEFA match delegate that three fireworks were ignited during the Match by the Club's supporters. Likewise, it was reported by a FARE observer present in the stadium during the Match that approximately five minutes before the kick-off, the Club's supporters situated in Section A, first row behind the goals, displayed a banner featuring the adapted German Nazi War Flag (so-called "Reichskriegsflagge"), additionally reading "ATM United Firm" with the cross and swastika replaced by the "h" sign referring to "hooligans" and an official emblem of the Club. According to the report, the flag remained on display throughout the game and was raised prominently after the final whistle and team celebration to be visible on the TV broadcasting.

**Legal framework** Article 14 UEFA Disciplinary Regulations; 16 (2) UEFA Disciplinary Regulations.

### **Decision**

The CEDB acknowledges that the Club did not provide any statements with regard to the reported acts of racism committed by its supporters, therefore not breaching the presumed accuracy of the official reports as it would have been required based on Article 45 DR. The CEDB notes that obviously such behavior is completely unacceptable and has no place in football. The scale of such behavior at the Match is truly abhorrent and the display of a Nazi themed flag throughout the match represents an extremely serious breach of Article 14 (1) DR. The lack of genuine effort shown by the Club to remove the flag during the Match must be considered to be an aggravating factor. With regard to the setting off of fireworks offences, the CEDB takes into account the Club's previous record (noting that it has already been punished for setting off fireworks) and the dangerous nature of the offences committed (noting that lighting fireworks at football matches creates a serious risk for the safety of spectators, officials and players). In view of the above, further applying Article 6 (5) DR in conjunction with Annex A (I), the CEDB deems that a fine of €2'000 should be regarded as the appropriate sanction. With regard to Article 14 DR, the CEDB recalls that UEFA has a zero tolerance approach to racism and discrimination at football matches. The CEDB in this regard emphasizes that the message and imagery put forward by the Club's supporters at the Match have no place in football or civilized society. At no point should Nazi symbolism be found in any stadium at any competition as it shows a despicable attitude and represents values that UEFA strongly opposes and vows to banish from football in general and from its prestigious competitions in particular. On this basis, while issuing a strong warning to the Club to tackle such racist behavior in the future, the CEDB considers it appropriate to order the partial closure of the Club's stadium during the next (1) UEFA competition match in which the Club would play as the host team. The Club shall inform UEFA at least 30 days prior to the match, the sector(s) to be closed, which shall at least comprehend 3'000 seats.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairmen:</u>	Berzi Sándor (HUN) Hansen Jim Stjerne (DEN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) 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 (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. Whilst the CEDB has considered all of the facts, allegations, legal arguments and evidence submitted in these proceedings, it refers in this decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. According to the facts of this case, as established by the official reports of the UEFA match delegate at the UEFA Europa League 2017/2018 match between Olympique de Marseille and Atlético de Madrid (the "Club") on 16 May 2018 (the "Match"), as well as the report of an observer from FARE who was present in the stadium, can be summarized as follows:

### UEFA match delegate

- 21' after Atletico scored the goal it was 1 Bengal light activated in the Atletico fans' sector 90' after 3rd goal scored by Atletico 1 Bengal light was activated in the Atletico fans' sector. After final whistle and during the post-match ceremony one flare was ignited in the sector of Atletico fans (behind the North goal)
- It was spotted the racist flag - German Nazi Banner styled as German Nazi Reichskriegsflagge in the sector where Atletico fans were located (behind the north goal). It was not removed, although it was asked from the stadium security to be removed. However, the stadium security services estimated that it is less dangerous to leave it, than to remove it. The same was mentioned by FARE observer. This flag remained during the entire match and it was visible during the post-match ceremony.
- I was informed by FARE observer about the German Nazi Reichskrieg flag in the sector of the Atletico fans (behind the North goal). Immediately I asked the stadium security services to remove it. It was also visible on CCTV monitors in the Control room. Soon later, the stadium security informed me that if it stays it would create less problems, than if they will try to remove it. It remained in the same position until the Atletico fans left the stadium.

### FARE

- Approximately 5 minutes before the kick-off, Atletico supporters in Section A, first row behind the goals, displayed a banner featuring the adapted German Nazi War Flag (Reichskriegsflagge) reading 'ATM United Firm' with the cross and swastika replaced by the 'h' sign referring to 'hooligans' and an official Atletico emblem.

- The flag remained on display throughout the game and was raised prominently after the final whistle and team celebration to be visible on the TV broadcasting.
- It is common among far-right groups in football in Europe to adapt the Naziparaphernalia and the Reichskriegsflagge in particular in the colors of their club or national team.
- It is common among far-right groups in football in Europe to adapt the Nazi paraphernalia and the Reichskriegsflagge in particular in the colors of their club or national team. The similarity of the flag displayed by Atletico fans to the Nazi Reichskriegsflagge is evident after comparison to the original flag.

## II. Merits of the Case

### A. UEFA's competence

3. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 DR, the CEDB is competent to deal with this case.
4. In light of the foregoing, UEFA's statutes, rules and regulations (in particular the DR) are applicable to these proceedings.

### B. The setting off of fireworks

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

5. 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:*

...

(c) *the lighting of fireworks or any other objects: ..."*

6. According to Article 45 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*

7. Setting off fireworks is a very serious offence 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, the use of pyrotechnic devices in stadia is strictly forbidden.
8. In the present case, it was reported by the UEFA match delegate that three fireworks were ignited during the Match by the Club's supporters.

9. These incidents are clearly described in the official reports which, according to Article 45 DR, carry the presumption of accuracy.
10. 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.
11. Consequently, according to Article 16 (2) (c) DR, the Club is to be held responsible for the misconduct of its supporters and must be penalised accordingly.

C. The racist behaviour

*a) Applicable legal framework and general remarks*

12. 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.
13. 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.
14. Under Article 14 (2) DR, if one or more of a member association or club's supporters engage in the behaviour described in paragraph 1, the member association or club responsible is punished with a minimum of a partial stadium closure
15. According to Article 45 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*

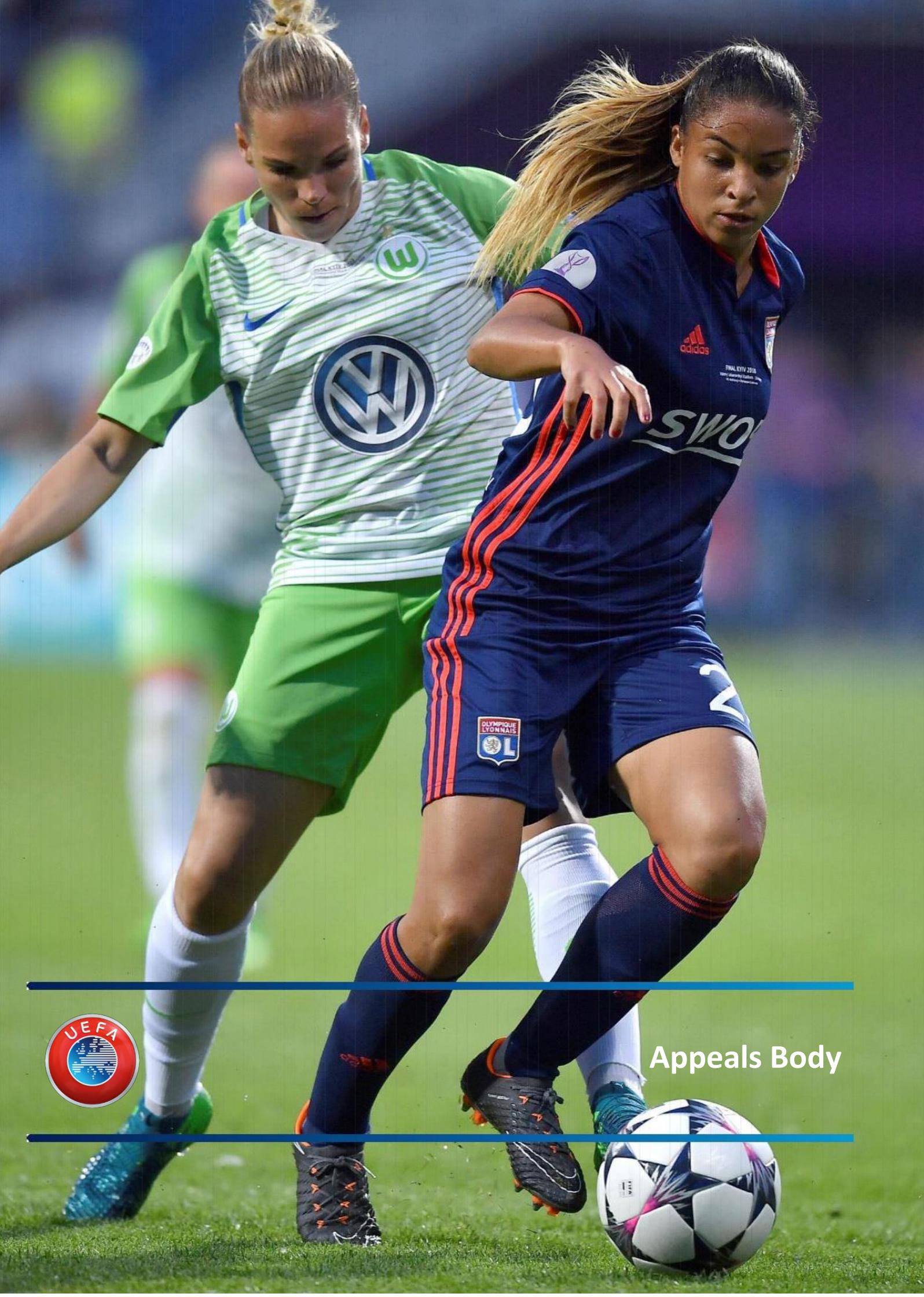
16. Article 14 DR is a special rule taking over the principle set out in Article 8 DR which stipulates that clubs are responsible for the racist conduct of their supporters. This responsibility applies to offences committed by any person supporting the team before, during or after the match, irrespective of the fault of the club in question (i.e. "strict liability").
17. The fight against racism is an extremely high priority for UEFA. UEFA has a policy of zero tolerance towards racism and discrimination on the pitch and in the stands. Any racist behaviour is considered a serious offence under the DR and shall be punished with regard to the circumstances and the relevant club's previous record with the utmost severe sanctions.

18. Further, 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).
19. In the present case, it was reported by a FARE observer present in the stadium during the Match that approximately five minutes before the kick-off, the Club's supporters situated in Section A, first row behind the goals, displayed a banner featuring the adapted German Nazi War Flag (so-called "Reichskriegsflagge"), additionally reading "ATM United Firm" with the cross and swastika replaced by the "h" sign referring to "hooligans" and an official emblem of the Club. According to the report, the flag remained on display throughout the game and was raised prominently after the final whistle and team celebration to be visible on the TV broadcasting.
20. The CEDB acknowledges that the Club did not provide any statements with regard to the reported acts of racism committed by its supporters, therefore not breaching the presumed accuracy of the official reports as it would have been required based on Article 45 DR.
21. Likewise, the CEDB, after thorough analysis of the relevant images provided during the course of these disciplinary proceedings, concludes that the occurrence of the banner under scrutiny has been established, i.e. it has remained undisputed that the Nazi-styled banner was displayed by the Club's supporters.
22. Indeed, the CEDB agrees with the interpretation given to such banner by the FARE report as the banner was clearly designed to put the Club's emblem in the context of the Nazi theme, design and colours.
23. The CEDB notes that obviously such behaviour is completely unacceptable and has no place in football. The scale of such behaviour at the Match is truly abhorrent and the display of a Nazi themed flag throughout the match represents an extremely serious breach of Article 14 (1) DR. The lack of genuine effort shown by the Club to remove the flag during the Match must be considered to be an aggravating factor.
24. In light of the foregoing, the CEDB concludes that the conduct of the Club's supporters clearly violated Article 14 (1) DR and must be punished accordingly.

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

25. Based on Article 23 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.
26. In the present case, with regard to the setting off of fireworks offences, the CEDB takes into account the Club's previous record (noting that it has already been punished for setting off fireworks) and the dangerous nature of the offences committed (noting that lighting fireworks at football matches creates a serious risk for the safety of spectators, officials and players).

27. In view of the above, further applying Article 6 (5) DR in conjunction with Annex A (I), the CEDB deems that a fine of €2'000 should be regarded as the appropriate sanction.
28. With regard to Article 14 DR, the CEDB recalls that UEFA has a zero tolerance approach to racism and discrimination at football matches.
29. The CEDB in this regard emphasizes that the message and imagery put forward by the Club's supporters at the Match have no place in football or civilized society. At no point should Nazi symbolism be found in any stadium at any competition as it shows a despicable attitude and represents values that UEFA strongly opposes and vows to banish from football in general and from its prestigious competitions in particular.
30. The CEDB additionally recalls that the Nazi banner was displayed throughout the Match and the Club made no effort whatsoever to remove it.
31. On this basis, while issuing a strong warning to the Club to tackle such racist behavior in the future, the CEDB considers it appropriate to order the partial closure of the Club's stadium during the next (1) UEFA competition match in which the Club would play as the host team. The Club shall inform UEFA at least 30 days prior to the match, the sector(s) to be closed, which shall at least comprehend 3'000 seats.



Appeals Body

## Decision of 1 February 2018

FC Bayern München  
(Illicit banner)

### **Circumstances of the case**

It was reported that the match was delayed for one minute because fans of the Appellant threw money and wallets on to the field of play which had to be cleared by stewards. Furthermore, the reports stipulated that in the 17th minute of the match, the Appellant's supporters threw their tickets away while holding a banner: "Is your greed finally satisfied?" The match was stopped for approximately one minute while stewards were collecting the tickets or fake money. During half-time and between two or three minutes into the second half, a new banner was displayed stating: "Fuck Anderlecht! Fuck UEFA!" The CEDB in its decision took into account the seriousness and multiplicity of the offences committed as well as the Appellant's previous record, noting that the latter has already been punished for throwing of objects and for displaying illicit banners, and decided to fine FC Bayern München €20'000.

The Appellant in its statements essentially stated having exchanged the necessary security information with the competent authorities and fan representatives of both clubs, as usual. The Appellant further affirmed having implemented security measures, which were largely successful, on the basis of a common assessment of the risk factors. Also, the Appellant explained that banners were used against the opponent club as well as against UEFA. The Appellant apologized for the incident and held that it constantly inform the representatives of its supporters that offensive and racist contents have no place in stadiums. With regard to the throwing of paper objects, the Appellant stated that at no time there was a risk of injury to the spectators, employees or players.

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

### **Decision**

On 7 December 2017, the CEDB fined the Appellant € 20'000. The Appeals Body upheld the initial CEDB decision and rejected the Appeal of the Appellant.

Chairman: Pedro Tomás (SPA)  
Vice-Chairman: Michael Maessen (NED)  
Members: Gianluca D'Aloja (ITA)  
Thomas Cayol (FRA)  
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 on 7 December 2017 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. In substance, according to the reports of the referee and the UEFA match delegate of the UEFA Champions League 2017/2018 match between RSC Anderlecht and FC Bayern München ("the Appellant") played on 22 November 2017 ("the match"), two incidents of disciplinary relevance occurred:
3. It was reported that the match was delayed for 1 minute because fans of the Appellant threw money and wallets on to the field of play which had to be cleared by stewards.
4. Furthermore, the reports stipulated that in the 17<sup>th</sup> minute of the match, the Appellant's supporters threw their tickets away while holding a banner: "*Is your greed finally satisfied?*" The match was stopped for approximately 1 minute while stewards were collecting the tickets or fake money. During half-time and between 2 or 3 minutes into the second half, a new banner was displayed stating: "*Fuck Anderlecht! Fuck UEFA!*"
5. In its decision of 7 December 2017, the Control, Ethics and Disciplinary Body considered that the banner displayed by the Appellant's supporters stating "*Fuck Anderlecht! Fuck UEFA!*" constituted an illicit banner which was not fit for a sports event and therefore fell under the scope of Article 16 (2) (e) of the UEFA Disciplinary Regulations, whereas the throwing of the fake money and wallets constituted a violation of Article 16 (2) (b) of the UEFA Disciplinary Regulations. As a result, the Control, Ethics and Disciplinary Body decided to fine the Appellant €20'000.
6. The Decision with grounds was notified to the Appellant on 11 January 2018.

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

7. On 12 January 2018, the Appellant lodged its intention to appeal the first instance decision in relation to the sanction imposed on it for the displaying of an illicit banner and the throwing of objects.
8. On 16 January 2018, the Appellant submitted its appeal brief. In substance, the Appellant admits the occurrence of the reported incidents and did not dispute the factual circumstances of the case.
9. However, the Appellant argues that the amount of the fine was too high and disproportionate in relation to the stated infringement, this in view of the low gravity of the

event, the low risk coming from fake paper money being thrown which was merely done to raise awareness for the issue of overpriced tickets for away supporters. .

10. Consequently, the Appellant requests that the decision of the Control, Ethics and Disciplinary Body be overturned with regard to the amount of the fine.

### **III. Hearing**

11. No hearing was held, since the Appellant requested that the proceedings be conducted in writing only and the Appeals Body did not raise any objection to this request.
12. The Appeals Body examines the entire case file, in particular the challenged decision and the grounds for appeal, on 1 February 2018.
13. The parties' arguments are set out and examined below, in so far as they are relevant to the decision.

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

14. Article 30 (4) of the UEFA Disciplinary Regulations states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
15. The Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
16. It follows that the Appeals Body has competence to decide on the present appeal and that the appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 65 (2) of the UEFA Disciplinary Regulations).

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

#### The banners and the throwing of objects

##### A. The legal framework.

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

18. According to Article 45 of the UEFA Disciplinary Regulations, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. In the case in hand

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

20. The Appeals Body further concludes that the first instance Control, Ethics and Disciplinary Body did correctly assess the circumstances of the case in its decision and correctly concluded that the behaviour of the Appellant's supporters regarding the displaying of the banner under scrutiny violated Article 16 (2) (e) of the UEFA Disciplinary Regulations as it was "*obviously not fit for a sports event*".

21. In this regard, the Panel stresses that it is understandable when supporters express their opinion regarding issues related to football, the club and the matches, which is why the UEFA Disciplinary Regulations expressly stipulate that only messages which are not fit for a sports event due to their provocative, offensive nature are regarded as in violation of Article 16 (2) of the UEFA Disciplinary Regulations. That is why the Control, Ethics and Disciplinary Body did not punish the Appellant for the first banner which was displayed at the match.

22. With regard to the second banner however, the Control, Ethics and Disciplinary Body rightfully concluded that the line between a mere expression of opinion and an illicit message of a provocative and offensive nature was crossed. "Fuck Anderlecht! Fuck UEFA!" is nothing but a mere insult to both RSC Anderlecht and UEFA and the Appeals Body is convinced that said banner is hence in clear violation of Article 16 (2) (e) of the UEFA Disciplinary Regulations.

23. Moreover, the Appeals Body is convinced that the Control, Ethics and Disciplinary Body equally correctly assessed the facts of the case in its decision with regard to the throwing of objects and coherently concluded that the behaviour of the Appellant's supporters and the throwing of wallets and fake bills violated Article 16 (2) (b) of the UEFA Disciplinary Regulations. It is not required for that the objects being thrown posed an actual danger to anyone for a violation of Article 16 (2) (b) of the UEFA Disciplinary Regulations.

24. In view of the fact that the factual circumstances of the case and the related violations of the UEFA Disciplinary Regulations remained undisputed during the course of the proceedings, it therefore remains for the Appeals Body to examine whether the Control, Ethics and Disciplinary Body respected the regulations and legal principles, in particular those of legality and proportionality, or whether it abused its power of discretion to fine the Appellant € 20'000.

C. Determination of the disciplinary measure

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

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

26. In this regard, the Appeals Body recalls that the appeal of the Appellant was only directed against the proportionality of the fine in the amount of € 20'000, as it was imposed on the Appellant by the Control, Ethics and Disciplinary Body.
27. The Appeals Body on a preliminary basis emphasized again that it is not its obligation to put its own assessment in place of the legal assessment of the Control, Ethics and Disciplinary Body, recalling that at this stage of the proceedings the Appeals Body only has to establish whether that the Control, Ethics and Disciplinary Body has abused or exceeded its broad powers of discretion when determining the disciplinary sanction against the Appellant.
28. However, after reviewing the explanations and legal deliberations of the Control, Ethics and Disciplinary Body in the first instance proceedings, the Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion.
29. The Appeals Body has sympathy for the intention behind the actions of the Appellant's supporters, having understanding for the fact that the question of adequate and affordable tickets for away-supporters is a pressing issue, which is why such issue was dealt with in a separate investigation conducted by UEFA. The Appeals Body also agrees that neither of the objects thrown onto the pitch caused any harm or danger.
30. Nonetheless, this disciplinary body wishes to stress again that it concurs with the conclusions drawn by the Control, Ethics and Disciplinary Body when it stated that the message displayed by the Appellant's supporters was clearly not fit for a sports' event and that the throwing of objects indicates a lack of discipline from the Appellant's supporters. In this regard, the Appeals Body finds it particularly regrettable that the match was even delayed due to the fact that the objects thrown onto the pitch had to be collected by stewards first, hence interrupting the match. This is simply not acceptable.
31. Taking into account the above, recalling the moderate amount by which the Appellant was fined, comparing said amount with the sanctions in its previous decisions for similar cases and infringements of the UEFA Disciplinary Regulations, the decision of the Control, Ethics and Disciplinary Body decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
32. On the basis of the above, the Appeals Body has no other option but to uphold the initial decision and reject the appeal.

## **VI. Costs**

33. 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 51 (2) of the UEFA Disciplinary Regulations).

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

## Decision of 1 February 2018

FC PAOK

(ineligible player, general principle of conduct)

### **Circumstances of the case**

PAOK played against SC Bettembourg in a UEFA Women's Champions League match. The player Eleni Giannou registered for PAOK was included in the match sheet. UEFA received information that a different person played the relevant match under the name of Elenni Giannou's, specifically against KS Vllaznia when she was registered as a substitute player. The UEFA match delegate asked PAOK to see the passport of the player for a visual check. PAOK did not provide the passport, stating that the player was injured at the hotel due to stomach problems. After the match, the delegate informed PAOK that the visual check was again not possible since the family of the player allegedly came to the hotel, taking her back home.

PAOK argued that Ms. Giannou is a first squad player as well as that she was properly registered on the match sheets, further being in possession of a valid passport. The reason for not being able to provide the passport of the player was that officials were not in possession of a copy and the player was neither in the starting eleven nor on the bench during the game nor present at the team hotel. The club also argues that Article 39.03 WUC Regulations does not oblige the club to be in possession of the passport of a player.

PAOK was enquired multiple times to provide additional documents. It neither sent the information to complete the file nor any confirmation of the presence of PAOK representatives and the players before the CEDB which hence held a hearing without the presence of the club's representatives and the club's players. Only the EDI was present at the hearing.

**Legal framework** Article 56 UEFA Disciplinary Regulations; Art. 11 (1) UEFA Disciplinary Regulations Art 39 (3) UEFA Women Champions League Regulations.

### **Decision**

The CEDB in its decision of 18 October 2017 decided to 1) exclude PAOK from participating in the next UEFA club competition for which it would otherwise qualify, 2) to exclude PAOK from participating in an additional UEFA club competition for which it would otherwise qualify. This sanction is deferred for a probationary period of three (3) year and 3) to fine FC PAOK € 30'000. On 1 February 2018, the Appeals Body decided to partially admit the appeal and to change the fine to €12'000.

**Chairman:** Pedro Tomás (SPA)  
**Vice-Chairman:** Michael Maessen (NED)  
**Members:** Gianluca D'Aloja (ITA)  
Thomas Cayol (FRA)  
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 official reports, the written submissions, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the club and the Ethics and Disciplinary Inspector (also “EDI”) in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning, as well as to those facts established by the Appeals Body and not contested by any of the parties.
2. On 22 August 2017, PAOK played against SC Bettembourg a UEFA Women's Champions League match. The player Eleni Giannou registered for PAOK was included in the match sheet.
3. Three days later, on 25 August 2017, KS Vllaznia played against PAOK a UEFA Women's Champions League match. The player Eleni Giannou registered for PAOK was not included this time in the match sheet.
4. On 25 August 2017, KS Vllaznia lodged a protest against PAOK for fielding a non eligible player during the game played against SC Battembourg on 22 August 2017 and for including the same player in the match sheet as a substitute, even though after advising the delegate the player finally didn't appear in the match sheet.
5. In substance, KS Vllaznia received an unofficial information that the player Eleni Giannou of PAOK didn't travel with her team to Bosnia, because she was injured. The club claims that a different person played the match against SC Battembourg with the name and Eleni Giannou's passport. Specifically at the match against KS Vllaznia, played on 25 August 2017 at 17:00, she was registered as a substitute player. After KS Vllaznia advised the UEFA Delegate of the previous circumstances, the delegate asked PAOK to see the passport of player Eleni Giannou and to visually check the player. The staff of PAOK didn't give her the passport and said that the player was injured and was at the hotel.
6. The above information was then confirmed by the UEFA delegate who explained that she was made aware by KS Vllaznia about circumstances involving the eligibility of the player named Eleni Giannou. She confirmed that PAOK warned her about the fact that Ms Giannou was injured and remained in Bosnia and another person using her name and passport played instead. The delegate convenes that before the match she asked PAOK for the passports and ID's for the match. Later on, at the stadium, escorted by the referee's team she made a visual check at the dressing room of PAOK and the player Eleni Giannou was missing allegedly for some stomach problems. After the match, the delegate informed PAOK that the visual check would take place afterwards at the hotel. This was again not possible due to the fact that apparently the family of the player came to the hotel and took her back home. She was also not available by phone.
7. On 30 August 2017, an UEFA Ethics and Disciplinary Inspector (“EDI”) was appointed to undertake the appropriate disciplinary investigations.

