



Arbitration CAS 2013/A/3453 FC Petrolul Ploiesti v. Union des Associations Européennes de Football (UEFA), award of 20 February 2014 (operative part of 28 January 2014)

Panel: Mr Dirk-Reiner Martens (Germany), Sole Arbitrator

Football

Disciplinary sanction due to the violation of the UEFA Club Licensing and Financial Fair Play Regulations

Classification of an entity under the reporting perimeter

Exclusion of the reporting perimeter

Burden of proving that the entity is immaterial

Ban of using third parties to transfer obligations in order to escape monitoring requirements

Review of the measure of the sanction

Combined sanction

- 1. According to the UEFA CL & FFP Regulations the reporting perimeter must include all entities in whose books the compensation paid to employees arising from contractual or legal obligations is accounted for. Therefore, it also includes a third party entity that has concluded with a club an agreement according to which said third party is contractually obliged to pay performance bonuses that form part of the club's overall employee compensation.**
- 2. An entity may be excluded from the reporting perimeter only if it is immaterial compared with the overall group made by the licence applicant. The term “*immaterial*” refers in principle to entities that fall within the reporting perimeter but exert almost no recognizable influence on the operations and activities mentioned in Article 46*bis* (2) and (3) of the UEFA CL & FFP Regulations. It must necessarily be interpreted narrowly as it constitutes an exception to the general rule.**
- 3. Considering the relationship between the basic rule in Article 46*bis* (2) and (3) and the exception in Article 46*bis* (4), it is the club that bears the burden of proof to establish the facts which classify an entity as “*immaterial*” and therefore needs to convincingly establish that the presence and activities of the entity are indeed secondary.**
- 4. The principal objectives behind the UEFA CL & FFP Regulations would be at risk if clubs were allowed to transfer obligations outside the core club structures in order to escape monitoring requirements under the UEFA Club Licensing and Financial Fair Play system. Clubs must be prevented from attempting to circumvent the rules by using third parties as a means to transfer their obligations in respect of the payment of compensation to employees.**
- 5. The measure of a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed by the CAS only when the**

sanction is evidently and grossly disproportionate to the offence.

6. **A combined sanction consisting of a reasonable fine and a potential exclusion from future competition is an appropriate means to sanction clubs which do not respect UEFA CL & FFP Regulations. The imposition of a fine alone, which, in order to be a sufficient deterrent, would necessarily have to be very high, would have an adverse effect on the club's finances and would thus run counter to the objective of the Regulations. On the other hand, where the exclusion of the club in breach of the Regulations is suspended until payment of the overdue payables by a certain deadline, the imposition of a fine is necessary to deter clubs from abusing the system by regularly delaying payment until a subsequently imposed deadline.**

1. FACTUAL BACKGROUND

1.1 The Parties

1. S.C. Fotbal Club Petrolul S.A. (hereinafter also referred to as the "Appellant") is a Romanian football club from Ploiesti, competing in the Romanian First Division. During the 2012/2013 season, the Appellant qualified for the 2013/2014 UEFA Europa League and obtained from the Romanian Football Federation ("FRF") the licence necessary to enter UEFA's club competitions in accordance with the relevant regulations.
2. The Union des Associations Européennes de Football ("UEFA") (hereinafter also referred to as the "Respondent") is the European governing body of football based in Nyon, Switzerland. It is the organizer of the UEFA Champions League and the UEFA Europa League.

1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written submissions and the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
4. On 28 September 2012, the Appellant together with three partners founded "LUPII GALBENI 2012", a community association for the development of sport in Ploiesti (hereinafter referred to as the "Association").
5. On 21 January 2013, the Association and the City of Ploiesti entered into a *Cooperation Contract No. 1456* under which the City of Ploiesti agreed to allocate funds from the municipal budget to the Association to be utilized to pay the Appellant's employees. The relevant provisions of

the contract read as follows:

“4.1 Ploiesti City has the following rights and obligations:

4.1.1. Provide from the local budget the amounts to be paid to FC Petrolul Ploiesti players and staff [...] as salary, contract rate, awards and/or sponsorships, as follows:

- a) Euro 1,000,000 if FC Petrolul Ploiesti (Senior) Team ranks one of the 10-6 places in the 1st League – National football Championship;*
- b) Euro 2,000,000 if FC Petrolul Ploiesti (Senior) Team ranks one of the 5-1 places in the 1st League – National football Championship;*
- c) Euro 1,000,000 if FC Petrolul Ploiesti (Senior) Team wins the national competition carried out under the name of “Romanian Cup”.*

[...]