8. The following chain of events and submissions occurred during the period in which the Ethics and Disciplinary Inspector proceeded with her investigations:
- On 4 September 2017, PAOK submitted its position about the admissibility of the protest filed by KS Vllaznia and, argued that the latter was lodged outside the deadline for filing it, and declared that they were convinced that the facts took place exactly in the way the team's representatives expressed. Briefly, the club states that there was no reason to use, in the place of one of its players, another player athlete, here Christine Tsakiri, since Mrs. Tsakiri already belonged to the team. She was not sanctioned and she was eligible to participate in the tournament. According to the pictures submitted by KS Vllaznia, there is a concurrence in such photos between the two athletes and therefore there may have been a misunderstanding, or even other reasons of KS Vllaznia, to submit such protest.
  - On 11 September 2017, the EDI requested the club to submit its position on the eligibility of the players and their whereabouts, during and after the matches ( i.e. the matches between PAOK and SC Bettembourg on 22.08.2017 and KS Vllaznia and PAOK on 25.08.2017). She also requested the passports or any other document of the Players Eleni Giannou and Chrysa Tsakiri with the relevant pages showing the entrance and exit of the country where the tournament took place. In this context, the club was required to comment on the pictures forwarded by KS Vllaznia and specifically on following points:
    - o the full name of the player shown in the photos circled with red, in case the player is not Eleni Giannou, an explanation why Eleni Giannou has not participated in the team photos and
    - o if the player is Chrysa Tsakiri why the player took place in team photo in Sarajevo.
  - On the same date, the EDI contacted SC Bettembourg requesting the latter to provide statements as regards the participation of the player Eleni Giannou.
  - On 13 September 2017, SC Bettembourg answered to the request of the Ethics and Disciplinary Inspector. In substance, it submitted that it received per email from an unknown person an information suggesting that during the match played on 22 August 2017 the PAOK player with No. 3 may have been "another person". She would have played with the identity of player Eleni Giannou, recorded in the official player-list and on match sheet with No.3. However, it deemed that it is neither in its competence nor in its possibility to make any control nor to provide any proof on this. In this context, the club didn't make any investigations in this direction, and had no further information to provide.
  - PAOK never answered to the enquiries made by the EDI on 11 September 2017 and neither provided the required documents.
9. Following the above, on 15 September 2017, the EDI sent her report. She concluded that the protest filed by KS Vllaznia is inadmissible since the Player subject of the protest never

participated in the match against KS Vllaznia. However, PAOK must be held responsible for breaching the UEFA Womens UCL Regulations for failure to present the player in question for the visual check and to provide the officials with a convincing explanation with regard to her absence in the validated match sheet. In addition, the EDI requested the CEDB to order the club PAOK to provide the documents and comments requested by means of the letter dated 11 September 2017. Attached to this request she also demanded an identical copy of the licences of the relevant players with their photos to complete her investigations on the identity of the player who played the match against SC Bettembourg.

10. On 21 September 2017, the club argued that Ms. Giannou is a first squad player of its team as well as that she was properly registered on the match sheets of the matches played on 22 and 25 August 2017. Further, she is in possession of a valid passport. The club attached a copy of her passport. The reason for not being able to provide at the time of the match the passport of the player was that officials were not in possession of such copy and the player was "neither in the starting eleven nor in the substitution bench during the game" nor present at the team hotel. The club also argues that Article 39.03 WUC Regulations does not oblige the club to be in possession of the passport of a player.
11. On 21 September 2017, the Control, Ethics and Disciplinary Body (also "CEDB") dismissed the protest of KS Vllaznia and ordered the club to submit in the next seven days all the information requested by the UEFA Ethics and Disciplinary Inspector to complete her report.
12. On 26 September 2017, the club was reminded about the deadline imposed by the above CEDB decision and enquired to submit the information to complete the case file. In particular, the request comprehended the following documents:
  - *Personal statements regarding the allegations and the players' whereabouts, during the matches (The matches between FC PAOK and SC Bettenbourg on 22.08.2017 and KFF Vllaznia and FC Paok on 25 08 2017) and after the matches from both Players (Eleni Giannou and Chrysa Tsakiri);*
  - *Passports with the relevant pages or any other document showing the entrance and exit of the county of the tournament for both players.*
  - *An identical copy of the licences of the relevant players with their photos.*
  - *FC PAOK's comments regarding the photos presented by the Protesting Club on following points;*
    - *The full name of the player shown in the photos circled with red,*
    - *In case the player is not Eleni Giannou, an explanation why Eleni Giannou has not participated team photos.*
    - *If the player is Chrysa Tsakiri why the player took place in team photo in Sarajevo.*
13. On 3 October 2017, proceedings were opened against the club for failing to abide by (or act in accordance with) the decision of the UEFA Organs of Administration for Sport, for failing to comply with the visual check of the player, for a player's eligibility infringement and for incidents of a non-sporting nature. In particular, it was again requested to the club to submit the missing information to complete the file. In addition, a hearing was organised to decide on this matter for which the club should have confirmed the name of their

representatives to be present at the hearing, as well as the presence of the players Eleni Giannou and Chryistine Tsakiri by 11 October 2017.

14. As of 12 October 2017, the club was again enquired to send this information as soon as possible. It still neither sent the information to complete the file nor any confirmation of the presence of PAOK representatives and the players before the Control Ethics and Disciplinary Body for the 18 October 2017.
15. On 18 October 2017, a hearing of the Control, Ethics and Disciplinary Body took place without the presence of the club's representatives and the club's players. Only the EDI was present at the hearing.
16. On this same date the Control, Ethics and Disciplinary Body decided to impose the following sanction:
  1. *To exclude FC PAOK from participating in the next UEFA club competition for which it would otherwise qualify.*
  2. *To exclude FC PAOK from participating in an additional UEFA club competition for which it would otherwise qualify. This sanction is deferred for a probationary period of three (3) years.*
  3. *To fine FC PAOK € 30'000.*
  4. *To open proceedings against the FC PAOK player Chrysi Tsakiri for infringing the general principles of conduct.*
17. The decision with grounds was notified to the appellant on 9 November 2017.
18. It is noted that on 16 November 2017, following the disciplinary proceedings opened against Ms Tsakiri the Control, Ethics and Disciplinary Body decided to close the said disciplinary proceedings opened against this player.

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

19. On 13 November 2017, the club announced its intention to appeal against the Decision.
20. On 19 November 2017, the Appellant filed its grounds for appeal. The club lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
21. In its statements, the Appellant referred to the factual circumstances of the case which essentially can be summarized as follows:
  - Appellant core argument bases on the conduct of Mr Proussalis, who is an executive of the Club and the only person dealing with all women's football department matters, who prepared the list of all twenty three (23) available players. The list was submitted to the Greek National Federation (HFF) on 11 August 2017 and forwarded to UEFA, presumably the same day. Mr. Proussalis decided that only nineteen (19) players would travel to Bosnia for the matches, due to the team's poor budget.

- On 19 August 2017, the club travelled by bus to Bosnia. The team consisted of eighteen (18) players (Chrysi Tsakiri included), the head coach, his staff members (assistant coach, goalkeepers' coach and team doctor), two fans/friends, and the team manager.
- On 22 August 2017, the club played against SC Bettembourg from Luxembourg, allegedly the weakest team in the group and one of the weakest in the Qualifying Round Stage. Before the match, the team gathered at the hotel lobby where the coach announced the starting line-up. Chrysi Tsakiri, though usually a substitute player with little to none appearances, was in it, as the coach thought it was a good opportunity for her to have some playing time and gain experience.
- The coach gave the list with the starting line-up to the team manager, Mr. Proussalis, as he was handling all procedural matters of the team, in order for him to register the starters and the substitutes to UEFA's match sheet. Due to a technical problem, the match sheet could not be filed electronically, so with the delegate's approval, Mr. Proussalis registered the players by hand. Right after that, he went to the dressing room and told Chrysi Tsakiri that she had been listed with the shirt number three (3), which was vacant due to Eleni Giannou's absence. She played the whole match with the shirt number three (3), believing that she was playing as Chrysi Tsakiri and that she was properly listed in the first place, thus eligible to play. So did the coach and every other member of the team (players and staff). The final score, 8-0 for PAOK, should certify the significant difference between the two opponents.
- No one in the team realized what had happened until the next match against KS Vllaznia, on 25 August 2017. When the team arrived at the stadium, Chrysi Tsakiri was informed by Mr. Proussalis that there had been a problem with her registration and she was not eligible to play in the match. She had to leave the dressing room area and go to the stands until the end of the match.
- When the coach asked Mr. Proussalis why he had sent Chrysi Tsakiri to the stands, the team manager revealed to him the embarrassing truth, that a protest had been filed by KS Vllaznia on the eligibility of the player, explaining that he had accidentally not registered Chrysi Tsakiri in the original squad list (sent to UEFA on 11 August 2017) and after the coach had chosen her to start in the first match of the tournament. He realized this at the time he was registering the starting eleven. He then took advantage of the absence of four (4) players that had been registered in the original squad list and were not present in Bosnia and decided to secretly cover his mistake by listing Chrysi Tsakiri under the name of one of them. He randomly chose Eleni Giannou.
- After his revelation to the coach, he commanded him to say to the UEFA Delegate, who had been already investigating the incident, that Eleni Giannou had been sick and left the stadium for the hotel. The coach instinctively followed his command and tried to conceal the offence the team unknowingly had committed. Mr. Proussalis and the coach repeated the same answer after the end of the match at the stadium

and at the hotel, in their attempt, so admitted by the club, to dodge the delegate's persisting attempts to make visual check of Eleni Giannou.

- The next day Mr Proussalis contacted the board, back in Thessaloniki, and reported half of the truth. He told the Vice President, Mr. Kapetanakis, that the team had achieved a crucial win for its qualification to the competition's next round and that a protest had been made by the opponent but he would handle it (as he does exclusively concerning all the department's matters) and the Club had nothing to worry about. He reassured the Vice President about the team's conduct in the tournament and its qualification to the next round.
- On 28 August 2017, the club received an e-mail from UEFA stating that disciplinary proceedings had been instigated, following the protest lodged by KS Vllaznia. This letter, as all correspondence concerning the Club's Women's Football Department, was instantly forwarded by the secretary to the team manager, Mr. Proussalis, who is the only executive staff dealing with the team and its matters. He decided to bypass PAOK's legal advisor who handles all domestic legal issues and appoint a foreign lawyer.
- On 19 October 2017, PAOK received the operating part of the UEFA CEDB's decision, which surprised the latter and took immediately control of the case. The club removed the team manager Mr. Proussalis from his duties.

22. With regard to the legal arguments the club submitted the following appreciations:

- Specifically for the player's eligibility the club holds that Chrysi Tsakiri who played against SC Bettembourg is a young player of average skills with little to none appearances in the team's matches before and after the said match. She is a bench player for PAOK at her best.
- No advantage has been gained for PAOK by her participation nor was there a need for an advantage to be gained, since the opponent was deemed far inferior beforehand. The purpose of her appearance in the match was just to add experience for the future, as the opponent's inferiority provided the coach with the opportunity to improve and not to cheat.
- Further, PAOK acknowledges and accepts the principle of strict liability (Art.8 DR) as a fundamental legal basis for UEFA's disciplinary procedures. Therefore, even though all offences charged on the club were committed or conducted by a sole individual, namely the team manager Mr. Proussalis, without the team's knowledge or approval, the club has no reason or intention to argue about PAOK's liability. Nevertheless, it strongly objects to the number and seriousness of the offences for which it was sanctioned, as well as to the magnitude of the sanction itself.
- The separate punishment for the subsequent infringements of the club conflicts with the general rule that all preparatory and sequential acts of an offence should not be

considered as independent offences but as elements of the main offence, for which a unique punishment should be imposed.

- Moreover, the infringement of a player's visual check is an offence which requires the offender's fault and intention. In this case, PAOK did not intend nor attempt to prevent the visual check of Eleni Giannou by concealing the player or her legal documents or by any other means. When the 4th official read "Eleni Giannou" in the team's locker room, the visual check failed just because the player had never been in Bosnia and not because PAOK voluntarily failed to cooperate, as is mistakenly stated in the CEDB's decision.
- With regard to the infringement of non-sporting nature, punishment on the club overcomes the need for punishment on the latter and prevents it. The general principal of Law "lex specialis derogat legi generali" applies here.
- Here, the CEDB has clearly based its decision on untrue and erroneous elements and did not consider essential circumstances which evaluation is compelling, even when the accused is at fault, given that the latter withheld crucial evidence and misled the Body into wrong facts. Truth and justice should eventually and by any means prevail.
- Regarding the determination of the appropriate disciplinary measure, the club holds mainly the following arguments:
  - o CEDB erred on the determination of the appropriate disciplinary measure for which it took into account erroneous elements particularly the circumstances mentioned in par.39 of its decision, i.e. a) seriousness and multiplicity of the offences committed, b) the serious impact that the behavior of the club has in the competition and the image of UEFA in general, c) the repeated and voluntary lack of cooperation of the club in a sensitive matter as it is the clarification of the eligibility of one of its players, d) the failure to abide by a decision of the Control, Ethics and Disciplinary Body, e) the voluntary absence of the club's representatives and the players at the hearing after being expressly summoned by the UEFA disciplinary body and f) the impact to the integrity and the smooth running of the competition caused by the behavior of the club and the negative consequences it may have on the development of women football.
  - o The offences committed by PAOK were not the four (4) mentioned in the decision but actually two (2), that is a) the fielding of a player who is not named on the player list (art.39par.6 Comp. Reg.) and b) the failure to abide by the decisions of UEFA Organs [art.11par.2 (e) DR].
  - o The penalty for the above most serious of PAOK's offences (player's eligibility infringement) is not explicitly provided in the DR. Its measure, though, could be estimated through similar provisions and through UEFA's Disciplinary Bodies' jurisprudence, e.g. decision of 13 August 2004 against PAOK FC (men's team and a different legal entity from AC PAOK) and its player Liassis

Louka for the match PAOK FC vs FC Maccabi Tel-Aviv, on 10 August 2004 and decision of 29 February 2016 on GNK Dinamo Youth and its player Matija Fintic.

- It notes that for offences considered as more serious by UEFA, which is match-fixing, the minimum sanction is one (1) year exclusion of its competitions with no fine at all.
  - Regarding the circumstance under (c) which is “the repeated and voluntary lack of cooperation of the club in a sensitive matter as it is the clarification of the eligibility of one of its players” the club notes that this is a typical behaviour of an offender attempting to conceal its fault.
  - PAOK’s absence at the hearing was not voluntary but undeliberate, whereas the Club’s board members were kept in the dark about UEFA’s correspondence by the offender, who was one of our officials. In this regard, the failure to abide by a decision of the CEDB, which -as stated includes the absence at the hearing, should not be counted as circumstance for the determination of the sanction for committing the offence, as it is the offence itself.
  - The club holds also that the development of women football cannot be harmed or impeded in any way by a club’s fielding of an ineligible player. The same applies for the integrity of the competition as the above is a common offence of medium to little seriousness.
- Finally the club notes a number of subjective elements and mitigating circumstances that must temper the original sanction imposed by the Control, Ethics and Disciplinary Body:
- The seriousness of the offences which must be deemed as medium to low seriousness in contrast to match fixing, bribery and corruption and doping.
  - The club’s involvement that is mainly restricted to the decisions taken by one sole individual deprived the club from the opportunity to admit the infringement of a player’s eligibility, which would be a strong mitigating circumstance and additionally burdened the club with an extra offence, namely “failure to abide to the decisions of the UEFA Organs”.
  - The club’s financial capacity taken into account its budget (50’000€) and the 30.000€ fine imposed on the club by the CEDB is an unrealistic penalty, utterly disproportionate to the Club’s financial capability. It exceeds by far not only the bonus given to PAOK by UEFA, but also the total annual revenue of the department, reaching the 3/5 of its annual budget.
  - The sporting consequences on an amateur club and its players. The team will become unattractive to any skilled and ambitious players and to any

potential officials or executives willing to interfere, thus the department that now struggles to exist and develop women's football will eventually be dissolved. And there is no other international competition for women football Clubs and thus, to deprive our amateur players from the goal to play in the next UWCL will affect their will to continue playing and their efforts to develop their skills will be in vain.

23. On 22 November 2017, the UEFA ethics and disciplinary inspector submitted his reply to the appeal, requesting that it be rejected and the costs charged accordingly.
24. The more detailed arguments made by the parties in support of its written submissions are set out below in as far as they are relevant.

### **III. Hearing**

25. On 1 February 2018, a hearing was held.
26. The Chairman of the Appeals Body opened the appeal hearing, noted the presence of the Appellant and the UEFA Ethics and Disciplinary Inspector.
27. Afterwards, the Chairman explained the procedure to be followed. He reminded the parties of the composition of the Appeals Body and told them that everything they and the Appeals Body said during the hearing would be recorded. No objection was raised.
28. The floor was given to the parties and the witnesses proposed by the Appellant who, in substance, reiterated the arguments given in their written pleadings and developed and maintained their requests.

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

29. Article 30 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
30. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 58 (2) DR).

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

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

31. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.

32. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.
33. 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.*
34. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
35. According to Article 39 UEFA Women Champions League Regulations (WUCL Regulations):
- 39.1 *In order to be eligible to participate in the competition, players must be registered with UEFA within the requested deadlines to play for a club and fulfil all the conditions set out in the following provisions. Only players who are duly registered with UEFA by means of the player list can validly serve pending suspensions.*
  - 39.2 *Players must be duly registered with the association concerned in accordance with the association's own rules and those of FIFA, notably the FIFA Regulations on the Status and Transfer of Players.*
  - 39.3 *Each player taking part in the competition must be in possession of a player's registration licence issued by her association or a valid passport or identity card, each containing her photograph and giving full particulars of her date of birth (day, month, year). The referee or the UEFA match delegate may ask to see the passports/identity cards of the players listed on the match sheet.*

- 39.4 *Players who are 16 years of age by the end of the calendar year when the match is played are eligible to play.*
- 39.5 *All players must undergo a medical examination to the extent provided for by the UEFA Medical Regulations.*
- 39.6 *The club bears the legal consequences for fielding a player who is not named on the player list, or who is otherwise not eligible to play.*
- 39.7 *In the course of a season, a player is eligible to play only for one single club in this competition. Exceptionally, if a player fulfils the two following conditions, she may play for another club which is also taking part in this season's competition:*
- a. The player has not been fielded for any UEFA Women's Champions League matches by the first club in question. (The fact that her name may have appeared on a match sheet does not mean that she actually played. Only her registration by the referee as having been fielded counts in this respect.)*
  - b. The player concerned is eligible to play for the other club by the deadlines set in Paragraph 40.02 provided that she is registered with the UEFA administration in accordance with the aforementioned procedure.*
- 39.8 *The UEFA administration decides on questions of player eligibility. Challenged decisions are dealt with by the UEFA Control, Ethics and Disciplinary Body.*

B. In the case in hand

36. This case is about a club, PAOK, which admittedly fielded a player who wasn't neither in the player's list nor in the match sheet for the UEFA Women's Champions League match against SC Bettembourg played on 22 August 2017. In fact, and admitted by the club itself, the player who played the match used the identity of another player who indeed was in the player's list and in the match sheet, but not physically present. Briefly, she unduly used the identity of a different player.
37. Despite the efforts of the UEFA delegate, the UEFA Administration and even the UEFA Control, Ethics and Disciplinary Body by means of a decision of 26 September 2017, to get the truth out of this situation, the club has been steadily reluctant to provide any useful information until facing the appealed decision.
38. The above circumstances have resulted in the appealed decision of the CEDB of 18 October 2017. According to this decision, the club is excluded from participating in the next two UEFA club competitions for which it would otherwise qualify – the second exclusion under probation for two years, and a fine against the club of €30'000.
39. Appellant contends that only the ineligible player offence is under scrutiny in these proceedings. The other infringements are merely a consequence of the latter and, consequently, should not be examined as separated infringements.
40. It is recalled that the charges pressed against the club in this case foresee four different infringements. In particular, and as exposed above, the club is facing the following charges:

player's eligibility Article 11 DR , visual check of players identity Article 39 (3) UWCL Regulations, incidents of non-sporting nature Article 11 DR, failure to abide to the decisions of the UEFA Organs for the Administration of Justice, Article 11 DR.

41. In particular, the Appeals Body deems that any of the above misconducts of the club relates to a specific provision. These need to fulfil specific conditions in order to trigger a particular disciplinary measure. Without entering into the question as if the club is responsible for any of the said infringements, the question about the number of different incidents to be assessed by the UEFA disciplinary body correspond to the above mentioned charges that by themselves and separately lead to the opening of independent disciplinary proceedings. Consequently and due to the specific circumstances of each potential infringement, these need to be assessed in a separate manner.
42. Consequently, it is obvious that the above has resulted in a sequence of disciplinary proceedings opened against the club leading to the current disciplinary proceedings comprehending all the infringements and resulting in the appealed decision of the Control, Ethics and Disciplinary Body of 18 October 2017.
43. Bearing the above in mind, the Appeals Body understands that the key aspects of this case involve the following legal questions:
  - Is the club responsible for each of the infringements?
  - Is the sanction proportionate?

#### **Is the club responsible for each of the infringements pressed against it?**

44. First and foremost, it is recalled again that the club core argument is that these proceedings should mainly deal with two sole infringements, i.e. ineligible player and failure to abide a decision of the Organs for Administration of Justice. Summarily the club holds that there is one main infringement being the cause of all the others. Appellant deems that as a consequence this case needs to be examined as a chain of events triggered in its origin by the fielding of a player who was using the identity of another one.
45. As established, the argument of one sole infringement from which all the others derive must be dismissed. Again, each of the misconducts for which the Appellant is charged justifies by itself the opening of independent disciplinary proceedings.
46. The fact that all these infractions allegedly resulted from the club's intention to hide or to avoid being caught is completely irrelevant and is even illustrative of the unacceptable attitude of the club throughout these proceedings.
47. As stated above, the club was found guilty by the Control, Ethics and Disciplinary Body for the following infringements: Player's eligibility Article 11 DR Visual check of players identity Article 39 (3) UWCL Regulations; Incidents of non-sporting nature Article 11 DR; Failure to abide to the decisions of the UEFA Organs for the Administration of Justice, Article 11 DR.
48. With regard to the first infringement, the player's eligibility during the match played between PAOK and SC Bettembourg on 22 August 2017, the club admits that it fielded a

player, Christine Tsakiri, who was neither in the player's list nor in the match sheet. Instead, Ms Tsakiri used the identity of another, Eleni Giannou.

49. According to the club's submissions Ms Tsakiri was in the original player's list of 23 players, but, due to financial reasons, this list was cut to 19 players, being the latter list the one sent to the Hellenic Football Association – now without the name of Ms Tsakiri included in it. However the club insists that the player Ms Tsakiri fulfilled, in principle, the personal capacities to play. Also the club points to the fact that Bettembourg is an inferior club from a competitive perspective, being the participation of Ms Tsakiri not aimed at seeking any advantage.
50. It is noted that only after having been punished by the Control, Ethics and Disciplinary Body on 18 October 2017 – the appealed decision, the club has openly recognized that its player used the identity of another one. Illustrating is the club's assertion that everything had been the result of the mismanagement of one sole person who is the responsible of the women section of the club and has constantly taken the wrong decisions.
51. Consequently, as the infringement is admitted not only by the club, but also by both players Ms Giannou and Ms Tsakiri, and corroborated by the evidence in the case in hand, the player Christine Tsakiri wasn't eligible to play the match. Briefly, Ms Tsakiri, was not listed in the player's list nor included in the match sheet, she used the identity of another person.
52. The club insists that the infringement originated from the actions of the team Manager Mr Proussalis who excluded some players from the list at his own discretion.
53. However, this is no reason to exempt the club from its responsibility for fielding a player who is not named in the player list or in the match sheet. In this regard, Article 11 DR and Article 39.06 WUCL Regulations are crystal clear as regards who must bear the legal consequences, i.e. only the club.
54. The Appeals Body deems that as the infringement is comprehensively established, the club must bear the legal consequences for fielding a player who is not named on the player list, or who is otherwise not eligible to play in accordance with Article 11 DR and 39.06 WUCL Regulations.
55. Regarding the second infringement, the failure to proceed to visual check identity, this Appeals Body recalls that according to Article 39.03 UWCL Regulations the UEFA delegate may ask to see the passports/identity cards of the players listed on the match sheet.
56. In the case in hand, it derives from the circumstances of this case that the delegate of the match between PAOK and KS Vlaznia tried on several occasions to proceed to the visual check of the passport of Eleni Giannou, who was in the player's list and also included in the match sheet of the previous match of the club, i.e. the match played against SC Bettembourg on 22 August 2017.
57. The club again admits that it didn't provide the delegate with the passport of the player listed on the match sheet. In this context, the club infers that it did not intend nor attempt

to prevent the visual check of Eleni Giannou by concealing the player or her legal documents or by any other means. The reason why the visual check failed when the 4th official read the name of "Eleni Giannou" in the team's locker room was claimed to be the absence of the player who had never been in Bosnia. Accordingly, the Appellant maintains the view that that it did not voluntarily fail to cooperate in the visual check and further inquiries of the UEFA Delegate, as was mistakenly stated in the CEDB's decision.

58. The Appeals Body fails to understand the reasoning of the club. It seems that Appellant simultaneously admits that it did avoid to present the passport to the delegate for a visual check, but at the same time, and surprisingly, argues that it didn't provide this document because the player didn't travel with the team. This argument is ill-founded.
59. It appears from the documents at hand and the own statements of Appellant that it certainly avoided to provide the passport of Ms Giannou for a visual check –or to admit the situation, because they knew the consequences this would imply, i.e. the club fielded an ineligible player during the match played against SC Bettembourg on 22 August 2017.
60. Having the above in mind, as a matter of fact, and admittedly, the club failed to cooperate with the delegate infringing hereby Article 39.03 UWCL Regulations.
61. With regard to the infringement of a non-sporting nature contemplated in Article 11 DR, this UEFA disciplinary body deems that the latter are focused on the persistent attitude of Appellant to avoid providing the Ethics and Disciplinary Inspector with the relevant information to clarify the facts of this case.
62. It derives from the circumstances of this case and the documents of the parties that Appellant prior to the first CEDB decision of 21 September 2017 failed to comply with the general principles of conduct enshrined in Article 11 DR. It was so because the club either submitted misleading information, either lied to the EDI and the Control, Ethics and Disciplinary Body, and, further, avoided to submit any information after being requested so.
63. First, the only submissions filed by the Appellant in the course of the proceedings leading to the said decision referred basically, and only, to the scope of the protest lodged by KS Vllaznia against PAOK (i.e. for fielding an ineligible player during a different match played days before against Bettembourg in UWCL). In particular, on this occasion, the Appellant expressly stated that there was no reason to use, in the place of one of its players, another player, here Christine Tsakiri, since Ms. Tsakiri already belonged to the team, she was not sanctioned and she was eligible to participate in the tournament. According to the pictures submitted by KS Vllaznia, there is a concurrence in such photos between the two athletes and therefore there may have been a misunderstanding, or even other intentional, reasons of KS Vllaznia, to submit such protest.
64. Now it is proven that all the above statements given by the club are incorrect, misleading and in some points completely false. In this regard, the club points to the fact that it was the club itself who was misled by the person responsible for the Women department of the club, Mr Prousalis. Allegedly, this person told the club that the case had been transferred

to an external lawyer who drafted the above mentioned statements and signed by the club's Vice-President.

65. The Appeals Body deems that the arguments raised by the club concerning the inaccuracy of its statement during the investigation phase are completely irrelevant. Only the club is liable for the misconducts of those persons connected to it (Article 8 DR). UEFA can't be the one paying and accepting the negligent attitude of clubs, first by appointing the wrong persons to deal with their administrative and legal issues, and, second, for not implementing a monitoring process over the veracity of those documents issued to defend its position. As correctly established by the appealed decision of the Control, Ethics and Disciplinary Body, it is demonstrated that the club was providing wrong and misleading information, as well as lying before the UEFA Organs of Administration of Justice.
66. Second, as stated above, the club didn't answer to the numerous intents of the Ethics and Disciplinary Inspectors to clarify some aspects of this case, e.g. if the player Eleni Giannou travelled to Bosnia and, if so, if she played the match.
67. The Appeals Body deems that the attitude of the club is intolerable. As establish by the CAS in several awards, sporting governing bodies have restricted investigatory powers (CAS 2009/A/1920 at para 85). It follows that every information that the parties may provide during the course of the disciplinary proceedings, in case these are accurate, is of great help to the duties of the UEFA disciplinary bodies. Here, the Appeals Body applauds the position of the Control, Ethics and Disciplinary Body to decide on a complex case like this one on the basis of very limited evidence, which was due to the misbehaviour of the Appellant.
68. Again, it is clear now that the club, allegedly by means of Mr Proussalis, avoided to give this information because by doing so it would have admitted the previous infringements. However, the club still insists in that this circumstance supports the view that in fact the club is facing only one infringement, because the subsequent sanctions derive from the first and admitted incident of fielding an ineligible player.
69. But, as established before, this argument is unfounded and ill conceived. It would be far too easy for clubs facing multiple infringements to rely solely on one incident arguing that this one roots at the origin of all the rest and, therefore, only be sanctioned for the "source" incident. This isn't reasonable neither from a legal nor from a practical point of view. Briefly, PAOK should have respected the UEFA regulations. It could have avoided the current situation by taking the correct decisions, which, in substance, was to truly cooperate with UEFA in this case. Illustrative is the fact that if it had stopped at the very beginning, its current disciplinary situation would've been completely a different one.
70. Illustrative is also the fact that it decided to fully cooperate once it received the sanction imposed by the CEDB on 18 October 2017 – the appealed decision.
71. It seems evident to this UEFA disciplinary body that every cooperation is essential for clarifying the facts of a case. It is even more important in those situations, as the case in hand, in which one of the parties is in possession of the critical/essentials elements of the

case, such as the passport of the players and the evidence that one of the players was or not using the identity of another player.

72. Bearing the above in mind, the Appeals Body considers that Appellant has repeatedly infringed its duty of cooperation which derives from the respect of the principles of sportsmanship, integrity and fair play enshrined in Article 11 DR.
73. Finally, this UEFA disciplinary body needs to examine the infringement as regards to not abiding by the decisions of the UEFA Organs for the Administration of Justice.
74. From the factual circumstances of this case it derives that on 21 September 2017, the Control, Ethics and Disciplinary Body ordered the club to submit seven days after this decision all the information requested by the UEFA Ethics and Disciplinary Inspector to complete her report. Later, on 26 September 2017, UEFA reminded the club about its obligation to provide the above mentioned information, specifying the exact documents and evidence to be provided.
75. Following the lack of any reaction of the club in this respect, on 3 October 2017, UEFA opened disciplinary proceedings against the club, again insisting the club to submit the required information. In addition, it informed that a hearing would deal with the matter and summoned both players Ms Tsakiri and Giannou, as well as demanded the club to inform about its representatives to attend the hearing.
76. Again, neither the club nor the players reacted to any of these requests. None of the players nor any representative of the club attended the hearing.
77. It follows from the above, that the Control, Ethics and Disciplinary Body issued a clear order towards the club to force the latter to provide the required information. The club clearly didn't abide by the decision of the Control, Ethics and Disciplinary Body, not even after being reminded days after the decision was issued or once the disciplinary proceedings had been opened also on the basis of this new infringement.
78. Only now with the appealed decision, after the Control, Ethics and Disciplinary Body imposed a sanction for several infringements committed, the Appellant reacts by admitting that it intentionally didn't abide out of fear of being caught or, more worrisome, because an official of the club was hiding this information from the club's board. This is no excuse and is in some extent an aggravating circumstance in this case.
79. The club argues that it didn't acknowledge this dramatic situation because it was managed by one sole person. It only was made aware once it received the appealed CEDB decision.
80. This is irrelevant for the reasons already expressed above. Briefly, the club must abide to the decisions of the Organs of Administration of Justice. From the factual circumstances of the case it derives that either the so called management of the club already knew about this first decision and voluntarily decided not to react to the previous requests, or it was so negligent not having a proper organisation to be aware of such a serious situation – accepting here that the club board was not informed of the first CEDB decision of 22

September 2017. In both cases, UEFA can't be made responsible of the club's own failings or negligent attitude.

81. To recapitulate, the *iter* of this case shows numerous infringements of a serious nature. Apart from the infringement relating to the eligibility of the player Christine Tsakiri and her use of another player's identity to play a match, it has been proven that the club has repeatedly disregarded the indications coming from the UEFA officials, UEFA Administration and the Ethics and Disciplinary Inspector. This resulted in the unacceptable and unexpected situation of PAOK not abiding to a decision coming from a UEFA disciplinary body, here the CEDB decision of 21 September 2017. Only this infringement puts the whole system into jeopardy. This is completely unacceptable.
82. Consequently, the Appeals Body confirms the Control, Ethics and Disciplinary Body decision and deems that the club infringed each and every charged pressed against it in the course of the current proceedings.

### **Is the sanction proportionate?**

83. It is the Appeals Body's constant practice to consider the Control, Ethics and Disciplinary Body's power of discretion to have been abused or exceeded if the first-instance body bases its decision on untrue or erroneous elements, does not apply fundamental legal principles, considers irrelevant facts or does not consider essential circumstances whose evaluation is compelling. In the opinion of the Appeals Body, none of this applies here.
84. The Appeals Body is of the opinion that the Control, Ethics and Disciplinary Body neither abused nor exceeded its broad powers of discretion. Its decision complies with the principles of legality – to the extent of its power of appreciation – and proportionality.
85. In particular and based on Article 23 DR, the UEFA disciplinary bodies determine 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.
86. With respect to the proportionality of the sanction, this UEFA disciplinary body refers to jurisprudence of CAS and in particular to CAS 2013/A/ 31139 and CAS 2012/A/2762, according to which, allegedly, "the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence". It follows that an appeals body has a very limited and restricted competence in this respect.
87. It is recalled that the Appeals Body finds that some mitigating circumstances submitted by the club are in fact aggravating circumstances and provides several factors that, in the opinion of the Appeals Body, lead to conclude that the club failed to prove that the sanction imposed in the appealed decision is evidently and grossly disproportionate.

88. As already established by the CEDB, the main principles that must guide the participation of teams at UEFA competitions are fair play, sportsmanship and integrity – Article 11 DR. The circumstances of this case expose a situation being exactly the opposite expression of what is expected from a club participating in UEFA competitions. It is recalled that the UEFA Women Champions League competition is the flagship competition of Women club football.
89. The Appeals Body shares this opinion as far as this situation had an impact in women's football. The efforts and professionalism levels achieved by the other competitors throughout the said competition are all of a sudden been violently attacked by the demonstrated and neglectful attitude of the club. It not solely harms the other direct competitors of this club, but the competition and the development of women football in general, which seems to be finally acquiring the deserved recognition.
90. Whereas the club insists that the above is not the case, the Appeals Body deems that in a similar situation, e.g. in relation to the UEFA Champions League, with renowned clubs as it is PAOK, the disciplinary consequence would uncontestably be of the same magnitude as those currently evaluated.
91. Appellant contests in general terms the circumstances evaluated by the Control, Ethics and Disciplinary Body in order to reach the appealed sanction. However, for the reasons already expressed in previous paragraphs and for those developed below, the Appeals Body shares in full the list of aggravating circumstances noted by the first instance.
92. For the sake of completeness it is recalled that the Control, Ethics and Disciplinary Body identified and took into account, amongst others, but in particular, the following concrete circumstances:
- the seriousness and multiplicity of the offences committed;
  - the serious impact that the behaviour of the club has in the competition and the image of UEFA in general;
  - the repeated and voluntary lack of cooperation of the club in a sensitive matter as it is the clarification of the eligibility of one of its players;
  - the failure to abide to a decision of the Control, Ethics and Disciplinary Body;
  - the voluntary absence of the club's representatives and the players at the hearing after being expressly summoned by the UEFA disciplinary body;
  - the impact to the integrity and the smooth running of the competition caused by the behaviour of the club and the negative consequences it may have on the development of women football.
93. Further, Appellant in its statements addresses to the fact that the sanction imposed by the Control, Ethics and Disciplinary Body will have an impact on the sporting performance of the club and the players. On the one hand the club infers that in case of an exclusion the team will become unattractive to any skilled and ambitious players and to any potential officials or executives willing to interfere, thus the department that now struggles to exist and develop women's football will eventually be dissolved. On the other hand, the club states that to deprive the amateur players from the goal to play in the next UWCL will impede their will to continue playing and their efforts to develop their skills will be in vain.

94. The Appeals Body can't comply with the arguments of the club insofar it can't blame the UEFA disciplinary bodies to impose sanctions that are perfectly according to the regulations. The aim of sanctions is two folded. On the one hand sanctions are aimed at punishing offenders and, on the other hand, to deter similar attitudes to happen again.
95. In the case in hand, the seriousness and sequence of misconducts don't allow for lenient sanctions. Only the fact of not abiding by decisions of the UEFA Organs for Administration of Justice in the manner exposed in the case in hand is reason enough to impose a sanction consisting of excluding the club from UEFA competitions. It is significant in this case the persistent attitude of the club of not cooperating neither with the Ethics and Disciplinary Inspector nor with the Control, Ethics and Disciplinary Body. It has been demonstrated beyond any reasonable doubt that the club repeatedly lied, tried to mislead the UEFA disciplinary bodies and failed steadily to cooperate in this case. The first statements as regards to the presence of Ms Giannou during the match played against SC Bettembourg are illustrative in this sense.
96. Bearing the above in mind, the club can't blame the UEFA disciplinary bodies for assessing in good manner the aggravating and mitigating circumstances in a situation in which the club has tried to circumvent the UEFA regulations, its duties towards the UEFA officials, Ethics and Disciplinary Inspectors and the UEFA disciplinary bodies.
97. Further, this UEFA disciplinary body has taken into consideration the fact that the club has no previous records. However, given the nature of the infringements, this is not enough to justify a reduction in the punishment imposed by the Appeals Body.
98. The club also points to a number of previous decisions taken by the UEFA disciplinary bodies that would allegedly expose the disproportionality of the sanction imposed by the Control, Ethics and Disciplinary Body. For instance it submits a decision of the CEDB taken on 12 September 2013 on PAOK for not complying with a decision of the Organs of Administration of Justice, a decision of the Appeals Body of 30 October 2012 for infringing whereabouts regulations and a decision of the Appeals Body of 2 June 2014 regarding the admission criteria of the UEFA Europa League Regulations.
99. It needs to be underlined that there is no previous record similar to the case in hand. Specifically the case mentioned by Appellant of FC PAOK dealt with acts of hooliganism perpetrated by FC PAOK supporters inside the stadium in a match meant to be behind closed doors. As for the rest of the cases they have nothing in common with the current one and, consequently, the comparison is completely inadequate and unfortunate.
100. It goes without saying that the replacement of identity, combined with an admitted and repeated lack of cooperation and with the addition of failing to abide by the decision of the Organs for the Administating of Justice, is a particularly serious infringement.
101. As said, none of the cases used by Appellant are comparable to the one in hand, neither from a material nor from a procedural perspective. Again, none of them have the combination of infringements mentioned above. Specifically the example relating to match

fixing is misleading as it refers to the admission criteria of clubs to participate at UEFA club competitions for which the measure to apply is, first, of an administrative nature, i.e. not of a sanctionary nature, and second, is expressly fixed in the UEFA club regulations (e.g. Article 4.02 UCL and UEL Regulations).

102. If the Appellant wanted to make a comparison with match fixing sanctions, a more adequate comparison, if any, would have been with those sanctions imposed on clubs ranging between 3 and 8 years of exclusion on the basis of infringements against Article 12 DR.
103. As such, the sanction to fine the club and to exclude the club from participating in two UEFA club competitions for which it would otherwise qualify – the second exclusion to be deferred for a probationary period of two years, is a logical step taken by UEFA in light of the range of sanctions at its disposal pursuant to Article 6 DR.
104. A different question is if the quantity of the fine imposed is also proportionate. Here, the club addresses to its financial capacity. In this regard, it refers to the fact that it is an amateur team with an annual budget of 50'000€, being the bonus of participating at UEFA competitions of 12'000€. Consequently, the 30'000€ imposed on the club is unrealistic and disproportionate with regard of the financial capacity of the club.
105. The Appeals Body deems that after considering the above statements, it complies with the assertion that, specifically, the amount of the fine in combination with the exclusion of two UEFA competitions for which the club would otherwise qualify – the second one under probation, is disproportionate. It is recalled that the club states that it received 12'000€ for its participation.
106. Having in mind the above, a fine of 30'000€ goes beyond the original purpose of punishing and deter potential similar misconducts. If taken for granted the arguments of the club, a 30'000€ would imply that even allowing the team to play the next UEFA competition it would create additional costs. This added to the fact that PAOK is an amateur team, the amount 30'000€ seems too harsh in these circumstances.
107. It is in fact the amount of 12'000€ received for participating in the current UEFA WUCL season which seems more appropriate when imposing a fine against PAOK, rather than a random figure of 30'000€ which, as said, would enlarge the effects of the sanction beyond the exclusion to participate at the next UEFA competition imposed over the club.

## **VI. Costs**

108. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 44 (2) DR).
109. It is considered justified to charge all of the costs of this case to the Appellant.

## Decision of 1 February 2018

FC Barcelona  
(field invasion, media matters)

### **Circumstances of the case**

In the present case, one of the Club's supporter jumped over the LED boarding in front of the East Stand and attempted to invade the pitch, but was stopped by the stewards that promptly reacted before he could run on the field of play. Also, it was reported that only three players from the Club passed through the mixed zone for interviews and in general, the club hasn't fulfilled media obligations. In view of all of the above, the CEDB deemed that a fine of € 25'000 was the appropriate sanction for the abovementioned violations.

The Club in its Appeal stated that due to the Catalonia independence movement and the high risk of possible incidents at the match, the preparation of the match was at a very high level and additional security measures were taken in this specific game to avoid and, if necessary, deal with a pitch invasion, such as the deployment of an extremely high number of additional stewards and security personnel. Moreover, the Club held that although it may be held liable for the behavior of its supporters, the present case does not concern a supporter of the Club and thus, in accordance with the jurisprudence, the club is not responsible. As to the media matters, the Club accepts the violations, while however alleging that the sanction for it is disproportionately high.

**Legal framework** Article 16 (2) (a) UEFA Disciplinary Regulations, Article 48.01 of the UEFA Champions League Regulations.

### **Decision**

The CEDB on 16 November 2017 imposed a fine of € 25'000 on the Club. The Appeals Body on 1 February 2018 dismissed the appeal lodged by FC Barcelona and confirmed the CEDB's decision.

Ad hoc Chairman: Michael Maessen (NED)

Members: Gianluca D'Aloja (ITA)  
Thomas Cayol (FRA)  
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's decision of 16 November 2017 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by the parties in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. Briefly, the most relevant facts in the light of the official reports and the documents of the case file can be summarized as follows:

*UEFA Media officer informed me that players of FC Barcelona didn't respect obligations for media activities. Only 3 players of home team passed through "mixed zone".*

*In Min. 69, attempted Field of Play incursion was observed by one supporter who jumped over the LED boarding in front of the East Stand. Promptly reaction by the stewards who stopped the supporter before he could run on the Field of Play.*

*Very good reaction of stewards when one fan of home team (from East stand) tried to make pitch invasion. He was stopped before he entered the field of play and after that removed from the stadium and handed to the police.*

3. On 16 November 2017, the Control, Ethics and Disciplinary Body imposed a fine of €25'000 on FC Barcelona (the "Appellant"; the "club") for the violation of the UEFA Champions League Regulations regarding TV-broadcasting and media matters and for a violation of Article 16 (2) (a) of the UEFA Disciplinary Regulations for an attempt to invade the field of play.
4. The Decision with grounds was notified to the Appellant on 6 December 2017.

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

5. On 8 December 2017, Appellant announced its intention to lodge an appeal against the Decision.
6. On 13 December 2017, Appellant requested the Chairman of the Appeals Body to extend and set a new deadline to lodge the grounds of appeal until 5 January 2018. Said request was accepted by the Chairman of the Appeals Body on 14 December 2017.
7. On 5 January 2018, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:

The field invasion

- a. The Appellant stated that in light of the current state of affairs in connection with the Catalonia independence movement, and the high risk of possible incidents at the match, the preparation of the match was at a very high level and additional security measures were taken by the club to ensure the safety at the stadium, as confirmed by the UCL Delegate and the Security Officer. Additional measures were taken in this specific game to avoid and, if necessary, deal with a pitch invasion, such as the deployment of an extremely high number of additional stewards and security personnel.
- b. Considering the special circumstances of the match and all extra measures taken by Appellant, the measures proved to be effective as no pitch invasion took place, reason why no sanction should be imposed on the club, given that the decision against the Appellant for insufficient organization cannot be upheld as the Appellant managed to prove that it has not been negligent in any way in the organization of the match.
- c. Moreover, the Appellant held that although it may be held liable for the behavior of its supporters, the present case does not concern a supporter of the club and thus, in accordance with the jurisprudence, the club is not responsible. The individual that tried to invade the pitch had a purchase ticket and a shirt written "Help Catalonia, Save Europe", clearly showing he was not a fan of the club, but had other reasons to attend the match. The explanations given by the CEDB in the appealed decision are not sufficient in this regard, since there are no objective signs of the perpetrator supporting FC Barcelona, a "pro Catalonia" t-shirt cannot be enough.
- d. Art. 16 (2) DR states that a sanction "may be imposed" which means that sanctions are not automatic, therefore it should be considered the specific circumstances of the match, the fact that the match was neither interrupted nor affected by the failed attempt as well as that proceedings were opened against the individual.
- e. Alternatively, only a warning or a reprimand would be appropriate, especially in view of the various mitigating circumstances speaking in favor of the Appellant and the impeccable organization and preparation of the organization of the match by the Appellant. The Appellant further refers to previous decision of the UEFA disciplinary bodies for similar violations, alleging that the fine imposed on the Appellant was disproportionately high.

The violation of media obligations

- f. As to the media matters, FC Barcelona accepts the violations, while however alleging that the sanction for it is disproportionately high.
8. No hearing was held, as the Appellant did not request for it. Consequently, the proceedings have been conducted in writing only.

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

9. Article 30 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."
10. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
11. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 65 (2) DR).

### IV. Legal Considerations Of The Appeals Body

#### The attempted invasion of the field of play

##### A. Applicable legal framework.

12. Pursuant to Article 52 of the UEFA Statutes, as well as Article 60 of the UEFA Disciplinary Regulations (DR), the Appeals Body is competent to deal with the case.
13. In light of the above, the UEFA Statutes, rules and regulations, in particular the DR are applicable to these proceedings.
14. 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.
15. 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 a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature;*
- f. *acts of damage;*
- g. *causing a disturbance during national anthems;*
- h. *any other lack of order or discipline observed inside or around the stadium.*

16. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. Merits

17. On a preliminary basis, the UEFA Appeals Body notes that the Appellant provided many arguments with regard to the organisation of the match and to the great efforts made by the Appellant with regard to the organization, security and the preparation of the match under scrutiny.
18. However, the UEFA Appeals Body also recalls that disciplinary proceedings were not opened for failures with regard to the organization of the match, i.e. there were no proceedings for a potential violation of Art. 40 of the UEFA Safety and Security Regulations and the protection of the pitch. As far as the attempted pitch invasion is concerned, disciplinary proceedings were only opened for the behaviour of the Appellant's supporters and for a potential violation of Art. 16 (2) (a) DR, by applying the principle of strict liability enshrined in Art. 8 DR. Quite on the contrary, the UEFA Appeals Body acknowledges that in view of the extraordinary political circumstances in Catalonia, it appears like the organization and preparation of the match met the required highest standards.
19. With this being established, this UEFA disciplinary body understands that the scope of the proceedings need to find an answer to the main questions raised, which is whether or not the perpetrator who attempted to invade the pitch was a supporter of the Appellant or not, and whether or not the sanction imposed by the CEDB for the behaviour of the alleged supporter of the Appellant was proportionate or not.
20. In the following paragraphs the UEFA Appeals Body will proceed to answer both questions.

a) Was the perpetrator a supporter of the Appellant?

21. According to the official report of the UEFA match delegate, the man who tried to storm the pitch was a supporter of the home-team.
22. The Appeals Body notes the arguments provided by the Appellant who had essentially argued that the mere fact that a spectator in the stadium is wearing a pro-Catalonia shirt would not necessarily mean that such spectator would be automatically considered a supporter of the Appellant.
23. The Appeals Body also recalls the line of arguments from the CEDB that the concept of "supporters" is an open one. In this regard, the CEDB had referred to the jurisprudence of the CAS which accepts UEFA's approach in its regulations to the notion of supporters, leaving an open definition and providing UEFA with a more comprehensive and reasonable scope of action on disciplinary matters. The CEDB, by referring to said jurisprudence, stressed that the use of the term "supporter" must remain open in order to be able to act against conducts by individuals that could harm the aims and values of UEFA (CAS 2007/A/1217 Feyenoord vs UEFA).

24. Having recalled both the arguments provided by the Appellant and the CEDB, taking into account all the information on file, i.e. particularly the official reports, the UEFA Appeals Body concurs with the conclusions drawn by the CEDB in its Decision.
25. This disciplinary body recalls that Art. 45 DR stipulates that the official reports provided by UEFA are presumed to be accurate, shifting the burden of proof on whoever challenges the accuracy of such reports.
26. In this match under scrutiny, the UEFA match delegate in his official report had stated that the perpetrator who was attempting to invade the pitch was a supporter of the Appellant. This means that the burden of proof to not only suggest but proof otherwise was on the Appellant.
27. However, the UEFA Appeals Body notes that the Appellant failed to do exactly that, by merely referring to potential ambiguities and other possible interpretations and theories with regard to the affiliation of the perpetrator. When the Appellant argued that the mere fact that the man was wearing a pro-Catalonia shirt was not sufficient for the CEDB to establish that said man was a supporter of the Appellant, it obviously misinterprets that the burden of proof would have quite contrarily obliged the Appellant to provide proof that said man was not a supporter of the Appellant, and not vice-versa. Simply raising doubts and providing an alternative theory does not meet such requirement.
28. Consequently, the Appeals Body complies with the view of the CEDB in that applying the principle of strict liability as described in Articles 8 and 16 (2) (a) DR, the Appellant 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*).
29. Again, this UEFA disciplinary notes that the Appellant also before this instance hasn't put forward any arguments which would breach the accuracy of the official UEFA report which expressly refers to the attempted pitch invasion by one of the Appellant's supporters (emphasis added) and is presumed to be accurate under Article 45 DR.
30. Consequently, the Appellant is responsible for any violation conducted by its supporters against the DR and, as it was decided by the CEDB, had to be punished accordingly.

b) The proportionality of the sanction

31. It is the Appeals Body's constant 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.
32. This UEFA disciplinary body recalls that of the total fine of €25'00 which was imposed on the Appellant, €10'000 of such fine was awarded for the attempted pitch invasion. The UEFA Appeals Body further notes that the CEDB had rightfully applied of Art. 6 (5) DR and Annex A (I), which stipulates a fine of €5'000 for a first violation of Art. 16 (2) (a) DR and €8'000 for

a second violation. The UEFA Appeals Body further recalls that the Appellant was already sanctioned for pitch invasions and attempts of it on three separate occasions.

33. Consequently, only by applying the abovementioned articles, it appears like the fine of €10'000 for said infringement was clearly justified. Even though the Appellant suggests otherwise and stresses that the CEDB had the discretion to an extent that it "may" impose a sanction (or not), the UEFA Appeals Body has no indication to assume that by choosing the concrete sanction the CEDB would have abused or exceeded its power of discretion. Quite on the contrary, the Appeals Body is convinced that the CEDB had no other choice than to impose a sanction on the Appellant, taking into account the previous record of the Appellant with regard to such violations.
34. Therefore, the UEFA Appeals Body comes to the conclusion that as far as the CEDB's decision in relation to the attempted pitch invasion is concerned, the Appeal of the Appellant is dismissed.

### **The media matters**

#### A. Applicable legal framework.

35. Pursuant to Article 52 of the UEFA Statutes, as well as Article 60 of the UEFA Disciplinary Regulations (DR), the Appeals Body is competent to deal with the case.
36. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Disciplinary Regulations are applicable to these proceedings.
37. 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.
38. According to Article 71.03 UCLR:

*"After the match, a mixed zone must be set up for the media on the way from the dressing rooms to the team transport area. This area – accessible only to coaches, players and representatives of the media, to offer reporters opportunities to conduct interviews – must include a sectioned-off area reserved for audiovisual rights holders, UEFA.com and club TV channels nearest the dressing rooms. In addition, the UEFA media officer may instruct the club to provide individual sections for audiovisual non-rights holders, audio media and written press. The home club must ensure that the whole mixed zone is safe for players and coaches to walk through. All players from both teams who have participated in the match, either in the starting line-up or as substitutes, are obliged to pass through the entire mixed zone in order to conduct interviews with the media. Clubs are responsible for ensuring that the relevant players pass through the mixed zone."*

39. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. Merits

40. The Appeals Body notes that the Appellant "*accepts its responsibility in relation to the violation of the media obligations contained in the TV – Broadcast Regulations – Competition Regs*" and only asks for a proportionate sanction.
41. As it was stated above, it needs to be recalled that it is the Appeals Body's constant 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.
42. The facts of this case can be regarded as established and the Appeals Body notes that the Appellant does not dispute its breach of the UCLR and its obligations with regard to media matters, while at the same time not providing any arguments or reference points which could lead this Appeals Body to the conclusion that the actual sanction of €15'000 imposed by the CEDB for such violation would be disproportionate, abusing or exceeding its power of discretion.
43. The Appeals Body acknowledges that the CEDB has applied Art. 6 (5) DR and Annex A (VII) which provides for standard sanctions, and has taken into account the fact that the Appellant has already be punished for the same violation in the recent past. The Appeals Body also recalled the content of the Decision and considered the fact that the CEDB had specifically explained why the standard sanction had to be increased under the present circumstances in application of Art. 23 DR.
44. Again recalling that the Appellant did not provide any arguments pertaining to these circumstances, the Appeals Body has no grounds to assume or come to the conclusion that the CEDB would have wrongfully imposed a sanction of €15'000 on the Appellant for the violation of the UCLR concerning the club's media obligations.
45. Consequently, the Appeals Body decides to dismiss the Appeal also regarding the media matters.

**V. Costs**

46. 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 51 (2) DR).
47. In this case, since these proceedings were conducted in writing the costs will be lower. Consequently, the costs of the proceedings are € 1'000 (minus the appeal fee), to be borne by the Appellant whose Appeal was rejected.

## Decision of 1 February 2018

F.C. København  
(Stairways blocked)

### **Circumstances of the case**

In the case at hand, it was reported that the Club's supporters were using the stands for "standing room", thereby sometimes blocking the stairways in the area. The CEDB came to the conclusion that the Club as the host and match organiser violated Article 38 of the UEFA Safety and Security Regulations and decided to impose a fine of €12'000 on the Club.

The Appellant in its appeal deems that it provided an adequate number of stewards and security personnel in the away section during the match and had no knowledge of any blocking of stairways, stating that the pictures show only a couple of spectators standing in a passageway for a brief moment whereas nothing has impeded the free flow of spectators. Therefore, the Appellant suggest that the delegate report seems unfounded and the fine should be annulled.

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

### **Decision**

The Appeals Body on 1 February 2018 decided to confirm the decision of the CEDB and to dismiss the Appeal of the Appellant.

Chairman: Pedro Tomás (SPA)  
Vice-Chairman: Michael Maessen (NED)  
Members: Gianluca D'Aloja (ITA)  
Thomas Cayol (FRA)  
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 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 Appeals Body proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by F.C. København (the "Appellant") 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 in the light of the official reports and the documents of the case file can be summarized as follows:

*Away team fans were using the stands for standing room only sometimes blocking the stairways in the area.*

3. On 16 November 2017, the Control, Ethics and Disciplinary Body imposed a fine of €12'000 for the blocking of stairways and the violation of Article 38 of the UEFA Safety and Security Regulations.
4. The Decision with grounds was notified to the Appellant on 11 December 2017.

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

5. On 13 December 2017, the Appellant announced its intention to appeal against the Decision.
6. On 15 December 2017, the Appellant filed its grounds for appeal. In substance the Appellant deems that it provided an adequate number of stewards and security personnel in the away section during the match and had no knowledge of any blocking of stairways, stating that the pictures show only a couple of spectators standing in a passageway for a brief moment whereas nothing has impeded the free flow of spectators. Therefore, the Appellant suggest that the delegate report seems unfounded and the fine should be annulled.
7. No hearing was held, as the Appellant did not request for it. Consequently, the proceedings have been conducted in writing only.

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

8. Article 30 (4) DR states as follows: "The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body."

9. The Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
10. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 65 (2) DR).

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

##### **A. Applicable legal framework.**

11. Pursuant to Article 52 of the UEFA Statutes, as well as Article 60 of the UEFA Disciplinary Regulations (DR), the Appeals 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.
13. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.
14. 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.
15. 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.*"
16. 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.

##### **B. Summary of the Appellants position**

17. Regarding the blocking of stairways, the Appellant submits the following arguments:
  - a. The Appellant refers to the UEFA delegate's report, according to which the preparation, stadium, home security and crowd behavior (home) were considered excellent.
  - b. The Appellant also points out alleged inaccuracies to the UEFA delegate's report and states that for this reason the Appeals Body should take into account the video surveillance footage and the Appellant's statements.

- c. The Appellant further affirms having provided an adequate number of stewards and security personnel in the away section during the match and having no knowledge of any blocking of stairways, providing photos of the video surveillance footage.
- d. According to the Appellant, due to the placement of the UEFA match delegate and the away section, the latter was only able to monitor "blocking of stairways" after the match was finished through the control room and not in connection with the entire game, to estimate the alleged blocking.
- e. The Appellant deems that the pictures show only a couple of spectators standing in a passageway for a brief moment and nothing has impeded the free flow of spectators. Therefore, the UEFA match delegate's report seems unfounded and the fine should be annulled.
- f. Alternatively, the Appellant requests the reduction of the fine, invoking the principle of proportionality. In this respect, the Appellant refers to the jurisprudence CAS 2015/A/3926 FC Gelsenkirchen-Schalke 04 v. UEFA, in which a fine in the amount of €10,000 was imposed for blocking of stairways during the whole match among other things.

### C. Merits

18. This UEFA disciplinary body understands that the scope of the proceedings need to find an answer to two main questions:
  - a. Is the infringement of this case, i.e. the blocking of stairways and/or passageways established?
  - b. Is the sanction proportionate?
19. In the following paragraphs the UEFA Appeals Body will proceed to answer both questions.
  - a) The violation of Article 38 of the UEFA Safety and Security Regulations
20. With regard to the blocking of stairways the UEFA match delegate clearly states that supporters of the away-team were sometimes blocking the stairways in the area.
21. The Appellant deems that there is no infringement of Article 38 UEFA Safety and Security Regulations as the away-supporters were merely occasionally walking up and down the stairs, a circumstance which could allegedly be seen on the relevant video footage and images.
22. It is recalled that the UEFA match delegate reported that stairways in the away-supporter sector were obstructed. In this sense, it has always been UEFA's position that the presumption of accuracy attached to these reports doesn't need any further evidence. This has also been confirmed by the CAS in CAS 2015/A/3926 at para 79 and 80.
23. Briefly, the Appeals Body recalls, as did CAS, that to assume a "regulatory assumption" in this case makes sense. Only the Appellant has the domestic authority (Hausrecht) and only the Appellant has the possibility to secure the evidence in this respect, for example to take pictures or video recordings of the behaviour of the spectators. UEFA has not this possibility

to secure evidence and for this reason UEFA depends on a regulatory assumption that the official's report describes the event correctly. Without this assumption UEFA would not be able to prove violations of UEFA regulations since it has no access to the respective evidence.

24. Again, the UEFA match delegate's report described a violation of Article 38 of the Security and Safety Regulations. In the said report it was stated that the stairways in the away-supporter sector were sometimes blocked. As stated above, the statement in the official report enjoys the regulatory assumption of being correct, thereby shifting the burden of proof on the Appellant. The UEFA match delegate's report has to be analysed in a consolidated matter and it describes a violation of Article 38 UEFA Safety and Security Regulations.
25. The Appellant in its statements stressed by means of analysing the video footage and video surveillance of the match, as well as photos of the stands, the Appeals Body would be in a position to acknowledge that the stairways were in fact kept free, given that only sometimes spectators were walking up and down the stairs, briefly standing maybe while however not impeding the free flow of spectators.
26. In the following, the Appeals Body thoroughly analysed the documents and photos provided by the Appellant, showing certain captions from surveillance cameras inside the stadium.
27. However, taking into account the relevant photos, this disciplinary body can merely note that such photos only show small sectors of the stadium at a certain minute of the match, while no actual video evidence was provided by the Appellant by means of which the Appeals Body could have come to the conclusion that the stairway were kept free throughout the entire match.
28. In this regard, this disciplinary body again wishes to emphasize that the burden of proof to show in these appeal proceedings that the stairways were kept free is on the Appellant, given that the report of the UEFA match delegate in which he described the partial blocking of stairways is presumed accurate.
29. In view of the Appeals Body, the Appellant failed to meet its burden of proof with regard to the reported blocking of stairways. Especially in a case where the official report already stated that the stairways were sometimes blocked, it is obviously not sufficient to provide nothing but six screenshots from the surveillance camera from random moments during the match.
30. Therefore, the Appeals Body comes to the conclusion that the Appellant did not provide proof which would raise doubts as regards the presumed accuracy of the official report, which is why the latter presumption prevails. Hence, the Appeals Body concluded that the blocking of stairways is established.

31. Bearing the above in mind, this disciplinary body agrees with the decision of the Control, Ethics and Disciplinary Body that Appellant must be held responsible for the insufficient organisation with regard to the blocking of stairways.

b) The proportionality of the sanction

32. This UEFA disciplinary body recalls that only applying Annex A (II) to the UEFA Disciplinary Regulations on the incident as regards the blocking of stairways would lead to a standard sanction of 12'000€, taking into account that the Appellant has already been punished once for the blocking of stairways, i.e. for a violation of Article 38 of the UEFA Safety and Security Regulations.
33. In addition to the standard sanction described above, in accordance with Article 6 (5) of the UEFA Disciplinary Regulations and its Annex A (II), the Appeals Body notes that the Appellant did not provide any arguments which could be taken into account as mitigating circumstances in application of Article 23 of the UEFA Disciplinary Regulations.
34. Likewise, the Appeals Body recalls that 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.
35. The Appeals Body holds that this was obviously not the case, given that the Control, Ethics and Disciplinary Body has thoroughly evaluated all circumstances, all evidence and has applied the standard sanction for the reported violation of the UEFA Disciplinary Regulations. In view of the violation at hand as well as the previous record of the Appellant, the Appeals Body agreed with the proportionality of the sanction applied by the Control, Ethics and Disciplinary Body.
36. On the basis of the above, the Appeals Body has no option first to uphold the approach of the Control, Ethics and Disciplinary Body's decision, to confirm the Decision and to dismiss the Appeal of the Appellant.

**V. Costs**

37. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 51 (2) DR).
38. In this case, since these proceedings were conducted in writing and the Appeal has been dismissed, the costs of the proceedings are € 1'000 (minus the appeal fee) to be borne by the Appellant.

## Decision of 24 May 2018

Tottenham Hotspur FC

(stairways blocked)

### **Circumstances of the case**

In the case at hand, it was reported by the UEFA match delegate that partially during the first half and during the complete second half of the match, the away supporters were blocking the stairways of the south east corner in the lower level which were not cleared by the stewards deployed by the Appellant. The CEDB in its decision of 22 March 2018 decided to fine Tottenham Hotspur FC, the Appellant, €12'000.

The latter argued that the Juventus supporters attempted to block the stairways of the southeast corner during the second half of the match but the Appellant's increased stewarding resources along with the Italian speaking supervisor prevented this from happening to the extent described by the UEFA match delegate and many of the supporters occupying the stairways for brief periods merely passing up and down the stairways to get to and from their seats to the concourse and back. In support for its explanations, the Appellant provided CCTV footage showing the minutes 20:48:16 until 20:49:51 as well as from 20:52:42 until 20:54:52, i.e. two sequences from the first half of the match. Additionally, the Appellant provided screenshots from 20:49:13 and 20:52:48, emphasizing that said images support its explanations, indicating that on both images it can be seen that no supporters are blocking any stairways.

**Legal framework** Article 38 UEFA Safety & Security Regulations.

### **Decision**

The UEFA Appeals Body comes to the conclusion that the CEDB's Decision in relation to the blocking of stairways was justified, which is why the Appeal of the Appellant was dismissed.

Chairman: Pedro Tomás (SPA)

Vice-Chairman: Michael Maessen (NED)

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

1. The elements set out below are a summary of the main relevant facts, as established by the Appeals Body on the basis of the decision rendered by the Control, Ethics and Disciplinary Body's (the "CEDB") decision of 24 May 2018 (the "Decision"), the official reports, the written submissions of the parties, the exhibits filed and the statements produced in the course of the Appeals Body proceedings. While the Appeals Body has considered all the facts, allegations, legal arguments and evidence submitted by Tottenham Hotspur FC (the "Appellant") 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 in the light of the official reports and the documents of the case file can be summarized as follows:

*"The crowd behaviour of the Juventus fans would have been excellent if it weren't for the fact that partially during the first half and during the complete second half the away fans were blocking the stairways (south east corner - lower level)."*

3. On 22 March 2018, the CEDB imposed a fine of €12'000 on the Appellant for the violation of Article 38 of the UEFA Safety and Security Regulations (the "SSR") and the failure 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.
4. The Decision with grounds was notified to the Appellant on 28 March 2018.

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

5. On 31 March 2018, the Appellant announced its intention to lodge an appeal against the Decision.
6. On 5 April 2018, the Appellant filed its grounds for appeal. In its statements, the Appellant, essentially, argued the following:
  - a. The Juventus supporters attempted to block the stairways of the southeast corner during the second half of the match but the Appellant's increased stewarding resources along with the Italian speaking supervisor prevented this from happening to the extent described by the UEFA match delegate and many of the supporters occupying the stairways for brief periods of time were merely passing up and down the stairways to get to and from their seats to the concourse and back.
  - b. Further, in the section III/15 of the grounds provided by the CEDB it is incorrectly stated that "It was decided by the responsible security officer to withdraw stewards

from the sector due to the behaviour of the away supporters.” This has been cited erroneously by the CEDB as one of the merits of the case and is simply not true. As explained in the original submission, consideration was given to this course of action due to the hostility of the away supporters and the safety of our staff but instead the Appellant chose to deploy additional stewards in the area in order to manage the situation.

- c. In support for its explanations, the Appellant provided CCTV footage showing the minutes 20:48:16 until 20:49:51 as well as from 20:52:42 until 20:54:52, i.e. two sequences from the first half of the match. Additionally, the Appellant provided screenshots from 20:49:13 and 20:52:48, emphasizing that said images support its explanations, indicating that on both images it can be seen that no supporters are blocking any stairways.
  - d. In conclusion, the Appellant states that the report submitted by the UEFA match delegate is inaccurate and the stairways in the south east corner were not blocked for the entire second half of the match.
7. No hearing was held, as the Appellant did not request for it. Consequently, the proceedings have been conducted in writing only.

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

8. Article 30 (4) of the UEFA Disciplinary Regulations (the “DR”) states as follows: “The Appeals Body has jurisdiction to hear appeals against decisions by the Control, Ethics and Disciplinary Body and to rule on particular urgent cases referred to it directly by the chairman of the Control, Ethics and Disciplinary Body.”
9. Appellant lodged its grounds for appeal by the set deadline and in the form required. The appeals fee was paid on time.
10. It follows that the Appeals Body has competence to decide on the present Appeal and that the Appeal is admissible. The Appeals Body may therefore consider its merits and can therefore re-examine the case in full, both factually and legally (Article 65 (2) DR).

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

#### **A. Applicable legal framework.**

11. Pursuant to Article 52 of the UEFA Statutes, as well as Article 60 DR, the Appeals Body 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.

13. According to Article 49 SSR, any breach of the said regulations may be penalised in accordance with the DR.
14. According to Article 2 SSR, the purpose of the regulations is to safeguard the safety and security of everyone present at a match. In order to achieve this, several provisions concerning spectator control are included in the regulations.
15. According to Article 38 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."*
16. According to Article 45 DR, facts contained in official UEFA reports are presumed to be accurate. Proof of their inaccuracy may, however, be provided.

B. Merits

17. The Appeals Body acknowledges that the only question to be answered in the case at hand is whether or not the report of the UEFA match delegate present at the match under scrutiny was correct when he noted that partially during the first half and during the entire second half the away fans were blocking the stairways.
18. In this regard, and on a preliminary basis, the Appeals Body notes that the CEDB did in fact err when it noted in par. 15 of the Decision that *"it was decided by the responsible security officer to withdraw stewards from the sector due to the behaviour of the away supporters"*. After careful review of the documents provided by the Appellant during the proceedings before the CEDB, it appears that the relevant CEDB panel misinterpreted the statements made by the Appellant and it holds true that the latter had in fact deployed additional stewards in the area in an attempt to deal with the blocking of stairways by the away-supporters. However, as it will be explained below, such circumstances have no decisive influence on the assessment of the case at hand.
19. Subsequently, the Appeals Body turned its attention to the further arguments of the Appellant, as well as to the evidence and in particular the CCTV footage which was provided by the latter.
20. On this note, this disciplinary body notes that the Appellant has provided two video exhibits: Exhibit A which shows stairways between 20:48:16 and 20:49:51, as well as Exhibit B which shows stairways between 20:52:42 and 20:54:52. Likewise, two further Exhibits C and D show still images taken from the surveillance cameras at 20:49:13 and 20:52:48.
21. In view of the aforementioned video and photo images, the Appeals Body agrees with the Appellant as it appears that during the moments captured on camera, the relevant stairways were kept free of spectators and remained accessible, i.e. the free flow was not impeded on said stairways during such moments.

22. Further, the Appeals Body then turned to the relevant report from the UEFA match delegate which refers to a partial blocking of stairways during the first half of the match, and a blocking of stairways during the entire second half of the match.
23. As it was noted above, such report enjoys the presumption of accuracy in accordance with Article 45 DR, and the Appeals Body recalls that the burden of proof to provide evidence for a potential inaccuracy of the official report is on the party relying on such alleged inaccuracy.
24. Furthermore, taking into account the content of Article 24 (2) DR, the Appeals Body further states that the applicable standard of proof to be applied in these proceedings is the comfortable satisfaction of the competent disciplinary body, i.e. here of the Appeals Body.
25. With this being established, this UEFA disciplinary body has to note however that the aforementioned CCTV images provided by the Appellant which were already analysed above only show a few moments during the first half of the match, to be precise during the first ten minutes of the match.
26. In this sense, the Appeals Body has to conclude that the evidence provided by the Appellant is not even sufficient to show an inaccuracy of the official report as far as it refers to the partial blocking of the stairways during the first half, given that said CCTV footage only covers ten minutes of the first half, whereas the remaining 35 minutes of the first half of the Match between approximately 20:55 and 21:30 are missing.
27. The same goes for the second half, for which the UEFA match delegate had reported a complete blocking of stairways, i.e. the obstruction of stairways throughout the entire second half. Yet, the Appellant does not provide any evidence whatsoever based on which this disciplinary body would have been able to conclude that the UEFA match delegate would have mistakenly observed the blocking of stairway during an entire (second) half of the Match. In this sense, the Appeals Body emphasizes that the legal obligation related to the evidence required in application of Article 45 DR and Article 24 (2) DR was for the Appellant to prove that the stairways were kept free throughout the entire match, and not only during isolated moments.
28. In view of all of the above, the Appeals Body comes to the conclusion that the Appellant did not provide sufficient evidence in support of its grounds for appeal. It is simply not sufficient to provide selected images of isolated points during match in order to prove that the blocking of stairways during the entire match (emphasis added) did not happen. Particularly with regard to the second half of the match, the Appeals Body recalls that the Appellant did not provide any piece of evidence in supporter of its arguments.
29. The Appeals Body in this regard wishes to stress the importance of the applicable regulations, such as Articles 2 and 38 SSR, which were introduced in order to maintain the safety and security of everyone present at the match.
30. In this regard, 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*).

31. Since the Appellant failed to provide conclusive evidence which would have shown to the comfortable satisfaction of this disciplinary body that the stairways were in fact kept free throughout the entire match, contrary to what was stated in the official reports, the Appeals Body has no other option but to agree with the CEDB's decision of 22 March 2018 that the Appellant had to be punished for the violation of Article 38 SSR.

a) The proportionality of the sanction

32. It is the Appeals Body's constant 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.
33. This UEFA disciplinary body recalls that a fine of €12'000 was imposed on the Appellant. The Appeals Body further notes that the CEDB had rightfully applied of Art. 6 (5) DR and Annex A (II), which stipulates a fine of €8'000 for a first violation of Art. 38 SSR and €12'000 for a second violation. The Appeals Body further recalls that the Appellant was already sanctioned once before for the blocking of stairways.
34. Consequently, only by applying the abovementioned articles, it appears like the fine of €12'000 for said infringement was clearly justified. The Appeals Body notes in this respect that the Appellant did not make an argument for a potential disproportionality of the fine which was imposed by the CEDB.
35. Therefore, the UEFA Appeals Body comes to the conclusion that the CEDB's Decision in relation to the blocking of stairways was justified, which is why the Appeal of the Appellant is dismissed.

**V. Costs**

36. The allocation of the costs of proceedings before the Appeals Body depends on the outcome of those proceedings. The Appeals Body decides at its own discretion how these costs are to be allocated to the various parties or borne by UEFA. The appeal fee is either deducted from the costs of proceedings or reimbursed (Article 51 (2) DR).
37. In this case, since these proceedings were conducted in writing the costs will be lower. Consequently, the costs of the proceedings are € 1'000 (minus the appeal fee), to be borne by the Appellant whose Appeal was rejected.



CFCB Adjudicatory Chamber

## Decision of 6 March 2018

FK Tirana  
(licensing criteria)

### **Circumstances of the case**

On 5 February 2018, the Club Financial Control Body (CFCB) Chief Investigator referred the case of the club KF Tirana to the CFCB Adjudicatory Chamber considering that the club had not fulfilled the club licensing criterion defined in Article 50bis of the UEFA Club Licensing and Financial Fair Play Regulations (CL&FFP Regulations) as a result of having overdue payables towards social/tax authorities as at 31 March 2017.

The club did not dispute the findings of the CFCB Chief Investigator, admitting the breach of Article 50bis of the CL&FFP Regulations.

The CFCB Adjudicatory Chamber deemed that the club had failed to satisfy the requirements of Article 50bis (1) of the CL&FFP Regulations and based on that, it obtained the licence issued by the Football Association of Albania not in accordance with the CL&FFP Regulations. The CFCB Adjudicatory Chamber considered appropriate to withhold all the UEFA revenues KF Tirana gained by participating in the competition considering the fact that KF Tirana should not have been admitted to the competition for failing to meet one of its admission criteria.

### **Decision**

The Adjudicatory Chamber of the CFCB decided that KF Tirana failed to satisfy the requirements of Article 50bis (1) of the CL&FFP Regulations and decided to withhold the amount of €215,000 corresponding to the UEFA revenues gained by the club by participating in the 2017/18 UEFA Europa League.

Chairman: José Narciso da Cunha Rodrigues (Portugal)

Vice-Chairmen: Christiann Timmermans (Netherlands)  
Louis Peila (Switzerland)

Members: Charles Flint (England)  
Adam Giersz (Poland)

## **PART I – Introduction**

1. On 5 February 2018, the Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of KF Tirana (the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether or not KF Tirana fulfilled the licensing criteria necessary to be awarded a licence to participate in UEFA club competitions during the 2017/18 season (a “UEFA Licence”), as established in the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “CL&FFP Regulations”), and whether or not KF Tirana was eligible to participate in the 2017/2018 UEFA Europa League.
3. In summary, the CFCB Adjudicatory Chamber shall analyse whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.
4. Unless otherwise stated, all figures referred to in this Decision have been rounded up or down (as the case may be) to the nearest thousand.

## **PART II – Reference by the CFCB Chief Investigator**

5. On 31 May 2017, the Football Association of Albania (the “FSHF”) provided UEFA with its list of licensing decisions for participation in the 2017/18 UEFA club competitions.
6. This list of licensing decisions indicated that the Club had been granted the UEFA Licence by the Club Licensing Appeals Body of the FSHF on 13 May 2017. The UEFA Licence had been previously refused by the Club Licensing First Instance Body of the FSHF on 4 May 2017.
7. On 15 June 2017, the club was admitted to the 2017/2018 UEFA Europa League.
8. As part of the monitoring process (Article 57 *et seq.* of the CL&FFP Regulations), the Club submitted to the UEFA Administration its completed monitoring documentation (comprising financial information as at 30 June 2017), including self-declarations by the Club indicating total overdue payables of €432,000 as at 30 June 2017 in respect of employees and towards social/tax authorities.
9. The CFCB Investigatory Chamber assessed the monitoring documentation of the Club and acknowledged the position regarding the Club’s overdue payables as at 30 June 2017.
10. On 15 September 2017, the CFCB Investigatory Chamber informed the Club that an investigation was opened against the Club because of the significant overdue payables as at 30 June 2017 and requested the Club to submit its updated monitoring documentation in accordance with Articles 65(2), 66(2) and 66bis(2) of the CL&FFP Regulations, in order to prove that it had no overdue payables towards other football clubs, in respect of employees and towards social/tax authorities as at 30 September 2017.

11. On the same occasion, the CFCB Investigatory Chamber imposed on the Club a conservatory measure consisting of temporarily withholding the UEFA revenues from the 2017/2018 UEFA club competitions that the club may be entitled to receive.
12. While performing a more detailed analysis of the overdue payables existing as at 30 June 2017, the CFCB Investigatory Chamber had some concerns on the validity of the UEFA licence which was received by the Club on 13 May 2017, considering that part of the declared overdue payables towards social/tax authorities as at 30 June 2017 was indicated by the Club as being already overdue as at 31 March 2017, which corresponds to the assessment deadline for overdue payables for UEFA Club Licensing.
13. As a consequence, on 19 September 2017, the CFCB Investigatory Chamber requested the licensor, the FSHF, to provide further comments with regard to the potential overdue payables of the Club as at 31 March 2017, including the payables position as at that date submitted by KF Tirana for club licensing purposes.
14. Based on the explanations provided by the FSHF, the CFCB Investigatory Chamber considered that it appears that an amount payable of Albanian Lek (ALL) 20,300,000 (equivalent to approximately €152,000) towards social/tax authorities was already overdue as at 31 March 2017.
15. The Club submitted to the UEFA Administration, via the CL/FFP IT Solution and the FSHF, its updated monitoring documentation (comprising financial information as at 30 September 2017), indicating that, by September 2017, it had settled the social/tax payables that were overdue as at 30 June 2017. It also indicated other overdue amounts as at 30 September 2017 in respect of employees which were considered by the CFCB Investigatory Chamber as not material enough to be referred to the CFCB Adjudicatory Chamber.
16. On 8 November 2017, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of the Club. Based on the identified overdue payables amounting to €152,000 as at 31 March 2017, the CFCB Investigatory Chamber questioned the fulfilment by the Club of the UEFA Club Licensing Criteria which must be fulfilled to obtain the licence necessary to participate in the 2017/18 UEFA club competitions.
17. Consequently, the CFCB Investigatory Chamber decided to continue the investigation previously opened and invited the Club and the Licensor, the FSHF, to submit further observations and/or evidence with regard to the payables identified as overdue as at 31 March 2017. The Club was also informed that the conservatory measure consisting of withholding the UEFA revenues previously imposed would remain in force.
18. On 1 December 2017, the FSHF stated in its observations before the CFCB Investigatory Chamber that the Club Licensing First Instance Body of the FSHF, on 4 May 2017, decided not to issue the UEFA licence to the Club *"because of the existing overdue payables to the tax authorities and because the incomplete information on payables that the club had presented"*, which decision was appealed by the Club. The Appeals Body accepted the appeal and granted the Club the UEFA Licence.
19. The FSHF stated that the decision of the Appeals Body *"was unexpected, to say the least, for FSHF because of the deficiencies of the club's application"*.

20. On 1 December 2017, the Club submitted its observations and it did not contest having overdue payables towards social/tax authorities as at 31 March 2017. In this respect, the Club stated that €84,000 has been paid by one of its shareholders and the remaining amount will be paid in 19 instalments from June 2017 until December 2018, in accordance with an agreement signed with the tax authorities on 10 May 2017.
21. On 8 December 2017, the CFCB Investigatory Chamber, headed by the CFCB Chief Investigator, Mr Yves Leterme, met in order to decide on the validity of the licence necessary to participate in the 2017/18 UEFA club competitions and the Club's fulfilment of the admission criteria to participate in the 2017/18 UEFA Europa League.
22. The CFCB Investigatory Chamber decided that KF Tirana has not fulfilled the club licensing criterion defined in Article 50bis of the CL&FFP Regulations as a result of having overdue payables towards social/tax authorities amounting to €152,000 as at 31 March 2017.
23. The CFCB Investigatory Chamber decided that, considering it was established a clear non-fulfilment of Article 50bis of the CL&FFP, the licence necessary to enter the UEFA club competitions which was granted to KF Tirana by the FSHF on 13 May 2017 was not issued in accordance with the CL&FFP Regulations. This means that the admission criterion defined in Article 4.01(c) of the *Regulations of the UEFA Europa League 2017/18 Season* (the "UEL Regulations") has not been fulfilled by KF Tirana and as a consequence, the latter was not eligible to participate in the 2017/18 UEFA Europa League.
24. Based on the above findings, the CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1)(d) of the Procedural rules governing the CFCB – Edition 2015 (the "Procedural Rules") and suggested that the CFCB Adjudicatory Chamber should impose a disciplinary measure on KF Tirana consisting of withholding €215,000, corresponding to the UEFA Revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
25. The CFCB Investigatory Chamber explained that it is appropriate to withhold all the UEFA revenues the Club gained by participating in the competition considering the fact that KF Tirana should not have been admitted to the competition for failing to meet one of its admission criteria.
26. The CFCB Chief Investigator also decided, on the basis of Article 41 of the Procedural Rules, to extend the conservatory measure that was imposed on 15 September 2017 on KF Tirana, consisting of temporarily withholding the UEFA revenues from the 2017/18 UEFA club competitions that the Club may be entitled to receive. This conservatory measure remains in force until the final decision of the CFCB Adjudicatory Chamber.

### **PART III – Jurisdiction of and procedure before the CFCB Adjudicatory Chamber**

27. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
28. On 7 February 2018, the CFCB Chairman informed the Club of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.

29. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 19 February 2018.
30. The Club made its written submission in accordance with the established deadline (the "Observations").
31. The members of the CFCB Adjudicatory Chamber convened on 6 March 2018 to consider the Club's case.
32. The quorum required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted their confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

#### **PART IV – Applicable rules and regulations**

33. This case concerns a possible violation of the CL&FFP Regulations. In particular, the present case concerns whether the Club fulfilled the criteria necessary to be awarded a UEFA Licence and whether or not KF Tirana was eligible to participate in the 2017/2018 UEFA Europa League. In summary, whether or not the licence obtained by the Club was in accordance with the CL&FFP.
34. Article 4.01(c) of the UEL Regulations states that, to be eligible to participate in the UEFA Europa League, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
35. According to Article 4.06 of the UEL Regulations, *"If there is any doubt as to whether a club fulfils the admission criteria defined in Paragraph 4.01(c) and Paragraph 4.01(d), the UEFA General Secretary refers the case to the UEFA Club Financial Control Body, which decides without delay upon the admission in accordance with the Procedural rules governing the UEFA Club Financial Control Body. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body"*. (emphasis added)
36. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (*inter alia*) intended to achieve the objectives set out in Article 2 of the CL&FFP Regulations:

*"1 These regulations aim:*

- a) to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
- b) to ensure that clubs have an adequate level of management and organisation;*

- c) *to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
- d) *to protect the integrity and smooth running of the UEFA club competitions;*
- e) *to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*

2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:

- a) *to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
- b) *to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;*
- c) *to introduce more discipline and rationality in club football finances;*
- d) *to encourage clubs to operate on the basis of their own revenues;*
- e) *to encourage responsible spending for the long-term benefit of football;*
- f) *to protect the long-term viability and sustainability of European club football."*

37. The Chapter 3 of the CL&FFP Regulations regulates the Licensing Criteria – Articles 16 to 52.
38. As per Article 16(1) of the CL&FFP Regulations the criteria defined in Chapter 3 must be fulfilled by clubs in order for them to be granted a licence to enter the UEFA club competitions.
39. Article 50bis of the CL&FFP Regulations is worded as follows:

*"1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) towards social/tax authorities as a result of contractual or legal obligations in respect of its employees that arose prior to the previous 31 December.*

*2 The licence applicant must submit to the auditor and/or the licensor a social/tax table showing:*

- a) *the amount payable (if any) to the competent social/tax authorities as at 31 December of the year preceding the licence season;*
- b) *any claim/proceedings pending.*

*3 The following information must be given, as a minimum, in respect of each payable towards social/tax authorities, together with explanatory comment:*

- a) *Name of the creditor;*
- b) *Any payable as at 31 December, including the due date for each unpaid element;*
- c) *Any payable as at 31 March (rolled forward from 31 December), including the due date for each unpaid element, together with explanatory comment and supporting evidence; and*
- d) *Amounts subject to any claim/proceedings pending.*

- 4 *The licence applicant must reconcile the total liability as per the social/tax table to the figure in the financial statements balance sheet for 'Accounts payable to social/tax authorities' or to the underlying accounting records.*
- 5 *The social/tax table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant."*

40. According to Article 54(1) of the CL&FFP Regulations, *"The monitoring process starts on submission by the licensor of the list of licensing decisions to the UEFA administration and ends at the end of the licence season".*

41. Article 72 of the CL&FFP Regulations reads as follows:

- "1 The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*
- 2 Any breach of these regulations may be dealt with by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body."*

42. Annex VIII of the CL&FFP Regulations defines the notion of *"overdue payables"* as follows:

- "1. Payables are considered as overdue if they are not paid according to the agreed terms.*
- 2. Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49, 50 and 50bis) and by 30 June and 30 September (in respect of Articles 65, 66 and 66bis) respectively that:*
  - a) it has paid the relevant amount in full; or*
  - b) it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
  - c) it has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision making bodies (licensor and/or UEFA Club Financial Control Body) consider that such claim has been brought or such proceedings have been opened for the sole purpose of avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*
  - d) it has contested to the competent authority under national law, the national or international football authorities or the relevant arbitration tribunal, a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision-making bodies (licensor and/or*

*UEFA Club Financial Control Body) that it has established reasons for contesting the claim or proceedings which have been opened; however, if the decision-making bodies (licensor and/or UEFA Club Financial Control Body) consider the reasons for contesting the claim or proceedings which have been opened as manifestly unfounded the amount will still be considered as an overdue payable; or*

- e) it is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or UEFA Club Financial Control Body) that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation and solidarity contributions."*

43. According to Article 3(1) of the Procedural Rules, the CFCB is competent to:

- "a) determine whether licensors have fulfilled their obligations and whether licence applicants have fulfilled the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations at the time the licence was granted;*
- b) determine whether, after the licence has been granted, licensees continue to fulfil the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- c) determine whether, after the licence has been granted, licensees fulfil the club monitoring requirements as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- d) impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations;*
- e) decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question."*

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

- " At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:*
- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*
- c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*
- d) refer the case to the adjudicatory chamber."*

45. Under Article 27 of the Procedural Rules:

- "The adjudicatory chamber may take the following final decisions:*
- a) to dismiss the case; or*
- b) to accept or reject the club's admission to the UEFA club competition in question; or*
- c) to impose disciplinary measures in accordance with the present rules; or*
- d) to uphold, reject, or modify a decision of the CFCB chief investigator."*

46. Under Article 28 of the Procedural Rules:

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

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

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

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

#### **PART V – Factual and legal appreciation by the CFCB Adjudicatory Chamber**

49. To be eligible to participate in the UEFA Europa League in the 2017/18 season, the Club must have a UEFA Licence. As explained in Article 16(1) of the CL&FFP Regulations, such licence can only be validly granted if all of the UEFA club licensing criteria in the CL&FFP Regulations are satisfied.

50. In the Observations, the Club did not address the issue concerning the UEFA licence granted by the FSHF. As to the existence of overdue payables as at 31 March 2017, the club states that one of its shareholders, Municipality of Tirana, paid €84,000 to the tax authorities and the remaining amount of €68,000 is still to be paid.

51. Having considered the evidence, in particular the findings of the CFCB Chief Investigator and the Observations, the CFCB Adjudicatory Chamber considers that:

##### Article 50bis of the CL&FFP Regulations – No overdue payables towards social/tax authorities

52. In its Observations, the Club did not dispute the existence of overdue payables towards the social/tax authorities as at 31 March 2017. On the contrary, the Club seems to recognize the existence of the overdue payables, indicating that it still has a debt in the amount of €68,000 towards the tax authorities.

53. The CFCB Adjudicatory Chamber thus considers that there is no doubt that the Club had overdue payables towards social/tax authorities amounting to €152,000 as at 31 March 2017, which appears to have been admitted by the Club before the CFCB Investigatory Chamber and Adjudicatory Chamber.
54. In the absence of any evidence from the Club to suggest the contrary and considering the Club actually admits having remaining debts towards the tax authorities, the CFCB Adjudicatory Chamber considers that an amount of one hundred and fifty two thousand Euros (€152,000) towards social/tax authorities was therefore, overdue as at 31 March 2017.
55. On this basis, the CFCB Adjudicatory Chamber accepts the finding of the CFCB Investigatory Chamber (as set out in Paragraph 22 of this Decision) that the Club has failed to satisfy the requirements of Article 50bis of the CL&FFP Regulations as a result of having overdue payables towards social/tax authorities amounting to €152,000 as at 31 March 2017.
56. It has been already been confirmed by the Court of Arbitration for Sport that *"The mere existence of overdue payables is indeed sufficient to declare the Appellant ineligible"* to a UEFA club competition.
- "The CL&FFP Regulations set out licensing criteria. As mentioned above, one of these requirements consists in the absence of overdue payables towards employees and social/tax authorities (Article 50 of the CL&FFP Regulations). Another one consists in the provision of annual financial statements, which must meet minimum disclosure requirements as per Annex VI and comply with accounting principles set out in Annex VII (Article 47 of the CL&FFP Regulations). In case of non-fulfilment of one of the above conditions the licence must therefore be refused and the club cannot be admitted to the UEFA competition."* - CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 84)

### Conclusions

57. The CFCB Adjudicatory Chamber determines that the Club has:
- (i) failed to satisfy the requirements of Article 50bis(1) of the CL&FFP Regulations; and
  - (ii) based on the foregoing, it obtained the licence issued by the FSHF not in accordance with the CL&FFP Regulations.

## **PART VI – Admission matters and disciplinary measures**

### Admission to the 2017/2018 UEFA Europa League

58. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which aim, *inter alia*, to protect the integrity and smooth running of the UEFA club competitions. This aim is of the utmost importance and is clearly threatened when clubs that have not met the UEFA licensing criteria are granted a UEFA Licence and then subsequently compete in the competitions. Such situations create a great deal of risk and uncertainty for UEFA, as competition organiser, and can undermine the sporting integrity of the competitions.

59. According to Article 4.01(c) of the UEL Regulations, to be eligible to participate in the competition, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
60. Article 4.06 of the UEL Regulations establishes that *"UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria (4.01(c) and (d) of the UEL Regulations) are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body"*.
61. In the present case, KF Tirana was granted a licence by the FSHF to participate in the 2017/2018 UEFA Europa League not in accordance with the CL&FFP Regulations, since it has been established that the Club failed to satisfy the requirements of Article 50bis(1) of the CL&FFP Regulations.
62. Following its admission to the 2017/2018 UEFA Europa League, the Club participated in the first qualifying round, and has already been eliminated from the competition.
63. The CFCB Adjudicatory Chamber has made it clear in a number of cases that the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally (in this regard, see paragraph 100 of case AC-01/2016, *Galatasaray Sportif Sınai ve Ticari Yatirimlar A.S.*).
64. This principle is of particular importance when it comes to assessing the eligibility of clubs for UEFA Licences. All clubs are subject to the same requirements and all clubs must be assessed on the same basis. To show undue leniency to a club that has not satisfied UEFA's club licensing criteria would be inconsistent with the inherent equality of the licensing system and must be avoided in order to maintain the value and integrity of the process.
65. On this basis and having regard to the fact that the Club has failed to satisfy one of the requirements of the CL&FFP Regulations, the CFCB Adjudicatory Chamber considers that the Club should not have been granted a UEFA Licence by the FSHF. It should therefore not have been admitted to the 2017/2018 UEFA Europa League.
66. The Club had already been admitted to the 2017/2018 UEFA Europa League, has already participated and it has already finished its participation in the 2017/2018 UEFA Europa League. It is therefore impossible for the CFCB Adjudicatory Chamber to reject, at this point of time, the admission to the 2017/2018 UEFA Europa League.
67. Consequently, considering that KF Tirana has not fulfilled the club licensing criterion defined in Article 50bis(1) of the CL&FFP as a result of having overdue payables towards social/tax authorities amounting to €152,000 as 31 March 2017, in accordance with Article 27(c) of the Procedural Rules, the CFCB Adjudicatory Chamber shall impose disciplinary measures in accordance with Article 29 of the Procedural Rules.
68. The CFCB Investigatory Chamber proposed that the CFCB Adjudicatory Chamber imposed disciplinary measure on the Club consisting of withholding €215,000, an amount

corresponding to the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League.

69. The Investigatory Chamber, on 15 September 2017, decided to impose a conservatory measure on the club temporarily withholding the UEFA revenues from the 2017/2018 UEFA Europa League which the club may be entitled to receive, which in case of KF Tirana corresponds to the amount of €215,000.
70. As previously mentioned, the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally. Therefore, the CFCB Adjudicatory Chamber deems necessary to take into account the particular circumstances of the case and the seriousness of the offence and respect the principles of equal treatment and proportionality, while assessing the appropriate disciplinary measure(s) to be imposed.
71. The CFCB Adjudicatory Chamber also considers that the sanction must serve as a sufficient deterrent to discourage clubs from breaching these rules and the disciplinary measures imposed must also be fair to those clubs who have participated in UEFA competitions in full compliance with these rules.
72. The fact that the Club participated in the 2017/2018 UEFA Europa League in breach of the CL&FFP Regulations should be taken into account when determining the appropriate disciplinary measure(s).
73. The Adjudicatory Chamber also takes into account, on the other hand, the fact that the Club spontaneously submitted accurate and correct information during the licensing process.
74. The CFCB Adjudicatory Chamber takes into account the amount of the payable overdue towards social/tax authorities as at 31 March 2017, i.e. €152,000.
75. In view of all the above circumstances, it decides that in the present case the withholding of the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League, i.e. €215,000, is the appropriate disciplinary measure.
76. In addition, costs of three thousand Euros (€3,000) are required to be paid by the Club, in accordance with Article 32(2) of the Procedural Rules.

## Decision of 6 March 2018

FK Vojvodina  
(licensing criteria)

### **Circumstances of the case**

On 5 February 2018, the Club Financial Control Body (CFCB) Chief Investigator referred the case of the club FK Vojvodina to the CFCB Adjudicatory Chamber considering that the club had not fulfilled the club licensing criterion defined in Article 50 of the UEFA Club Licensing and Financial Fair Play Regulations (CL&FFP Regulations) as a result of having overdue payables in respect of employees as at 31 March 2017.

The club accepted the existence of overdue payables in respect of employees as at 31 March 2017 and the arguments raised by the club do not change the fact that it did not comply with its obligations as established in the CL&FFP Regulations.

The CFCB Adjudicatory Chamber deemed that the club had failed to satisfy the requirements of Article 50 (1) of the CL&FFP Regulations and based on that, it obtained the licence issued by the Football Association of Serbia not in accordance with the CL&FFP Regulations. The CFCB Adjudicatory Chamber considered appropriate to withhold all the UEFA revenues FK Vojvodina gained by participating in the competition considering the fact that FK Vojvodina should not have been admitted to the competition for failing to meet one of its admission criteria.

### **Decision**

The Adjudicatory Chamber of the CFCB decided that FK Vojvodina failed to satisfy the requirements of Article 50 (1) of the CL&FFP Regulations and decided to withhold the amount of €215,000 corresponding to the UEFA revenues gained by the club by participating in the 2017/18 UEFA Europa League.

Chairman: José Narciso da Cunha Rodrigues (Portugal)

Vice-Chairmen: Christiann Timmermans (Netherlands)  
Louis Peila (Switzerland)

Members: Charles Flint (England)  
Adam Giersz (Poland)

## **PART I – Introduction**

1. On 5 February 2018, the Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of FK Vojvodina (the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether or not FK Vojvodina fulfilled the licensing criteria necessary to be awarded a licence to participate in UEFA club competitions during the 2017/18 season (a “UEFA Licence”), as established in the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “CL&FFP Regulations”), and whether or not FK Vojvodina was eligible to participate in the 2017/2018 UEFA Europa League.
3. In summary, the CFCB Adjudicatory Chamber shall analyse whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.
4. Unless otherwise stated, all figures referred to in this Decision have been rounded up or down (as the case may be) to the nearest thousand.

## **PART II – Reference by the CFCB Chief Investigator**

5. On 31 May 2017, the Football Association of Serbia (the “FSS”) provided UEFA with its list of licensing decisions for participation in the 2017/18 UEFA club competitions.
6. This list of licensing decisions indicated that the Club had been granted the UEFA Licence by the Club Licensing Appeals Body of the FSS on 26 May 2017. The UEFA Licence had been previously refused by the Club Licensing First Instance Body of the FSS because of incomplete financial documentation.
7. On 15 June 2017, the club was admitted to the 2017/2018 UEFA Europa League.
8. As part of the monitoring process (Article 57 *et seq.* – Chapter 2 - of the CL&FFP Regulations), the Club submitted to the UEFA Administration its completed monitoring documentation (comprising financial information as at 30 June 2017), including self-declarations by the Club indicating total overdue payables of €632,000 as at 30 June 2017 in respect of employees (€535,000) and towards social/tax authorities (€97,000).
9. The CFCB Investigatory Chamber assessed the monitoring documentation of the Club and acknowledged the position regarding the Club’s overdue payables as at 30 June 2017.
10. On 15 September 2017, the CFCB Investigatory Chamber informed the Club that an investigation was opened against the Club because of the significant overdue payables as at 30 June 2017 and requested the Club to submit its updated monitoring documentation

in accordance with Articles 65(2), 66(2) and 66bis(2) of the CL&FFP Regulations, in order to prove that it had no overdue payables towards other football clubs, in respect of employees and towards social/tax authorities as at 30 September 2017.

11. On the same occasion, the CFCB Investigatory Chamber imposed on the Club a conservatory measure consisting of temporarily withholding the UEFA revenues from the 2017/2018 UEFA club competitions that the club may be entitled to receive.
12. While performing a more detailed analysis of the overdue payables existing as at 30 June 2017, the CFCB Investigatory Chamber had some concerns on the validity of the UEFA licence which was received by the Club on 26 May 2017, considering that part of the declared overdue payables as at 30 June 2017 was indicated by the Club as being already overdue as at 31 March 2017, which corresponds to the assessment deadline for overdue payables for UEFA Club Licensing.
13. As a consequence, on 19 September 2017, the CFCB Investigatory Chamber requested the Licensor, the FSS, to provide further comments with regard to the potential overdue payables of the Club as at 31 March 2017, including the payables position as at that date submitted by FK Vojvodina for club licensing purposes
14. The FSS provided its observations and additional documentation to the CFCB Investigatory Chamber, including an audit report dated 23 May 2017 ("BDO report") provided by the Club as part of its licensing documentation which indicated overdue payables in respect of employees equivalent to €562,000 as at 31 March 2017. The FSS admitted "*certain delay* [of the Club] *in settlement of the liabilities as of 31 March 2017*", but decided however to grant the UEFA licence to the club "*with the remark that the Club will ensure that such things no longer occur in the future as well as that the Appeals Commission is not brought into such situation again*".
15. The Club submitted to the UEFA Administration, via the CL/FFP IT Solution and the FSS, its updated monitoring documentation (comprising financial information as at 30 September 2017), indicating that, it had settled all payables that were overdue as at 30 June 2017 and that no amount was overdue towards other football clubs, in respect of employees and towards tax/social authorities as at 30 September 2017.
16. On 8 November 2017, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of the Club and acknowledged that the Club settled the amounts overdue as at 30 June 2017 by September 2017. However, based on the identified overdue payables as at 31 March 2017, the CFCB Investigatory Chamber questioned the fulfilment by the Club of the UEFA Club Licensing Criteria which must be fulfilled to obtain the licence necessary to participate in the 2017/18 UEFA club competitions.
17. Consequently, the CFCB Investigatory Chamber decided to continue the investigation previously opened and invited the Club and the Licensor, the FSS, to submit further observations and/or evidence with regard to the payables identified as overdue as at 31 March 2017. The Club was also informed that the conservatory measure consisting of withholding the UEFA revenues previously imposed would remain in force.

18. On 29 November 2017, the FSS explained in its observations before the CFCB Investigatory Chamber that out of the alleged overdue payables of Serbian Dinar (RSD) 70,202,000 (equivalent to approximately €562,000) in respect of employees as per the payable table of the BDO report, the amount of RSD 49,509,000 (equivalent to approximately €390,000) appeared to be settled with employees (deferred based on agreements with employees) on 31 March 2017; as a result, only RSD 20,693,000 (equivalent to approximately €172,000) were overdue as at 31 March 2017. As indicated in the BDO report, this amount was finally paid by 19 May 2017.
19. The FSS stated that *"by not granting the licence, and objectively there were grounds for that, players' results of the last competing season would be completely devaluated, which could have great negative impact of their further development"*.
20. On 30 November 2017, the Club submitted its observations and it did not contest having overdue payables in respect of employees as at 31 March 2017.
21. On 8 December 2017, the CFCB Investigatory Chamber, headed by the CFCB Chief Investigator, Mr Yves Leterme, met in order to decide on the validity of the licence necessary to participate in the 2017/18 UEFA club competitions and the Club's fulfilment of the admission criteria to participate in the 2017/18 UEFA Europa League.
22. The CFCB Investigatory Chamber decided that FK Vojvodina has not fulfilled the club licensing criterion defined in Article 50(1) of the CL&FFP Regulations as a result of having overdue payables in respect to employees amounting to €172,000 as at 31 March 2017.
23. The CFCB Investigatory Chamber decided that, considering it was established a clear non-fulfilment of Article 50 of the CL&FFP, the licence necessary to enter the UEFA club competitions which was granted to FK Vojvodina by the FSS on 26 May 2017 was not issued in accordance with the CL&FFP Regulations. This means that the admission criterion defined in Article 4.01 (c) of the *Regulations of the UEFA Europa League 2017/18 Season* (the "UEL Regulations") has not been fulfilled by FK Vojvodina and as a consequence, the latter was not eligible to participate in the 2017/18 UEFA Europa League.
24. Based on the above findings, the CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1)(d) of the Procedural rules governing the CFCB – Edition 2015 (the "Procedural Rules") and suggested that the CFCB Adjudicatory Chamber should impose a disciplinary measure on FK Vojvodina consisting of withholding €215,000, corresponding to the UEFA Revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
25. The CFCB Investigatory Chamber explained that it is appropriate to withhold all the UEFA revenues the Club gained by participating in the competition considering the fact that FK Vojvodina should not have been admitted to the competition for failing to meet one of its admission criteria.

26. The CFCB Chief Investigator also decided, on the basis of Article 41 of the Procedural Rules, to extend the conservatory measure that was imposed on 15 September 2017 on FK Vojvodina, consisting of temporarily withholding the UEFA revenues from the 2017/18 UEFA club competitions that the Club may be entitled to receive. This conservatory measure remains in force until the final decision of the CFCB Adjudicatory Chamber.

### **PART III – Jurisdiction of and procedure before the CFCB Adjudicatory Chamber**

27. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
28. On 7 February 2018, the CFCB Chairman informed the Club of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
29. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 19 February 2018.
30. The Club made its written submission in accordance with the established deadline (the "Observations").
31. The members of the CFCB Adjudicatory Chamber convened on 6 March 2018 to consider the Club's case.
32. The quorum required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted their confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

### **PART IV – Applicable rules and regulations**

33. This case concerns a possible violation of the CL&FFP Regulations. In particular, the present case concerns whether the Club fulfilled the criteria necessary to be awarded a UEFA Licence and whether or not FK Vojvodina was eligible to participate in the 2017/2018 UEFA Europa League. In summary, whether or not the licence obtained by the Club was in accordance with the CL&FFP.
34. Article 4.01(c) of the UEL Regulations states that, to be eligible to participate in the UEFA Europa League, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
35. According to Article 4.06 of the UEL Regulations, *"If there is any doubt as to whether a club fulfils the admission criteria defined in Paragraph 4.01(c) and Paragraph 4.01(d), the UEFA General Secretary refers the case to the UEFA Club Financial Control Body, which decides*

*without delay upon the admission in accordance with the Procedural rules governing the UEFA Club Financial Control Body. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body*". [emphasis added]

36. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (*inter alia*) intended to achieve the objectives set out in Article 2 of the CL&FFP Regulations:

"1 *These regulations aim:*

- a) *to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
- b) *to ensure that clubs have an adequate level of management and organisation;*
- c) *to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
- d) *to protect the integrity and smooth running of the UEFA club competitions;*
- e) *to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*

2 *Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:*

- a) *to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
- b) *to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;*
- c) *to introduce more discipline and rationality in club football finances;*
- d) *to encourage clubs to operate on the basis of their own revenues;*
- e) *to encourage responsible spending for the long-term benefit of football;*
- f) *to protect the long-term viability and sustainability of European club football."*

37. The Chapter 3 of the CL&FFP Regulations regulates the Licensing Criteria – Articles 16 to 52.

38. As per Article 16(1) of the CL&FFP Regulations the criteria defined in Chapter 3 must be fulfilled by clubs in order for them to be granted a licence to enter the UEFA club competitions.

39. "Article 50 of the CL&FFP Regulations states that:

- "1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) in respect of its employees as a result of contractual or legal obligations that arose prior to the previous 31 December.*
- 2 Payables are all forms of consideration due in respect of employees as a result of contractual or legal obligations, including wages, salaries, image rights payments, bonuses and other benefits. Amounts payable to people who, for various reasons, are no longer employed by the applicant fall within the scope of this criterion and must be settled within the period stipulated in the contract and/or defined by law, regardless of how such payables are accounted for in the financial statements.*
- 3 The term "employees" includes the following persons:*
  - a) All professional players according to the applicable FIFA Regulations on the Status and Transfer of Players; and*
  - b) The administrative, technical, medical and security staff specified in Articles 28 to 33 and 35 to 39.*
- 4 The licence applicant must prepare and submit to the licensor an employees table showing:*
  - a) all employees who were employed at any time during the year up to 31 December; i.e. not just those who remain at 31 December;*
  - b) all employees in respect of whom there is an amount outstanding to be paid as at 31 December, irrespective of whether they were employed during the year up to 31 December; and*
  - c) all employees in respect of whom there is a claim pending before the competent authority under national law or proceedings pending before a national or international football authority or relevant arbitration tribunal.*
- 5 The following information must be given, as a minimum, in respect of each employee:*
  - a) Name of the employee;*
  - b) Position/function of the employee;*
  - c) Start date;*
  - d) End date (if applicable);*
  - e) The balance payable as at 31 December, including the due date for each unpaid element;*
  - f) Any payable as at 31 March (rolled forward from 31 December), including the due date for each unpaid element, together with explanatory comment; and*
  - g) Amounts subject to any claim/proceedings pending.*
- 6 The licence applicant must reconcile the total liability as per the employees table to the figure in the financial statements balance sheet for 'Accounts payable towards employees' or to the underlying accounting records.*

- 7 *The employees table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant."*
40. According to Article 54(1) of the CL&FFP Regulations, *"The monitoring process starts on submission by the licensor of the list of licensing decisions to the UEFA administration and ends at the end of the licence season"*.
41. Article 72 of the CL&FFP Regulations reads as follows:
- "1 The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*
- 2 Any breach of these regulations may be dealt with by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body."*
42. Annex VIII of the CL&FFP Regulations defines the notion of *"overdue payables"* as follows:
- "1. Payables are considered as overdue if they are not paid according to the agreed terms.*
- 2. Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49, 50 and 50bis) and by 30 June and 30 September (in respect of Articles 65, 66 and 66bis) respectively that:*
- a) it has paid the relevant amount in full; or*
  - b) it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
  - c) it has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision making bodies (licensor and/or UEFA Club Financial Control Body) consider that such claim has been brought or such proceedings have been opened for the sole purpose of avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*
  - d) it has contested to the competent authority under national law, the national or international football authorities or the relevant arbitration tribunal, a claim which has been brought or proceedings which have been opened against it by a*

*creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision-making bodies (licensor and/or UEFA Club Financial Control Body) that it has established reasons for contesting the claim or proceedings which have been opened; however, if the decision-making bodies (licensor and/or UEFA Club Financial Control Body) consider the reasons for contesting the claim or proceedings which have been opened as manifestly unfounded the amount will still be considered as an overdue payable; or*

- e) *it is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or UEFA Club Financial Control Body) that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation and solidarity contributions."*

43. According to Article 3(1) of the Procedural Rules, the CFCB is competent to:

- "a) determine whether licensors have fulfilled their obligations and whether licence applicants have fulfilled the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations at the time the licence was granted;*
- b) determine whether, after the licence has been granted, licensees continue to fulfil the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- c) determine whether, after the licence has been granted, licensees fulfil the club monitoring requirements as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- d) impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations;*
- e) decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question."*

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

- " At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:*
- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*
- c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*
- d) refer the case to the adjudicatory chamber."*

45. Under Article 27 of the Procedural Rules:

*"The adjudicatory chamber may take the following final decisions:*

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

46. Under Article 28 of the Procedural Rules:

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

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

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

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

#### **PART V – Factual and legal appreciation by the CFCB Adjudicatory Chamber**

49. To be eligible to participate in the UEFA Europa League in the 2017/18 season, the Club must have a UEFA Licence. As explained in Article 16(1) of the CL&FFP Regulations, such licence can only be validly granted if all of the UEFA club licensing criteria in the CL&FFP Regulations are satisfied.

50. In the Observations, the Club considers that the licensing process was correctly executed by the FSS and the Club met the necessary licensing conditions. The Club states that the existence of overdue payables in March 2017 was finally paid by 19 May 2017 and that the amount overdue was not significant.
51. The Club explains that it had "a misfortune of frequent changes of its top management" during the previous year which affected the Club's functioning. The Club also makes reference to the "usual business practice" in Serbia, where allegedly invoices are paid in average after 139 days, and states that the insolvency of most business in Serbia reflects on the Club's business and that the operations of the Club are linked to the untimely payments of its sponsors, debtors and services providers.
52. The Club highlights having managed to pay its creditors and not having overdue payables as at 30 September 2017.
53. The Club also indicates that it did not conceal the existence of the overdue payments and disclosed the correct and true data.
54. Having considered the evidence, in particular the findings of the CFCB Chief Investigator and the Observations, the CFCB Adjudicatory Chamber considers that:

Article 50 of the CL&FFP Regulations – No overdue payables in respect of employees

55. In its Observations, the Club accepted the existence of overdue payables in respect of employees as at 31 March 2017, which was paid by May 2017.
56. The arguments raised by the Club cannot be sustained and, in any case, they do not change the fact that the Club did not comply with its obligations and had overdue payables as at 31 March 2017.
57. As already confirmed by the Court of Arbitration for Sport (CAS), *"the clubs must not only fulfil the material requirements set in the regulations, but they also need to meet these conditions on a certain date"*. The CAS further explained the following:

*"In this regard, the Panel stresses that for the good organization of any competition, strict deadlines are inevitable. As stated by another CAS Panel (CAS 2008/A/1579), "[t]he matter of deadlines has to be considered under the principles of equality of treatment; it is a must to treat all the clubs and the national football associations the same way". In addition, the purpose of the deadline set forth in Article 50 of the CL&FFP Regulations is also to serve the interests of legal certainty and security, taking into consideration that UEFA Europa League first qualifying round usually takes place in early July.- CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 80)*

58. On this basis, the CFCB Adjudicatory Chamber accepts the finding of the CFCB Investigatory Chamber (as set out in Paragraph 22 of this Decision) that the Club has failed to satisfy the

requirements of Article 50(1) of the CL&FFP Regulations as a result of having overdue payables in respect to employees to €172,000 as at 31 March 2017.

59. It has been already been confirmed by the Court of Arbitration for Sport that *"The mere existence of overdue payables is indeed sufficient to declare the Appellant ineligible"* to a UEFA club competition.

*"The CL&FFP Regulations set out licensing criteria. As mentioned above, one of these requirements consists in the absence of overdue payables towards employees and social/tax authorities (Article 50 of the CL&FFP Regulations). Another one consists in the provision of annual financial statements, which must meet minimum disclosure requirements as per Annex VI and comply with accounting principles set out in Annex VII (Article 47 of the CL&FFP Regulations). In case of non-fulfilment of one of the above conditions the licence must therefore be refused and the club cannot be admitted to the UEFA competition."* - CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 84)

#### Conclusions

60. The CFCB Adjudicatory Chamber determines that the Club has:
- (i) failed to satisfy the requirements of Article 50(1) of the CL&FFP Regulations; and
  - (ii) based on the foregoing, it obtained the licence issued by the FSS not in accordance with the CL&FFP Regulations.

### **PART VI – Admission matters and disciplinary measures**

#### Admission to the 2017/2018 UEFA Europa League

61. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which aim, *inter alia*, to protect the integrity and smooth running of the UEFA club competitions. This aim is of the utmost importance and is clearly threatened when clubs that have not met the UEFA licensing criteria are granted a UEFA Licence and then subsequently compete in the competitions. Such situations create a great deal of risk and uncertainty for UEFA, as competition organiser, and can undermine the sporting integrity of the competitions.
62. According to Article 4.01(c) of the UEL Regulations, to be eligible to participate in the competition, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
63. Article 4.06 of the UEL Regulations establishes that *"UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria*

(4.01(c) and (d) of the UEL Regulations) *are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body*".

64. In the present case, FK Vojvodina was granted a licence by the FSS to participate in the 2017/2018 UEFA Europa League not in accordance with the CL&FFP Regulations, since it has been established that the Club failed to satisfy the requirements of Article 50(1) of the CL&FFP Regulations.
65. Following its admission to the 2017/2018 UEFA Europa League, the Club participated in the first qualifying round, and has already been eliminated from the competition.
66. The CFCB Adjudicatory Chamber has made it clear in a number of cases that the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally (in this regard, see paragraph 100 of case AC-01/2016, *Galatasaray Sportif Sinaı ve Ticari Yatirimlar A.S.*).
67. This principle is of particular importance when it comes to assessing the eligibility of clubs for UEFA Licences. All clubs are subject to the same requirements and all clubs must be assessed on the same basis. To show undue leniency to a club that has not satisfied UEFA's club licensing criteria would be inconsistent with the inherent equality of the licensing system and must be avoided in order to maintain the value and integrity of the process.
68. On this basis and having regard to the fact that the Club has failed to satisfy one of the requirements of the CL&FFP Regulations, the CFCB Adjudicatory Chamber considers that the Club should not have been granted a UEFA Licence by the FSS. It should therefore not have been admitted to the 2017/2018 UEFA Europa League.
69. Consequently, considering that FK Vojvodina has not fulfilled the club licensing criterion defined in Article 50(1) of the CL&FFP Regulations as a result of having overdue payables in respect to employees amounting to €172'000 as 31 March 2017, in accordance with Article 27(c) of the Procedural Rules, the CFCB Adjudicatory Chamber shall impose disciplinary measures in accordance with Article 29 of the Procedural Rules.
70. The CFCB Investigatory Chamber proposed that the CFCB Adjudicatory Chamber imposed disciplinary measure on the Club consisting of withholding €215,000, an amount corresponding to the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
71. The Investigatory Chamber, on 15 September 2017, decided to impose a conservatory measure on the club temporarily withholding the UEFA revenues from the 2017/2018 UEFA Europa League which the Club may be entitled to receive, which in case of FK Vojvodina corresponds to the amount of €215,000.
72. As previously mentioned, the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally. Therefore, the CFCB Adjudicatory Chamber deems necessary

to take into account the particular circumstances of the case and the seriousness of the offence and respect the principles of equal treatment and proportionality, while assessing the appropriate disciplinary measure(s) to be imposed.

73. The CFCB Adjudicatory Chamber also considers that the sanction must serve as a sufficient deterrent to discourage clubs from breaching these rules and the disciplinary measures imposed must also be fair to those clubs who have participated in UEFA competitions in full compliance with these rules.
74. The fact that the Club participated in the 2017/2018 UEFA Europa League in breach of the CL&FFP Regulations should be taken into account when determining the appropriate disciplinary measure(s).
75. The Adjudicatory Chamber also takes into account, on the other hand, the fact that the Club had properly disclosed to the licensor the correct and accurate financial information required during the licensing process.
76. The CFCB Adjudicatory Chamber takes into account the amount of the payable overdue in respect of employees as at 31 March 2017, i.e. €172,000.
77. In view of all the above circumstances, it decides that in the present case the withholding of the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League, i.e. €215,000, is the appropriate disciplinary measure.
78. In addition, costs of three thousand Euros (€3,000) are required to be paid by the Club, in accordance with Article 32(2) of the Procedural Rules.

## Decision of 6 March 2018

FC Irtysh  
(licensing criteria)

### **Circumstances of the case**

On 5 February 2018, the Club Financial Control Body (CFCB) Chief Investigator referred the case of the club FC Irtysh to the CFCB Adjudicatory Chamber considering that the club had not fulfilled the club licensing criterion defined in Article 50bis of the UEFA Club Licensing and Financial Fair Play Regulations as a result of having overdue payables towards social/tax authorities as at 31 March 2017. FC Irtysh expressly recognized the existence of overdue payables towards the social/tax authorities as at 31 March 2017, but affirmed having paid the tax arrears in September 2017. The CFCB Adjudicatory Chamber considers that the efforts of the Club to pay all payables overdue towards social/tax authorities before September 2017 does not change the fact that FC Irtysh breached its obligations established in the CL&FFP Regulations, having overdue payables as at 31 March 2017. The CFCB Adjudicatory Chamber deemed that FC Irtysh had failed to satisfy the requirements of Article 50bis (1) of the CL&FFP Regulations and based on that, it obtained the licence issued by the Football Federation of Kazakhstan not in accordance with the CL&FFP Regulations. The CFCB Adjudicatory Chamber considered appropriate to withhold all the UEFA revenues FC Irtysh gained by participating in the competition considering the fact that FC Irtysh should not have been admitted to the competition for failing to meet one of its admission criteria. Considering the existence of such a significant overdue payables towards social/tax authorities, the Adjudicatory Chamber considered that the withholding of the UEFA revenues gained by participating in the 2017/2018 UEFA Europa League is not enough and will not have the desired deterrent effect. As a consequence, it decides to also impose an exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next three seasons. However, taking into account that FC Irtysh had properly disclosed to the licensor the correct and accurate financial information required, the exclusion is deferred for a probationary period of three years.

### **Decision**

The Adjudicatory Chamber of the CFCB decided that FC Irtysh failed to satisfy the requirements of Article 50bis (1) of the CL&FFP Regulations and decided to withhold the amount of €440,000 corresponding to the UEFA revenues gained by the club by participating in the 2017/18 UEFA Europa League. Moreover, decided to exclude FC Irtysh from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) seasons (i.e. the 2018/19, 2019/20 and 2020/21 seasons). This sanction is deferred for a probationary period of (3) three years and the exclusion must be enforced only in case the club participates again in a UEFA club competition having not fulfilled the licence criteria required to obtain the UEFA licence in accordance with the CL&FFP Regulations.

Chairman: José Narciso da Cunha Rodrigues (Portugal)  
Vice-Chairmen: Christiann Timmermans (Netherlands)  
Louis Peila (Switzerland)  
Members: Charles Flint (England)  
Adam Giersz (Poland)

## **PART I – Introduction**

1. On 5 February 2018, the Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of Football Club Irtysh Public Fund (“FC Irtysh” or the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether or not FC Irtysh fulfilled the licensing criteria necessary to be awarded a licence to participate in UEFA club competitions during the 2017/18 season (a “UEFA Licence”), as established in the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “CL&FFP Regulations”), and whether or not FC Irtysh was eligible to participate in the 2017/2018 UEFA Europa League.
3. In summary, the CFCB Adjudicatory Chamber shall analyse whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.
4. Unless otherwise stated, all figures referred to in this Decision have been rounded up or down (as the case may be) to the nearest thousand.

## **PART II – Reference by the CFCB Chief Investigator**

5. On 31 May 2017, the Football Federation of Kazakhstan (the “FFK”) provided UEFA with its list of licensing decisions for participation in the 2017/18 UEFA club competitions.
6. This list of licensing decisions indicated that the Club had been granted the UEFA Licence by the club licensing first instance decision-making body of the FFK on 26 April 2017.
7. On 15 June 2017, the club was admitted to the 2017/2018 UEFA Europa League.
8. As part of the monitoring process (Article 57 *et seq.* of the CL&FFP Regulations), the Club submitted to the UEFA Administration its completed monitoring documentation (comprising financial information as at 30 June 2017), including self-declarations by the Club indicating total overdue payables of €1,800,000 as at 30 June 2017 towards social/tax authorities.
9. The CFCB Investigatory Chamber assessed the monitoring documentation of the Club and acknowledged the position regarding the Club’s overdue payables as at 30 June 2017.
10. On 15 September 2017, the CFCB Investigatory Chamber informed the Club that an investigation was opened against the Club because of the significant overdue payables as at 30 June 2017 and requested the Club to submit its updated monitoring documentation in accordance with Articles 65(2), 66(2) and 66bis(2) of the CL&FFP Regulations, in order to prove that it had no overdue payables towards other football clubs, in respect of employees and towards social/tax authorities as at 30 September 2017.

11. On the same occasion, the CFCB Investigatory Chamber imposed on the Club a conservatory measure consisting of temporarily withholding the UEFA revenues from the 2017/2018 UEFA club competitions that the club may be entitled to receive.
12. While performing a more detailed analysis of the overdue payables existing as at 30 June 2017, the CFCB Investigatory Chamber had some concerns on the validity of the UEFA licence which was received by the Club on 26 April 2017, because the declared overdue payables as at 30 June 2017 were indicated by the Club as being already overdue as at 31 March 2017, which corresponds to the assessment deadline for overdue payables for UEFA Club Licensing.
13. As a consequence, on 19 September 2017, the CFCB Investigatory Chamber requested the licensor, the FFK, to provide further comments with regard to the potential overdue payables of the Club as at 31 March 2017, including the payables position as at that date submitted by FC Irtysh for club licensing purposes
14. The FFK provided further documentation, including the external report on overdue payables submitted by the Club as part of its licensing documentation. The external report confirmed the existence of overdue payables in the amount of Kazakhstan Tenge (KZT) 611,000,000 (equivalent to approximately €1,800,000), as at the date of inspection, 10 February 2017. The report of the FFK's financial expert dated 17 April 2017 also indicated this fact, which confirmed the existence of overdue payables towards social/tax authorities amounting to KZT 609,000,000 (equivalent to approximately €1,800,000) as at 31 March 2017.
15. The Club submitted to the UEFA Administration, via the CL/FFP IT Solution and the FFK, its updated monitoring documentation (comprising financial information as at 30 September 2017), indicating that it had settled all payables that were overdue as at 30 June 2017, through different payments dated 1, 4 and 24 August 2017 as well as 28 September 2017. The Club further indicated no amount was overdue towards other football clubs, in respect of employees and towards social/tax authorities at 30 September 2017.
16. On 8 November 2017, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of the Club and confirmed that the Club had complied with the other monitoring requirements as defined in Articles 65, 66 and 66bis of the CL&FFP Regulations.
17. However, based on the identified overdue payables equivalent to €1,800,000 as at 31 March 2017, the CFCB Investigatory Chamber questioned the fulfilment by the Club of the UEFA Club Licensing Criteria which must be fulfilled to obtain the licence necessary to participate in the 2017/18 UEFA club competitions.
18. Consequently, the CFCB Investigatory Chamber decided to continue the investigation previously opened and invited the Club and the licensor, the FFK, to submit further observations and/or evidence with regard to the payables identified as overdue as at 31 March 2017. The Club was also informed that the conservatory measure consisting of withholding the UEFA revenues previously imposed would remain in force.

19. On 29 November 2017, the FFK confirmed the existence of overdue payables of €1,800,000 towards social/tax authorities as at 31 March 2017. The FFK stated that the Licensing Commission have considered the overdue payables and at the same time, it considered all the reasons that led to this problem, such as the financial crisis, the change of the legal status of the Club, amongst others. The FFK also stated that the Club paid all the overdue payables by September 2017.
20. On 4 December 2017, the Club submitted its observations and it did not contest having overdue payables towards social/tax authorities as at 31 March 2017. The Club held that the debt was due to a shortage of funds because of insufficient funding by sponsors.
21. On 8 December 2017, the CFCB Investigatory Chamber, headed by the CFCB Chief Investigator, Mr Yves Leterme, met in order to decide on the validity of the licence necessary to participate in the 2017/18 UEFA club competitions and the Club's fulfilment of the admission criteria to participate in the 2017/18 UEFA Europa League.
22. The CFCB Investigatory Chamber decided that FC Irtysh has not fulfilled the club licensing criterion defined in Article 50bis of the CL&FFP Regulations as a result of having overdue payables towards social/tax authorities equivalent to €1,800,000 as at 31 March 2017.
23. The CFCB Investigatory Chamber decided that, considering it was established a clear non-fulfilment of Article 50bis of the CL&FFP, the licence necessary to enter the UEFA club competitions which was granted to FC Irtysh by the FFK on 26 April 2017 was not issued in accordance with the CL&FFP Regulations. This means that the admission criterion defined in Article 4.01(c) of the *Regulations of the UEFA Europa League 2017/18 Season* (the "UEL Regulations") has not been fulfilled by FC Irtysh and as a consequence, the latter was not eligible to participate in the 2017/18 UEFA Europa League.
24. Based on the above findings, the CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1)(d) of the Procedural rules governing the CFCB – Edition 2015 (the "Procedural Rules") and suggested that the CFCB Adjudicatory Chamber should impose a disciplinary measure on FC Irtysh consisting of withholding €440,000, corresponding to the UEFA Revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
25. The CFCB Investigatory Chamber explained that it is appropriate to withhold all the UEFA revenues the Club gained by participating in the competition considering the fact that FC Irtysh should not have been admitted to the competition for failing to meet one of its admission criteria.
26. The CFCB Chief Investigator also decided, on the basis of Article 41 of the Procedural Rules, to extend the conservatory measure that was imposed on 15 September 2017 on FC Irtysh, consisting of temporarily withholding the UEFA revenues from the 2017/18 UEFA club competitions that the Club may be entitled to receive. This conservatory measure remains in force until the final decision of the CFCB Adjudicatory Chamber.

### **PART III – Jurisdiction of and procedure before the CFCB Adjudicatory Chamber**

27. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
28. On 7 February 2018, the CFCB Chairman informed the Club of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
29. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 19 February 2018.
30. The Club submitted its written submission (the "Observations").
31. The members of the CFCB Adjudicatory Chamber convened on 6 March 2018 to consider the Club's case.
32. The quorum required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted their confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

#### **PART IV – Applicable rules and regulations**

33. This case concerns a possible violation of the CL&FFP Regulations. In particular, the present case concerns whether the Club fulfilled the criteria necessary to be awarded a UEFA Licence and whether or not FC Irtysh was eligible to participate in the 2017/2018 UEFA Europa League. In summary, whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.
34. Article 4.01(c) of the UEL Regulations states that, to be eligible to participate in the UEFA Europa League, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
35. According to Article 4.06 of the UEL Regulations, *"If there is any doubt as to whether a club fulfils the admission criteria defined in Paragraph 4.01(c) and Paragraph 4.01(d), the UEFA General Secretary refers the case to the UEFA Club Financial Control Body, which decides without delay upon the admission in accordance with the Procedural rules governing the UEFA Club Financial Control Body. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body"*. [emphasis added]
36. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (*inter alia*) intended to achieve the objectives set out in Article 2 of the CL&FFP Regulations:

- "1 These regulations aim:*
- a) to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
  - b) to ensure that clubs have an adequate level of management and organisation;*
  - c) to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
  - d) to protect the integrity and smooth running of the UEFA club competitions;*
  - e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*

*2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:*

- a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
- b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;*
- c) to introduce more discipline and rationality in club football finances;*
- d) to encourage clubs to operate on the basis of their own revenues;*
- e) to encourage responsible spending for the long-term benefit of football;*
- f) to protect the long-term viability and sustainability of European club football."*

37. The Chapter 3 of the CL&FFP Regulations regulates the Licensing Criteria – Articles 16 to 52.
38. As per Article 16(1) of the CL&FFP Regulations the criteria defined in Chapter 3 must be fulfilled by clubs in order for them to be granted a licence to enter the UEFA club competitions.
39. Article 50bis of the CL&FFP Regulations is worded as follows:

*"1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) towards social/tax authorities as a result of contractual or legal obligations in respect of its employees that arose prior to the previous 31 December.*

*2 The licence applicant must submit to the auditor and/or the licensor a social/tax table showing:*

- a) the amount payable (if any) to the competent social/tax authorities as at 31 December of the year preceding the licence season;*
- b) any claim/proceedings pending.*

*3 The following information must be given, as a minimum, in respect of each payable towards social/tax authorities, together with explanatory comment:*

- a) Name of the creditor;*

- b) *Any payable as at 31 December, including the due date for each unpaid element;*
  - c) *Any payable as at 31 March (rolled forward from 31 December), including the due date for each unpaid element, together with explanatory comment and supporting evidence; and*
  - d) *Amounts subject to any claim/proceedings pending.*
- 4 *The licence applicant must reconcile the total liability as per the social/tax table to the figure in the financial statements balance sheet for 'Accounts payable to social/tax authorities' or to the underlying accounting records.*
- 5 *The social/tax table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant."*
40. According to Article 54(1) of the CL&FFP Regulations, *"The monitoring process starts on submission by the licensor of the list of licensing decisions to the UEFA administration and ends at the end of the licence season"*.
41. Article 72 of the CL&FFP Regulations reads as follows:
- "1 The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*
- 2 Any breach of these regulations may be dealt with by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body."*
42. Annex VIII of the CL&FFP Regulations defines the notion of "overdue payables" as follows:
- "1. Payables are considered as overdue if they are not paid according to the agreed terms.*
- 2. Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49, 50 and 50bis) and by 30 June and 30 September (in respect of Articles 65, 66 and 66bis) respectively that:*
- a) *it has paid the relevant amount in full; or*
  - b) *it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
  - c) *it has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision making bodies (licensor and/or UEFA Club Financial Control Body) consider that such claim has been brought or such proceedings have been opened for the sole purpose of*

*avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*

- d) it has contested to the competent authority under national law, the national or international football authorities or the relevant arbitration tribunal, a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision-making bodies (licensor and/or UEFA Club Financial Control Body) that it has established reasons for contesting the claim or proceedings which have been opened; however, if the decision-making bodies (licensor and/or UEFA Club Financial Control Body) consider the reasons for contesting the claim or proceedings which have been opened as manifestly unfounded the amount will still be considered as an overdue payable; or*
- e) it is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or UEFA Club Financial Control Body) that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation and solidarity contributions."*

43. According to Article 3(1) of the Procedural Rules, the CFCB is competent to:

- "a) determine whether licensors have fulfilled their obligations and whether licence applicants have fulfilled the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations at the time the licence was granted;*
- b) determine whether, after the licence has been granted, licensees continue to fulfil the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- c) determine whether, after the licence has been granted, licensees fulfil the club monitoring requirements as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
- d) impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations;*
- e) decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question."*

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

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

- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*

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

45. Under Article 27 of the Procedural Rules:

*"The adjudicatory chamber may take the following final decisions:*

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

46. Under Article 28 of the Procedural Rules, *"The adjudicatory chamber determines the type and extent of the disciplinary measures to be imposed according to the circumstances of the case."*

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

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

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

## **PART V – Factual and legal appreciation by the CFCB Adjudicatory Chamber**

49. To be eligible to participate in the UEFA Europa League in the 2017/18 season, the Club must have a UEFA Licence. As explained in Article 16(1) of the CL&FFP Regulations, such licence can only be validly granted if all of the UEFA club licensing criteria in the CL&FFP Regulations are satisfied.
50. In the Observations, the Club recognizes having breached article 50bis of the CL&FFP Regulations, but states that it did disclose the correct financial information to the FFK during the licensing process. The Club explains that it paid all debts in respect of employees at the beginning of March 2017 and that tax arrears were paid in September 2017. The Club accepts that it had debts in respect of employees and towards the social/tax authorities in January 2017 invoking deficit of financial resources due to insufficient financing from sponsors.
51. The Club states it incurred financial costs due to its participation in the 2017/2018 UEFA Europa League, including the reconstruction of stadium and other projects.
52. The Club requests a lenient disciplinary measure as well as reduction in the withholding of the UEFA revenues, allowing the Club to bear the costs incurred.
53. Having considered the evidence, in particular the findings of the CFCB Chief Investigator and the Observations, the CFCB Adjudicatory Chamber considers that:

Article 50bis of the CL&FFP Regulations – No overdue payables towards social/tax authorities

54. In its Observations, the Club expressly recognized the existence of overdue payables towards the social/tax authorities as at 31 March 2017.
55. The CFCB Adjudicatory Chamber considers that the efforts of the Club to pay all payables overdue towards social/tax authorities before September 2017 does not change the fact that the Club breached its obligations established in the CL&FFP Regulations, having overdue payables as at 31 March 2017.
56. As already confirmed by the Court of Arbitration for Sport (CAS), *“the clubs must not only fulfil the material requirements set in the regulations, but they also need to meet these conditions on a certain date”*. The CAS further explained the following:

*“In this regard, the Panel stresses that for the good organization of any competition, strict deadlines are inevitable. As stated by another CAS Panel (CAS 2008/A/1579), “[t]he matter of deadlines has to be considered under the principles of equality of treatment; it is a must to treat all the clubs and the national football associations the same way”. In addition, the purpose of the deadline set forth in Article 50 of the CL&FFP Regulations is also to serve the interests of legal certainty and security, taking into consideration that UEFA Europa League first qualifying round usually takes place in early July.- CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 80)*

57. On this basis, the CFCB Adjudicatory Chamber accepts the finding of the CFCB Investigatory Chamber (as set out in Paragraph 22 of this Decision) that the Club has failed to satisfy the requirements of Article 50bis of the CL&FFP Regulations as a result of having overdue payables towards social/tax authorities equivalent to €1,800,000 as at 31 March 2017.
58. It has been already been confirmed by the CAS that *“The mere existence of overdue payables is indeed sufficient to declare the Appellant ineligible”* to a UEFA club competition.

*“The CL&FFP Regulations set out licensing criteria. As mentioned above, one of these requirements consists in the absence of overdue payables towards employees and social/tax authorities (Article 50bis of the CL&FFP Regulations). Another one consists in the provision of annual financial statements, which must meet minimum disclosure requirements as per Annex VI and comply with accounting principles set out in Annex VII (Article 47 of the CL&FFP Regulations). In case of non-fulfilment of one of the above conditions the licence must therefore be refused and the club cannot be admitted to the UEFA competition.” - CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 84)*

#### Conclusions

59. The CFCB Adjudicatory Chamber determines that the Club has:
- (iii) failed to satisfy the requirements of Article 50bis(1) of the CL&FFP Regulations; and
  - (iv) based on the foregoing, it obtained the licence issued by the FFK not in accordance with the CL&FFP Regulations.

### **PART VI – Admission matters and disciplinary measures**

#### Admission to the 2017/2018 UEFA Europa League

60. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which aim, *inter alia*, to protect the integrity and smooth running of the UEFA club competitions. This aim is of the utmost importance and is clearly threatened when clubs that have not met the UEFA licensing criteria are granted a UEFA Licence and then subsequently compete in the competitions. Such situations create a great deal of risk and uncertainty for UEFA, as competition organiser, and can undermine the sporting integrity of the competitions.
61. According to Article 4.01(c) of the UEL Regulations, to be eligible to participate in the competition, clubs must *“have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline”*.
62. Article 4.06 of the UEL Regulations establishes that *“UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria (4.01(c) and (d) of the UEL Regulations) are or have been met until the end of the competition;*

*if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body”.*

63. In the present case, FC Irtysh was granted a licence by the FFK to participate in the 2017/2018 UEFA Europa League not in accordance with the CL&FFP Regulations, since it has been established that the Club failed to satisfy the requirements of Article 50bis(1) of the CL&FFP Regulations.
64. Following its admission to the 2017/2018 UEFA Europa League, the Club participated in the first and second qualifying rounds, and has already been eliminated from the competition.
65. The CFCB Adjudicatory Chamber has made it clear in a number of cases that the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally (in this regard, see paragraph 100 of case AC-01/2016, *Galatasaray Sportif Sinaı ve Ticari Yatirimlar A.S.*).
66. This principle is of particular importance when it comes to assessing the eligibility of clubs for UEFA Licences. All clubs are subject to the same requirements and all clubs must be assessed on the same basis. To show undue leniency to a club that has not satisfied UEFA's club licensing criteria would be inconsistent with the inherent equality of the licensing system and must be avoided in order to maintain the value and integrity of the process.
67. On this basis and having regard to the fact that the Club has failed to satisfy one of the requirements of the CL&FFP Regulations, the CFCB Adjudicatory Chamber considers that the Club should not have been granted a UEFA Licence by the FFK. It should therefore not have been admitted to the 2017/2018 UEFA Europa League.
68. Consequently, considering that FC Irtysh has not fulfilled the club licensing criterion defined in Article 50bis (1) of the CL&FFP as a result of having overdue payables towards social/tax authorities equivalent to €1,800,000 as at 31 March 2017, in accordance with Article 27(c) of the Procedural Rules, the CFCB Adjudicatory Chamber shall impose disciplinary measures in accordance with Article 29 of the Procedural Rules.
69. The CFCB Investigatory Chamber suggests that the CFCB Adjudicatory Chamber imposes disciplinary measure on the Club consisting of withholding €440,000, amount corresponding to the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
70. The Investigatory Chamber, on 15 September 2017, decided to impose a conservatory measure on the club temporarily withholding the UEFA revenues from the 2017/2018 UEFA Europa League the club may be entitled to receive, which in case of FC Irtysh corresponds to the amount of € 440'000.
71. As previously mentioned, the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally. Therefore, the CFCB Adjudicatory Chamber deems necessary to take into account the particular circumstances of the case and the seriousness of the

offence and respect the principles of equal treatment and proportionality, while assessing the appropriate disciplinary measure(s) to be imposed.

72. The CFCB Adjudicatory Chamber highlights the risk of incurring in unequal treatment by imposing only a financial sanction in opposition to a sporting sanction for the same breach, i.e. the non-fulfilment of the licensing criteria established in the CL&FFP Regulations, only depending on the moment the breach is detected/verified.
73. The CFCB Adjudicatory Chamber also considers that the sanction must serve as a sufficient deterrent to discourage clubs from breaching these rules and the disciplinary measures imposed must also be fair to those clubs who have participated in UEFA competitions in full compliance with these rules.
74. The seriousness of the breach of Article 50bis(1) of the CL&FFP Regulations and the fact that the Club participated in the 2017/2018 UEFA Europa League in breach of the CL&FFP Regulations shall be taken into account when determining the appropriate disciplinary measure(s).
75. In view of the circumstances of the case, the CFCB Adjudicatory Chamber decides to impose the disciplinary measure consisting in the withholding of the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League, i.e. €440,000.
76. However, the CFCB Adjudicatory Chamber considers that taking into account the significant overdue payables towards social/tax authorities as at 31 March 2017 amounting to approximately €1,800,000, the withholding of the UEFA revenues gained by participating in the 2017/2018 UEFA Europa League is not enough and will not have the desired deterrent effect.
77. In view of the circumstances of the case, it decides to also impose on FC Irtysh an exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) seasons (i.e. the 2018/19, 2019/20 and 2020/21 seasons). However, taking into account that the Club had properly disclosed to the licensor the correct and accurate financial information required, the exclusion is deferred for a probationary period of (3) years. This exclusion must be enforced in case the Club participates again in a UEFA club competition having not fulfilled the licence criteria required to obtain a UEFA licence in accordance with the CL&FFP Regulations.
78. In addition, costs of three thousand Euros (€3,000) are required to be paid by the Club, in accordance with Article 32(2) of the Procedural Rules.

## Decision of 6 March 2018

FC Sion  
(licensing criteria)

### **Circumstances of the case**

On 5 February 2018, the Club Financial Control Body (CFCB) Chief Investigator referred the case of the club Olympique des Alpes SA ("FC Sion") to the CFCB Adjudicatory Chamber considering that the club had not fulfilled the club licensing criterion defined in Article 49 of the UEFA Club Licensing and Financial Fair Play Regulations (CL&FFP Regulations) as a result of having overdue payables towards other football clubs as at 31 March 2017. FC Sion expressly recognized the existence of overdue payables towards other football club as at 31 March 2017, which was eventually paid on 7 June 2017. However, FC Sion argues that it did not breach the CL&FFP Regulations, since the mistake in the document dated 7 April 2017 was the result of a misinterpretation by the club's responsible person for dealing with the licence and was therefore, an unintentional mistake. Moreover, the club held that it was already sanctioned by the SFL for providing the wrong information. The CFCB Adjudicatory Chamber considered that FC Sion's allegation of existence of a violation of the principle of *ne bis in idem* was unfounded and analysed the substance of the matter. The CFCB Adjudicatory Chamber considered that FC Sion had overdue payables towards a football club amounting to €950,000 as at 31 March 2017, in breach of the CL&FFP Regulations. It also considered that the club breached Articles 13 (1) and 43 (1)(i) of the CL&FFP Regulations and indicated that the submission of incorrect, inaccurate and incomplete documentation by clubs is a serious matter which should be taken into account in considering the sanction that should flow from a breach of Article 49 of the CL&FFP Regulations. The CFCB Adjudicatory Chamber deemed that FC Sion had failed to satisfy the requirements of Article 49 (1) of the CL&FFP Regulations and based on that, it obtained the licence issued by the Swiss Football League not in accordance with the CL&FFP Regulations. It considered that and exclusion from the next UEFA club competition for which FC Sion would otherwise qualify in the next two seasons as well as a fine were the appropriate disciplinary measures to ensure that a club does not derive a benefit from being wrongly admitted to a UEFA competition, to make clear the importance of compliance by licence applicants with the duty to submit accurate information during the licencing process, and to serve as a sufficient deterrent to dissuade licence applicants from submitting inaccurate financial information.

### **Decision**

The Adjudicatory Chamber of the CFCB decided that FC Sion failed to satisfy the requirements of Article 49 (1) of the CL&FFP Regulations and decided to exclude FC Sion from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. the 2018/19 and 2019/20) as well as to impose a fine in the amount of €235,000.

Chairman: José Narciso da Cunha Rodrigues (Portugal)

Vice-Chairmen: Christiann Timmermans (Netherlands)  
Louis Peila (Switzerland)

Members: Charles Flint (England)  
Adam Giersz (Poland)

## **PART I – Introduction**

1. On 5 February 2018, the Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of Olympique des Alpes SA (“FC Sion” or the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether or not FC Sion fulfilled the licensing criteria necessary to be awarded a licence to participate in UEFA club competitions during the 2017/18 season (a “UEFA Licence”), as established in the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “CL&FFP Regulations”), and whether or not FC Sion was eligible to participate in the 2017/2018 UEFA Europa League.
3. In summary, the CFCB Adjudicatory Chamber shall analyse whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.

## **PART II – Reference by the CFCB Chief Investigator**

4. On 31 May 2017, the Swiss Football League (the “SFL”), the Licensor, provided UEFA with its list of licensing decisions for participation in the 2017/18 UEFA club competitions.
5. This list included FC Sion as a football club having been granted the UEFA Licence by the club licensing first instance decision-making body of the SFL on 28 April 2017. It was also indicated that a disciplinary procedure was pending at the SFL against FC Sion.
6. On 15 June 2017, the Club was admitted to the 2017/2018 UEFA Europa League.
7. On 5 July 2017, the CFCB Investigatory Chamber informed the SFL that a compliance audit would take place in order to assess whether the SFL and its affiliated clubs had fulfilled their obligations as defined in the CL&FFP Regulations and whether the licences for participation in the 2017/18 UEFA club competitions had been correctly awarded.
8. Between 4 and 8 September 2017, independent auditors, i.e. Deloitte LLP (the “Deloitte”), performed the above-mentioned compliance audit at the premises of the SFL. The licensing documentations of three clubs, including FC Sion, were assessed.
9. On 25 October 2017, further to the compliance audit performed from 4 to 8 September 2017, Deloitte issued their draft report, which was forwarded to FC Sion and the SFL. The Club and the SFL were requested to confirm the draft report’s factual accuracy by 30 October 2017 and were also informed that they could submit observations on the draft report’s findings.
10. FC Sion submitted its observations and remarks on the Deloitte draft report, which were forwarded to Deloitte the same day.
11. On 3 November 2017, Deloitte issued their final compliance audit report (the “Deloitte report”) for the attention of the CFCB Investigatory Chamber. In their report, the

independent auditors indicated the existence of an overdue payable of FC Sion amounting to €950,000 towards another football club (FC Sochaux) as at 31 March 2017 and resulting from a transfer undertaken by the Club prior to 31 December 2016. The Deloitte report also confirmed that the total amount of €950,000 had been paid by FC Sion to FC Sochaux on 7 June 2017.

12. On 6 November 2017, the SFL submitted its observations on the Deloitte report. As part of its comments, the SFL provided a copy of the decision of its Disciplinary Commission dated 14 June 2017 adopted in the disciplinary procedure indicated as pending in the list of the SFL licensing decisions.
13. The case had been referred to the SFL Disciplinary Commission on 23 May 2017 by the President of the SFL club licensing first instance decision-making body with regard to the submission of potentially misleading information by FC Sion to the SFL as part of its licensing documentation. In its decision, the SFL Disciplinary Commission came to the conclusion that FC Sion had no intention to mislead the SFL, but indeed submitted some incorrect licensing documentation; the SFL Disciplinary Commission further confirmed that the total amount of €950,000 had been paid by the Club to FC Sochaux on 7 June 2017. Because of the inaccurate information submitted, the SFL Disciplinary Commission decided to impose a fine of CHF 8,000 on the Club.
14. On 6 November 2017, FC Sion submitted its observations on the Deloitte report. It can be noted that regarding the existence of an overdue payable as at 31 March 2017 towards another football club as a result of a transfer undertaken prior to 31 December 2016, FC Sion confirmed that *"il apparaît aujourd'hui qu'il existait bel et bien un engagement impayé découlant d'une activité de transfert. Ce point est admis"*
15. On 8 November 2017, the CFCB Investigatory Chamber assessed the Deloitte report as well as the Club's observations on the Deloitte report. On the basis of the identified overdue payables amounting to €950,000 as at 31 March 2017, the CFCB Investigatory Chamber questioned the compliance by the Club with the UEFA Club Licensing Criteria which must be fulfilled in order to obtain the licence necessary to participate in the 2017/2018 UEFA club competitions.
16. Consequently, on 17 November 2017, the CFCB Investigatory Chamber informed the Club that an investigation was opened against it and invited the Club to provide observations and/or evidence with regard to the amount of €950,000 identified as overdue payable as at 31 March 2017.
17. On 4 December 2017, FC Sion submitted its observations regarding its overdue payable towards another football club (FC Sochaux) as at 31 March 2017. In summary, FC Sion confirmed that the amount due to FC Sochaux in respect of the transfer of a player was an overdue payable as at 31 March 2017. However, the Club provided a number of reasons on the basis of which no sanction should be imposed. In particular, the Club admitted that there was an overdue payable as at 31 March 2017, but stated that the mistake in the document dated 7 April 2017 was the result of a misinterpretation by the club's responsible person for dealing with the licence (the "Club's licence manager"), who is not a lawyer. The Club

affirmed that it never had the intention to conceal the information and had provisioned the amount due for payment and that, in any case, it has already been sanctioned by the SFL for providing the wrong information.

18. On 8 December 2017, the CFCB Investigatory Chamber, headed by the CFCB Chief Investigator, Mr Yves Leterme, met in order to decide on the validity of the licence necessary to participate in the 2017/18 UEFA club competitions and the Club's fulfilment of the admission criteria to participate in the 2017/18 UEFA Europa League.
19. The CFCB Investigatory Chamber decided that FC Sion has not fulfilled the club licensing criterion defined in Article 49 (1) of the CL&FFP Regulations as a result of having overdue payables towards another football club amounting to €950,000 as at 31 March 2017.
20. The CFCB Investigatory Chamber concluded that, considering it was established a clear non-fulfilment of Article 49 of the CL&FFP Regulation, the licence granted to FC Sion by the SFL on 13 May 2017, necessary to enter the UEFA club competitions, had not been issued in accordance with the CL&FFP Regulations. This means that the admission criterion defined in Article 4.01 (c) of the *Regulations of the UEFA Europa League 2017/18 Season* (the "UEL Regulations") has not been fulfilled by FC Sion and, as a consequence, the latter would not have been eligible to participate in the 2017/18 UEFA Europa League.
21. Based on the above findings, the CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1) (d) of the Procedural rules governing the CFCB – Edition 2015 (the "Procedural Rules") and suggested for a disciplinary measure to be imposed on FC Sion by the CFCB Adjudicatory Chamber, such measure consisting of a fine of €235,000, corresponding to the UEFA Revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
22. The CFCB Investigatory Chamber submitted that it is appropriate to impose a fine corresponding to all the UEFA revenues the Club gained by participating in the competition considering the fact that FC Sion should not have been admitted to the competition for failing to meet one of its admission criteria.

### **PART III – Proceedings before the SFL Disciplinary Commission**

23. The President of the club licensing first instance decision-making body of the SFL referred the case of the Club to the SFL Disciplinary Commission with regard to the submission of potentially misleading information by the Club as part of its licensing documentation.
24. According to the decision of the SFL Disciplinary Commission, amongst the licensing documentation provided by the Club to the SFL, the Club provided a declaration dated 7 April 2017 with the reference "Written confirmation: no overdue payables arising from transfer activities", signed by the Club's president, stating that as at 31 March 2017 there were no overdue payables towards other football clubs. In particular, the Club indicated that

the case between FC Sion and FC Sochaux regarding the transfer of the player Ishmael Yartey was still under dispute.

25. With regards to the alleged pending dispute, the Court of Arbitration for Sport (CAS), on 4 November 2016, decided that FC Sion must pay the club FC Sochaux an amount of €950'000 and the Club did not appeal the CAS decision and thus, it became final.
26. On 8 February 2017, FC Sochaux put the Club in default for the payment of the aforementioned sum and, on 23 February 2017, FC Sochaux contacted the FIFA Disciplinary department asking for the imposition of a disciplinary sanction on FC Sion for not complying with the CAS decision, including FC Sion in copy. FIFA replied, on 11 April 2017, informing FC Sochaux that the Swiss Football Federation was competent to execute the CAS decision, also including FC Sion in copy of this letter.
27. In this scenario, the President of the club licensing first instance decision-making body of the SFL considered that the Club had overdue payables concerning transfers as at 31 December 2016 and thus, the document dated 7 April 2017 was falsified.
28. The Club, before the SFL, explained that the CAS decision was notified on 2 December 2016 and thus, on 31 December 2016 the Club was still considering the possibility of appealing. The Club also admitted that on 31 March 2017 there was an overdue payable concerning a transfer and the confirmation sent by the Club's license manager (dated 7 April 2017) was wrong. It asserted that it was a result of a misinterpretation by the club's licensing manager who understood that, because there was an enquiry before FIFA, the dispute regarding the transfer fee as to the substance was still not final. Consequently, the Club considers that it was not a deliberate misstatement, but an inadvertent error.
29. Finally, the Club stated that it had paid the full amount of €950,000 on 7 June 2017.
30. The SFL Disciplinary Commission considered that indeed the contents of the document dated 7 April 2017 did not correspond to reality. However, it considered that the document does not correspond to a falsification/forgery, but rather a document that contains false information. It was not a document produced to mislead, which would correspond to a forgery.
31. According to the SFL Disciplinary Commission, the wrong information contained in the dossier provided by the club in the licensing proceedings is the result of an internal mistake and not of a strategy adopted to misrepresent the accounts of the Club.
32. The SFL Disciplinary Commission considered that the Club had violated the obligation of veracity, but that the infringement did not affect the validity of the licence. Therefore, in the general scope of the sanction a fine would suffice to condemn the infringement. It indicated, however, that the commission must take into consideration that license candidates must, without exception, submit to the SFL's Licensing Manager, respectively to the SFL Licence Commission, complete files containing accurate and non-contradictory files and certificate.
33. Accordingly, for the violation of the duty to veracity, a fine of CHF 8,000 was imposed on the Club by the SFL Disciplinary Commission.

#### **PART IV – Jurisdiction of and procedure before the CFCB Adjudicatory Chamber**

34. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
35. On 7 February 2018, the CFCB Chairman informed the Club of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
36. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 19 February 2018. At the Chairman's discretion, this deadline was later extended until 22 February 2018.
37. The Club made its written submission in accordance with the new deadline (the "Observations").
38. The members of the CFCB Adjudicatory Chamber convened on 6 March 2018 to consider the Club's case.
39. The quorum of judges required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted their confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

#### **PART V – Applicable rules and regulations**

40. This case concerns a possible violation of the CL&FFP Regulations. In particular, the present case concerns whether the Club fulfilled the criteria necessary to be awarded a UEFA Licence and whether or not FC Sion was eligible to participate in the 2017/2018 UEFA Europa League. In summary, whether or not the licence obtained by the Club was in accordance with the CL&FFP Regulations.
41. Article 4.01(c) of the UEL Regulations states that, to be eligible to participate in the UEFA Europa League, clubs must *"have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline"*.
42. According to Article 4.06 of the UEL Regulations, *"If there is any doubt as to whether a club fulfils the admission criteria defined in Paragraph 4.01(c) and Paragraph 4.01 (d), the UEFA General Secretary refers the case to the UEFA Club Financial Control Body, which decides without delay upon the admission in accordance with the Procedural rules governing the UEFA Club Financial Control Body. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria are or have been met until*

the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body". [emphasis added]

43. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (*inter alia*) intended to achieve the objectives set out in Article 2 of the CL&FFP Regulations:

"1 These regulations aim:

- a) to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;
- b) to ensure that clubs have an adequate level of management and organisation;
- c) to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;
- d) to protect the integrity and smooth running of the UEFA club competitions;
- e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.

2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:

- a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
- b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;
- c) to introduce more discipline and rationality in club football finances;
- d) to encourage clubs to operate on the basis of their own revenues;
- e) to encourage responsible spending for the long-term benefit of football;
- f) to protect the long-term viability and sustainability of European club football."

44. The Chapter 3 of the CL&FFP Regulations regulates the Licensing Criteria.

45. Article 5 of the CL&FFP Regulations establishes that:

- "1 The licensor is a UEFA member association and governs the club licensing system.*
- 2 Under certain conditions as set out in Annex II, a UEFA member association may delegate the club licensing system to its affiliated league. Vis-à-vis UEFA, the UEFA member association remains liable and responsible for the proper implementation of the club licensing system, regardless of whether there is delegation or not.*
- 3 The licensor must ensure that all applicable provisions defined in part II of these regulations are integrated into national club licensing regulations, which must be submitted in one of the UEFA official languages to the UEFA administration for review according to the procedure defined in Annex III.*
- 4 In particular the licensor must:*
  - a) establish an appropriate licensing administration as defined in Article 6;*
  - b) establish at least two decision-making bodies as defined in Article 7;*
  - c) set up a catalogue of sanctions as defined in Article 8;*
  - d) define the core process as defined in Article 9;*
  - e) assess the documentation submitted by the clubs, consider whether this is appropriate and determine whether each criterion has been met and what further information, if any, is needed in accordance with Article 10;*
  - f) ensure equal treatment of all clubs applying for a licence and guarantee the clubs full confidentiality with regard to all information provided during the licensing process as defined in Article 11;*
  - g) determine whether a licence can be granted".*

46. Article 13(1) of the CL&FFP Regulations states that:

- "1 The licence applicant must provide the licensor with:*
  - a) all necessary information and/or relevant documents to fully demonstrate that the licensing obligations are fulfilled; and*
  - b) any other document relevant for decision-making by the licensor".*

47. As per Article 16(1) of the CL&FFP Regulations the criteria defined in Chapter 3 must be fulfilled by clubs in order for them to be granted a licence to enter the UEFA club competitions.
48. Article 43(1)(i) of the CL&FFP Regulations states that the licence applicant must submit a legally valid declaration confirming that *"all submitted documents are complete and correct"*.
49. Article 49 of the CL&FFP Regulations is worded as follows:

*"1 The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) towards other football clubs as a result of transfers undertaken prior to the previous 31 December.*

*2 Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.*

*3 The licence applicant must prepare and submit to the licensor a transfers table, unless the information has already been disclosed to the licensor under existing national transfer requirements (e.g. national clearing house system). It must be prepared even if there have been no transfers/loans during the relevant period.*

*4 The licence applicant must disclose:*

*a) all new player registrations (including loans) in the 12 month period up to 31 December, irrespective of whether there is an amount outstanding to be paid as at 31 December;*

*b) all transfers for which an amount is outstanding to be paid as at 31 December, irrespective of whether they were undertaken in the 12 month period up to 31 December or before; and*

*c) all transfers subject to a claim pending before the competent authority under national law or proceedings pending before a national or international football authority or relevant arbitration tribunal.*

*5 The transfers table must contain the following information as a minimum (in respect of each player transfer, including loans):*

*a) Player (identification by name or number);*

*b) Date of the transfer/loan agreement;*

- c) *Name of the football club that formerly held the registration;*
- d) *Transfer (or loan) fee paid and/or payable (including training compensation and solidarity contribution) even if payment has not been requested by the creditor;*
- e) *Other direct costs of acquiring the registration paid and/or payable;*
- f) *Amount settled and payment date;*
- g) *Balance payable as at 31 December in respect of each player transfer including the due date for each unpaid element;*
- h) *Balance payable as at 31 March (rolled forward from 31 December) including the due date for each unpaid element, together with explanatory comment;*
- i) *Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as at 31 December; and*
- j) *Amounts subject to any claim/proceedings pending.*

6 *The licence applicant must reconcile the total liability as per the transfers table to the figure in the financial statements balance sheet for 'Accounts payable relating to player transfers' (if applicable) or to the underlying accounting records.*

7 *The transfers table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant."*

50. According to Article 54(1) of the CL&FFP Regulations, *"The monitoring process starts on submission by the licensor of the list of licensing decisions to the UEFA administration and ends at the end of the licence season"*.

51. Article 71 of the CL&FFP Regulations establishes as follows:

*"1. UEFA and/or its nominated bodies/agencies reserve the right to, at any time, conduct compliance audits of the licensor and, in the presence of the latter, of the licence applicant/licensee.*

*2. Compliance audits aim to ensure that the licensor, as well as the licence applicant/licensee, have fulfilled their obligations as defined in these regulations and that the licence was correctly awarded at the time of the final decision of the licensor.*

3. *For the purpose of compliance audits, in the event of any discrepancy in the interpretation of the national club licensing regulations between the UEFA official language version and the official national language version, the UEFA official language version is authoritative.*

52. Article 72 of the CL&FFP Regulations reads as follows:

*"1 The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*

*2 Any breach of these regulations may be dealt with by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body."*

53. Annex VIII of the CL&FFP Regulations defines the notion of "overdue payables" as follows:

*"1. Payables are considered as overdue if they are not paid according to the agreed terms.*

*2. Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49, 50 and 50bis) and by 30 June and 30 September (in respect of Articles 65, 66 and 66bis) respectively that:*

*b) it has paid the relevant amount in full; or*

*b) it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*

*c) it has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision making bodies (licensor and/or UEFA Club Financial Control Body) consider that such claim has been brought or such proceedings have been opened for the sole purpose of*

*avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*

- d) it has contested to the competent authority under national law, the national or international football authorities or the relevant arbitration tribunal, a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision-making bodies (licensor and/or UEFA Club Financial Control Body) that it has established reasons for contesting the claim or proceedings which have been opened; however, if the decision-making bodies (licensor and/or UEFA Club Financial Control Body) consider the reasons for contesting the claim or proceedings which have been opened as manifestly unfounded the amount will still be considered as an overdue payable; or*
  
- e) it is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or UEFA Club Financial Control Body) that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation and solidarity contributions.”*

54. According to Article 3(1) of the Procedural Rules, the CFCB is competent to:

- “a) determine whether licensors have fulfilled their obligations and whether licence applicants have fulfilled the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations at the time the licence was granted;*
  
- f) determine whether, after the licence has been granted, licensees continue to fulfil the licensing criteria as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
  
- g) determine whether, after the licence has been granted, licensees fulfil the club monitoring requirements as defined in the UEFA Club Licensing and Financial Fair Play Regulations;*
  
- h) impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations;*

- i) *decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question.*"

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

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

- e) *dismiss the case; or*
- f) *conclude, with the consent of the defendant, a settlement agreement; or*
- g) *apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*
- h) *refer the case to the adjudicatory chamber."*

56. Under Article 27 of the Procedural Rules:

*"The adjudicatory chamber may take the following final decisions:*

- e) *to dismiss the case; or*
- f) *to accept or reject the club's admission to the UEFA club competition in question; or*
- g) *to impose disciplinary measures in accordance with the present rules; or*
- h) *to uphold, reject, or modify a decision of the CFCB chief investigator."*

57. Under Article 28 of the Procedural Rules:

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

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

- "a) warning,*
- b) reprimand,*

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

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

## **PART VI – Factual and legal appreciation by the CFCB Adjudicatory Chamber**

60. To be eligible to participate in the UEFA Europa League in the 2017/18 season, the Club must have a UEFA Licence. As explained in Article 16(1) of the CL&FFP Regulations, such licence can only be validly granted if all of the UEFA club licensing criteria in the CL&FFP Regulations are satisfied.
61. In the Observations, the Club denies having breached any UEFA Regulations. The club contends that, having demonstrated that it was an unintentional mistake, no sanction is required. The Club also contends that, having already been subject to a disciplinary process before the SFL for the same offence, it should not be sanctioned again.
62. The Club makes reference to all its statements before the CFCB Investigatory Chamber, which can be summarized as follows:
- The transfer agreement between FC Sion and FC Sochaux was “conditional” and the parties were not in agreement as to whether or not the conditions were met. The

dispute was brought before the CAS that admitted the conclusions of FC Sochaux and FC Sion renounced to its right to appeal.

- The clubs were negotiating the payment of €950,000 and FC Sochaux contacted the FIFA's Disciplinary Committee on 23 February 2017, while FIFA only replied on 11 April 2017, indicating that FIFA was not competent to execute the decision.
- In the meantime, on 7 April 2017, the Club's licence manager confirmed that there were no overdue payables towards other football clubs.
- The Club admits that there was an overdue payable as at 31 March 2017, but affirms that the mistake in the document dated 7 April 2017 was the result of a misinterpretation by the Club's licence manager, who is not a lawyer.
- The Club never had the intention to conceal the information and had provisioned the amount due for payment.
- The Club has already been sanctioned by the SFL.

63. In case the CFCB Adjudicatory Chamber decides to sanction the Club, the Club raises the following arguments: if it is considered that the Club should not have participated in the UEFA club competition and that the Club should reimburse the UEFA revenues received, the amount of €229,438 should be deducted from such amount, corresponding to the costs incurred due to the participation in the relevant UEFA club competition. The Club provides extracts detailing alleged costs related to equipment, trip related costs, hotels, airplanes, organizational and security expenses.

#### Preliminary

64. The Adjudicatory Chamber takes note of the argument raised by the Club that, having already been subject to a disciplinary process before the SFL for the same offence, it should not be sanctioned again.

65. This allegation is, however, unfounded.

66. According to Article 3 (1) of the Procedural Rules, the CFCB is competent to:

- a) determine whether licensors have fulfilled their obligations and whether licence applicants have fulfilled the licensing criteria as defined in the *UEFA Club Licencing and Financial Fair Play Regulations* at the time the licence was granted;
- b) determine whether, after the licence has been granted, licensees continue to fulfil the club monitoring requirements as defined in the *UEFA Club Licencing and Financial Fair Play Regulations*;
- c) determine whether, after the licence has been granted, licensees fulfil the club monitoring requirements as defined in the *UEFA Club Licencing and Financial Fair Play Regulations*:

- d) impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the *Club Licencing and Financial Fair Play Regulations*;
  - e) decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question.
67. Article 5(3) of the CL&FFP Regulations states that the licensor must ensure that all applicable provisions defined in part II of these regulations are integrated into national club licencing regulations, which must be submitted in one of the UEFA official languages to the UEFA administration for review according to the procedure defined in Annex III.
68. In terms of Article 4.01(c) of the UEL Regulations, in order to be eligible to participate in the competition, clubs must have obtained a licence issued by the competent national body in accordance with the *UEFA Club Licencing and Financial Fair Play Regulations* and be included in the list of licencing decisions to be submitted by this body to the UEFA administration by the given deadline.
69. Article 54(1) of the CL&FFP Regulations foresees that the monitoring process starts on submission by the licensor of the list of licencing decisions to the UEFA administration and ends at the end of the licence season.
70. The rule of *ne bis in idem* is a broad principle aimed at protecting the finality and the stability of judgements.
71. Nevertheless, the present case does not fall within the application of this principle.
72. The CFCB Adjudicatory Chamber reverts to the decision of the SFL Disciplinary Commission to note that this Commission acted as an internal body of the SFL mainly in order to decide whether or not the national regulations were complied with.
73. As it can be noted in the grounds of the decision, the SFL Disciplinary Commission decided and fined FC Sion under the scope of the SFL licence regulation, the SFL regulations on disciplinary proceedings and the disciplinary regulations of the Swiss Football Association (see points 1, 10, 11 and 12 of the decision of the SFL Disciplinary Commission).
74. It is not the responsibility of the CFCB Adjudicatory Chamber to control or review disciplinary measures based solely on the applicable regulation at national level.
75. Moreover, according to Article 24(2) of the SFL licencing regulation, the UEFA is entitled to control at any time the licence granted to the club which participates in a UEFA club competition.
76. Indeed, in accordance with CL&FFP Regulations and the Procedural Rules, the CFCB has exclusive jurisdiction to review the licences granted by the licensor, accepting or rejecting a club's admission, as well as analysing whether or not the licensing criteria were fulfilled in accordance with the applicable regulations.

77. Neither the UEFA Administration nor the CFCB are bound by a decision of a licensor which granted a licence to participate in a UEFA competition. Otherwise, any licensor would be able to undermine the CL&FFP Regulations and the Procedural Rules. In such a situation, the possibility of contradictory decisions by different licensors would put in risk the coherence, the objectives and the effectiveness of the CL&FFP Regulations, creating uncertainty and jeopardising the equality of treatment of candidates and the transparency of the process.
78. The allegation of the existence of a violation of the principle of *ne bis in idem* being unfounded, the CFCB Adjudicatory Chamber proceeds to analyse the substance of the matter. Having considered the evidence, in particular the findings of the CFCB Chief Investigator and the Observations, the CFCB Adjudicatory Chamber considers that:

Article 49 of the CL&FFP Regulations – No overdue payables towards other football clubs

79. In its Observations, the Club did not dispute the existence of overdue payables towards FC Sochaux as at 31 March 2017. On the contrary, the Club expressly recognizes these overdue payables.
80. FC Sochaux put the Club in default on 8 February 2017 requesting the payment of the relevant amount and, subsequently, on 23 February 2017, considering FC Sion still had not paid its debt, it requested FIFA to execute the CAS decision, putting FC Sion in copy of the letter addressed to FIFA.
81. The CFCB Adjudicatory Chamber notes that there is no doubt that the Club had overdue payables towards a football club amounting to €950,000 as at 31 March 2017, which was eventually paid on 7 June 2017 only, clearly in breach of the CL&FFP Regulations.
82. As already confirmed by the Court of Arbitration for Sport (CAS), *“the clubs must not only fulfil the material requirements set in the regulations, but they also need to meet these conditions on a certain date”*. The CAS further explained the following:
- “In this regard, the Panel stresses that for the good organization of any competition, strict deadlines are inevitable. As stated by another CAS Panel (CAS 2008/A/1579), “[t]he matter of deadlines has to be considered under the principles of equality of treatment; it is a must to treat all the clubs and the national football associations the same way”. In addition, the purpose of the deadline set forth in Article 50 of the CL&FFP Regulations is also to serve the interests of legal certainty and security, taking into consideration that UEFA Europa League first qualifying round usually takes place in early July.- CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 80)*
83. On this basis, the CFCB Adjudicatory Chamber accepts the finding of the CFCB Investigatory Chamber (as set out in Paragraph 18 of this Decision) that the Club had failed to satisfy the requirements of Article 49 of the CL&FFP Regulations as a result of having overdue payables towards football clubs amounting to € 950,000 as at 31 March 2017.

84. The CFCB Adjudicatory Chamber recalls that as it has already been confirmed by the Court of Arbitration for Sport, *"The mere existence of overdue payables is indeed sufficient to declare the Appellant ineligible"* to a UEFA club competition.

*"The CL&FFP Regulations set out licensing criteria. As mentioned above, one of these requirements consists in the absence of overdue payables towards employees and social/tax authorities (Article 50 of the CL&FFP Regulations). Another one consists in the provision of annual financial statements, which must meet minimum disclosure requirements as per Annex VI and comply with accounting principles set out in Annex VII (Article 47 of the CL&FFP Regulations). In case of non-fulfilment of one of the above conditions the licence must therefore be refused and the club cannot be admitted to the UEFA competition."* - CAS 2013/A/3233 PAE PAS Giannina 1966 v. UEFA - para. 84)

#### Submission of inaccurate information

85. The SFL Disciplinary Commission decided that, although the information contained in the document dated 7 April 2017 was false/wrong, the document was not falsified and the Club did not have the intention to mislead the SFL.
86. There can be no dispute that there were overdue payables which should have been included in the financial information submitted by the Club.
87. It is the responsibility of the licence applicant to submit complete and accurate information under Article 13 of the CL&FFF, and as the SFL decision makes clear this was not done.
88. The Club insists that it did not have the intention to mislead the SFL.
89. In this regard, the CFCB Adjudicatory Chamber returns to the documentation and highlights that the relevant document dated 7 April 2017 has been signed by the FC Sion's President. The Club and its President are responsible for providing correct and accurate information when applying for a UEFA licence. That responsibility does not depend upon it being established that the inaccuracy in the information submitted was intentional. As the decision of the SFL Disciplinary Commission makes clear, and the documents show, the Club did breach its duty to provide accurate financial information.

#### Conclusions

90. The CFCB Adjudicatory Chamber determines that the Club has:
- (v) failed to satisfy the requirements of Article 49(1) of the CL&FFP Regulations; and

- (vi) based on the foregoing, it obtained the licence issued by the SFL not in accordance with the CL&FFP Regulations;
- (vii) breached Articles 13(1) and 43(1)(i) of the CL&FFP Regulations.

## **PART VII – Admission matters and disciplinary measures**

### Admission to the 2017/2018 UEFA Europa League

91. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which aim, inter alia, to protect the integrity and smooth running of the UEFA club competitions. This aim is of the utmost importance and is clearly threatened when clubs that have not met the UEFA licensing criteria are granted a UEFA Licence and then subsequently compete in the competitions. Such situations create a great deal of risk and uncertainty for UEFA, as competition organiser, and can undermine the sporting integrity of the competitions.
92. According to Article 4.01(c) of the UEL Regulations, to be eligible to participate in the competition, clubs must *“have obtained a licence issued by the competent national body in accordance with the UEFA Club Licensing and Financial Fair Play Regulations and be included in the list of licensing decisions to be submitted by this body to the UEFA administration by the given deadline”*.
93. Article 4.06 of the UEL Regulations establishes that *“UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these two admission criteria (4.01(c) and (d) of the UEL Regulations) are or have been met until the end of the competition; if such an investigation reveals that one of these two criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the Procedural rules governing the UEFA Club Financial Control Body”*.
94. In the present case, FC Sion was granted a licence by the SFL to participate in the 2017/2018 UEFA Europa League not in accordance with the CL&FFP Regulations, since it has been established that the Club failed to satisfy the requirements of Article 49(1) of the CL&FFP Regulations.
95. Following its admission to the 2017/2018 UEFA Europa League, the Club participated in the third qualifying round, and has already been eliminated from the competition.
96. The CFCB Adjudicatory Chamber has made it clear in a number of cases that the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally (in this regard, see paragraph 100 of case AC-01/2016, *Galatasaray Sportif Sinaı ve Ticari Yatirimlar A.S.*).

97. This principle is of particular importance when it comes to assessing the eligibility of clubs for UEFA Licences. All clubs are subject to the same requirements and all clubs must be assessed on the same basis. To show undue leniency to a club that has not satisfied UEFA's club licensing criteria would be inconsistent with the inherent equality of the licensing system and must be avoided in order to maintain the value and integrity of the process.
98. The CFCB Adjudicatory Chamber considers that the Club should not have been granted a UEFA Licence by the SFL.
99. In accordance with the disciplinary measures imposed in previous cases related to the admission criteria, in the manner provided for in Article 27(b) of the Procedural Rules, in case of non-fulfilment of the licence criteria the Club's admission to the 2017/2018 UEFA Europa League could have been rejected.
100. However, the rejection of the admission to participate in the UEFA club competitions was imposed by the CFCB Adjudicatory Chamber on clubs when the irregularity in the granting of the licences by the licensor were detected before the start of the UEFA club competition and the rejection of the clubs' admission to the relevant UEFA club competition, in accordance with Article 27(b) of the Procedural Rules, was possible.
101. In the present case, as previously explained, the existence of overdue payables towards football clubs as at 31 March 2017 and therefore, the breach of Article 49(1) of the CL&FFP Regulations, has been established by the CFCB Investigatory Chamber during the monitoring process and in particular, within the scope of the investigation opened against the Club considering the existence of significant overdue payables as of 30 June 2017.
102. The Club had already been admitted to the 2017/2018 UEFA Europa League, has already participated and has already finished its participation in the 2017/2018 UEFA Europa League, being entered the competition in the third qualifying round and eliminated in the same round.
103. Considering the circumstances of the present case, the CFCB Adjudicatory Chamber can no longer reject the Club's admission to the 2017/2018 UEFA Europa League.
104. Consequently, considering that FC Sion has not fulfilled the club licensing criterion defined in Article 49(1) of the CL&FFP as a result of having overdue payables towards football clubs amounting to €950,000 as 31 March 2017, in accordance with Article 27(c) of the Procedural Rules, the CFCB Adjudicatory Chamber shall impose disciplinary measures in accordance with Article 29 of the Procedural Rules.
105. The CFCB Investigatory Chamber suggests that the CFCB Adjudicatory Chamber imposes disciplinary measure on the Club consisting of a fine of €235,000, the amount corresponding to the UEFA revenues the Club gained by participating in the 2017/2018 UEFA Europa League.
106. In accordance with Article 2(1)(h) of the UEFA Statutes (edition April 2017), one of the objectives of UEFA shall be *"redistribute revenue generated by football in accordance with*

*the principle of solidarity and to support reinvestment in favour of all levels and areas of football, especially the grassroots of the game". Article 2 (2) of the UEFA Statutes establishes that "UEFA shall seek to achieve its objectives by implementing any measures it deems appropriate, such as setting down rules, entering into agreements or conventions, taking decisions or adopting programmes".*

107. The Club has received revenues of €235,000 from the 2017/2018 UEFA Europa League.
108. The CFCB Adjudicatory Chamber agrees that, in general, imposing a fine corresponding to the amount of the UEFA revenues the Club gained by participating in the competition, considering the fact that a club should not have been admitted to the competition for failing to meet one of its admission criteria, appears to be an appropriate measure. However, such a fine should not necessarily correspond, contrary to the argument sustained by the Club, to a mere civil reimbursement of the UEFA revenues received.
109. The CFCB Adjudicatory deems important to emphasise that in cases related to the admission criteria in which it is established that the club failed to fulfil the club licensing criteria before its admission to the UEFA club competition, the sanction to be imposed in general is the rejection of the club's admission, in accordance with Article 27(b) of the Procedural Rules.
110. As previously mentioned, the CL&FFP Regulations are underpinned by the principle that all clubs must be treated equally. Therefore, the CFCB Adjudicatory Chamber deems necessary to take into account the particular circumstances of the case and the seriousness of the offence and respect the principles of equal treatment and proportionality, while assessing the appropriate disciplinary measure(s) to be imposed.
111. The CFCB Adjudicatory Chamber highlights the risk of unequal treatment by imposing a financial sanction (fine corresponding to the amount of the UEFA revenues) in opposition to a sporting sanction (the rejection of the admission or exclusion of the competition) for the same breach, i.e. the non-fulfilment of the licensing criteria established in the CL&FFP Regulations, only depending on the moment the breach is detected/verified.
112. The CFCB Adjudicatory Chamber also considers that the sanction must serve as a sufficient deterrent to discourage clubs from breaching these rules and the disciplinary measures imposed must also be fair to those clubs who have participated in UEFA competitions in full compliance with these rules.
113. The seriousness of the breach of Article 49(1) of the CL&FFP regulations, the fact that the Club participated in the 2017/2018 UEFA Europa League in breach of the CL&FFP Regulations and the significant amount of the overdue payable towards a football club as at 31 March 2017 shall be taken into consideration when determining the appropriate disciplinary measure(s).
114. It is essential to also take into account that all clubs comply with the disclosure obligations in the CL&FFP Regulations in order to enable the UEFA Administration and the CFCB to properly assess the position of the clubs which will take part in UEFA's club competitions.

115. Articles 13(1) and 43(1)(i) of the CL&FFP Regulations play a key role in setting the standard of these disclosures, emphasising that *"all necessary information and/or relevant documentation"* must be provided and that all documents that are submitted must be *"complete and correct"*.
116. The CFCB Adjudicatory Chamber has stressed on a number of occasions that a club's disclosures have to be *"correct"* and *"accurate"*, otherwise the whole club licensing and financial fair play system would be undermined (in this regard, see paragraph 53 of case AC-01/2015, *Pallohonka Oy*).
117. It is clear then that the submission of incorrect, inaccurate and incomplete documentation by clubs is a serious matter which should be taken into account in considering the sanction that should flow from a breach of Article 49 of the CL&FFP Regulations.
118. It is important to reiterate the importance of the accuracy of the financial information given in the licensing system, since the Financial Fair Play and Club Licensing system is primarily based on the information provided to UEFA by the clubs through their national associations. For this reason, any detected infringements must be severely penalised.
119. In view of all the circumstances of the case, the CFCB Adjudicatory Chamber deems that an exclusion from the next UEFA club competition for which the Club would otherwise qualify in the next two (2) seasons (i.e. the 2018/19 and 2019/20 seasons) and a fine in the amount of €235,000 are the appropriate disciplinary measures to ensure that a club does not derive a benefit from being wrongly admitted to a UEFA competition, to make clear the importance of compliance by licence applicants with the duty to submit accurate information during the licencing process, and to serve as a sufficient deterrent to dissuade licence applicants from submitting inaccurate financial information.
120. In addition, costs of three thousand Euros (€ 3,000) are required to be paid by the Club, in accordance with Article 32(2) of the Procedural Rules.

## Decision of 19 April 2018

### ORDER

Panathinaikos Athletikos Omilos PAE  
(overdue payables)

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

On 12 December 2017, the Club Financial Control Body (CFCB) Adjudicatory Chamber decided (the "Decision") that Panathinaikos Athletikos Omilos PAE ("Panathinaikos") had breached Articles 65(1) and 66 (1) of the UEFA Club Licensing and Financial Fair Play Regulations (CL&FFP Regulations) for having overdue payables towards other football clubs and in respect of its employees as at 30 September 2017. The CFCB Adjudicatory Chamber decided to exclude Panathinaikos from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) seasons unless the club was able to prove by 1 March 2018 that it had paid the amounts or concluded an agreement with the creditors with regard to the amounts that were identified as overdue payables as at 30 September 2017 (the "Condition"). The Adjudicatory Chamber decided to also impose a fine of two hundred thousand Euros (€200,000) on Panathinaikos, from which one hundred thousand Euros (€100,000) was suspended and would only fall due in case of non-fulfilment of the Condition. An examination was conducted by the CFCB Investigatory Chamber on 19 March 2018 in order to verify whether Panathinaikos had satisfied the Condition and concluded that the club had not satisfied the Condition because a significant amount related to overdue payables towards other football clubs and in respect of employees were not settled (i.e. paid or deferred) by 1 March 2018. Panathinaikos did not contest the findings of the Investigatory Chamber, but stated that the sanctions imposed on the club should be suspended considering the implementation of a reasonable and realistic financial and business plan taken to bring the club into compliance with the CL&FFP Regulations. Moreover, the club requested, alternatively, either the signature of a settlement agreement or the imposition of alternative disciplinary measures. The CFCB Adjudicatory Chamber noted that the club did not dispute not having fulfilled the Condition and considered that the arguments submitted by Panathinaikos cannot be taken into account at this stage of the procedure which only concerns the question whether or not the Condition has been satisfied.

#### **Decision**

The CFCB Adjudicatory Chamber decided that Panathinaikos failed to satisfy the Condition and the exclusion provided for in the Decision shall take effect immediately and consequently, Panathinaikos is excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) seasons (i.e. the 2018/19, 2019/20 and 2020/21 seasons). The amount of €100,000 regarding the fine imposed on the Club in the total amount of €200,000 is no longer suspended and is due immediately.

Chairman: José Narciso da Cunha Rodrigues (Portugal)  
Vice-Chairmen: Christiann Timmermans (Netherlands)  
Louis Peila (Switzerland)  
Members: Charles Flint (England)  
Adam Giersz (Poland)

1. On 12 December 2017, the Adjudicatory Chamber of the UEFA Club Financial Control Body made its decision in case AC-02/2017, *Panathinaikos Athletikos Omilos PAE* (the "**Decision**") in accordance with the *Procedural rules governing the UEFA Club Financial Control Body – Edition 2015* (the "**Procedural Rules**").
2. The CFCB Adjudicatory Chamber found that Panathinaikos Athletikos Omilos PAE ("**Panathinaikos**" or the "**Club**") had breached Articles 65(1) and 66(1) of the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the "**CL&FFP Regulations**") Regulations because it had:
  - (a) total overdue payables towards other football clubs and in respect of its employees of four million, four hundred and forty-seven thousand Euros (€4,447,000) as at 30 June 2017; and
  - (b) total overdue payables towards other football clubs and in respect of its employees of five million, six hundred and thirty-one thousand Euros (€5,631,000) as at 30 September 2017.
3. Against this background, the CFCB Adjudicatory Chamber decided to exclude Panathinaikos from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) seasons (i.e. the 2018/19, 2019/20 and 2020/21 seasons) unless the Club was able to prove by 1 March 2018 that it had paid the amounts or concluded an agreement with the creditors with regard to the amounts that were identified as overdue payables as at 30 September 2017 (i.e. five million, six hundred and thirty-one thousand Euros (€5,631,000) (the "**Condition**").
4. The CFCB Adjudicatory Chamber decided to also impose a fine of two hundred thousand Euros (€200,000) on Panathinaikos, from which one hundred thousand Euros (€100,000) was suspended and would only fall due in case of non-fulfilment of the Condition.
5. An examination was conducted by the CFCB Investigatory Chamber on 19 March 2018 in order to verify whether the Club had satisfied the Condition. Such examination took into account the information and supporting documentation submitted by the Club.
6. The CFCB Investigatory Chamber's examination concluded that the Club had not satisfied the Condition because only the amounts of seven hundred and sixty-three thousand Euros (€763,000) and one million, two hundred and fourteen thousand Euros (€1,214,000) of the relevant overdue payables towards other football clubs and in respect of employees were respectively paid and deferred (with agreements with the creditors) before 1 March 2018.
7. According to the analysis of the CFCB Investigatory Chamber, the remaining amount of three million, six hundred and fifty-four thousand Euros (€3,654,000) related to overdue payables towards other football clubs and in respect of employees were not settled (i.e. paid or deferred) by 1 March 2018.

8. The Club was notified of the outcome of the CFCB Investigatory Chamber's examination on 20 March 2018 and was given the opportunity to submit its observations on the findings of the CFCB Investigatory Chamber.
9. The CFCB Adjudicatory Chamber acknowledges receipt of the letter dated 5 April 2018 from the Club's lawyer, Mr. Alkis Papantoniou, in which the Club does not contest the findings of the CFCB Investigatory Chamber.
10. Notwithstanding the above, Panathinaikos states that any sanction to be imposed by the CFCB Adjudicatory Chamber could be suspended considering that the Club is implementing a reasonable and realistic financial and business plan, having already taken steps to bring itself into compliance with CL&FFP Regulations, and is trying to attract investors.
11. In the alternative, the Club requests either the signature of a settlement agreement or the imposition of alternative disciplinary measures foreseen in Article 29 of the Procedural Rules as follows:
  - to limit the sanction imposed on the Club to a restriction on the number of players that Panathinaikos may register for participation in UEFA Competitions for the 1<sup>st</sup> competition it may qualify in the next three (3) seasons, including a financial limit on the overall aggregate cost of the employee benefits expenses of players registered on the A-list for this purpose;
  - alternatively, to order the exclusion from the next UEFA club competition for which Panathinaikos FC would otherwise qualify for one season (2018-2019);
  - alternatively, a combination of the proposed sanctions.
12. The Club also lists mitigating circumstances that should be taken into account by the CFCB Adjudicatory Chamber.
13. However, the CFCB Adjudicatory Chamber notes that the Club did not dispute not having fulfilled the Condition.
14. The arguments submitted by the Club, which partly repeat the submissions already made during the main proceedings, cannot be taken into account at this stage of the procedure, which only concerns the question whether or not the Condition has been satisfied.
15. Consequently, the CFCB Adjudicatory Chamber accepts the findings of the CFCB Investigatory Chamber with regard to the Club's failure to satisfy the Condition.