4.1.3. The amounts stipulated in art. 4.1.1 will be granted for each competition year, during 2012-2017.

[...]

4.2. “Lupii Galbeni 2012” Community Association has the following rights and obligations:

4.2.1. Use the amounts allocated by Ploiesti City, exclusively for payment of salaries, contract rates, awards and or/ sponsorships owed to FC Petrolul Ploiesti players and staff”.

6. On 15 July 2013, the FRF submitted to the Respondent’s Club Financial Control Body (“CFCB”) the Appellant’s monitoring documentation and financial information as at 30 June 2013, revealing overdue payables of the Appellant in the amount of EUR 244,000. This amount included (i) overdue payables towards other football clubs of EUR 42,000 and (ii) overdue payables towards social/tax authorities of EUR 202,000.
7. On 9 August 2013, the CFCB Investigatory Chamber convened to assess the monitoring documentation of the Appellant, finding that the Appellant was in breach of the “no overdue payables towards football clubs, employees and social/tax authorities” requirements under Articles 65 and 66 of the UEFA Club Licensing and Financial Fair Play Regulations (“UEFA CL & FFP Regulations”).
8. On 21 August 2013, the Appellant provided evidence that it had paid the overdue payables in the meantime. On the same day, the CFCB Chief Investigator ordered the Appellant to submit updated monitoring documentation for the monitoring period up until 30 September 2013 by no later than 15 October 2013.
9. Between 15 and 18 October 2013, the Appellant, the FRF and the Respondent exchanged

correspondence regarding the reporting perimeter under Article 46bis of the UEFA CL & FFP Regulations, and whether it was necessary under the relevant regulation for the Appellant to disclose also the payables of the Association (i.e. outstanding performance bonuses in the amount of EUR 200,000) in the reporting data of the Appellant. The Respondent answered said question in the affirmative.

10. On 18 October 2013, the Appellant sent a legal opinion to the Respondent arguing that the Association should in fact not be included in the reporting perimeter. At the same time, the Appellant further described the relationship between the Appellant and the Association as follows:

“During the season 2012/2013:

In compliance with the provisions of the Cooperation Agreement and of the mandate given by the Town Hall, the Association concluded direct agreements with football players and staff of FC Petrolul undertaking to pay the bonuses included in the agreement for the achieved performances.

It is important to emphasize that during the season 2012/2013 the obligation to pay bonuses to players and staff was exclusively assumed by the Town Hall and paid through the Association. As a consequence thereof, the Club had no obligation whatsoever to pay bonuses to its players and/or staff as no mention to this effect was included in their contracts.

During the season 2013/2014:

As of the current season, the Club unilaterally decided to mention and include the performance bonuses in the contracts with its players and staff, pointing out the fact that although the Association was bound to pay them, the club would guarantee its payment in the event of default by the Association.

In this second scenario the Club, aware of the provisions included in the Cooperation Agreement between the Association and the Town hall, directly assumes before its employees the obligation to pay bonuses for performances”.

11. On 18 October 2013, the FRF submitted the Appellant’s monitoring documentation and financial information (including the Association) as at 30 September 2013, revealing overdue payables in the amount of EUR 519,000. This amount included (i) overdue payables towards other football clubs of EUR 3,000, (ii) overdue payables towards employees of EUR 200,000, and (iii) overdue payables towards social/tax authorities of EUR 316,000. The updated monitoring information of the Appellant also revealed that the Appellant later paid EUR 3,000 of overdue payables towards employees after 30 September 2013.
12. On 11 November 2013, the CFCB Investigatory Chamber convened to assess the monitoring documentation of the Appellant, finding that it had overdue payables in violation of Articles 65 and 66 of the UEFA CL & FFP Regulations and that it had submitted its monitoring information after the deadline of 15 October 2013.
13. On 18 November 2013, the CFCB Chief Investigator decided to refer the case to the CFCB

Adjudicatory Chamber.

1.3 The Proceedings before the CFCB Adjudicatory Chamber

14. On 12 December 2013, the CFCB Adjudicatory Chamber convened to assess the Appellant's case.

15. On 20 December 2013, the CFCB Adjudicatory Chamber decided:

- “1. *FC Petrolul has breached Articles 65 (1), 65 (8), 66 (1) and 66 (6) of the CL&FFP Regulations.*
2. *To exclude FC Petrolul from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (i.e. 2014/15, 2015/16 and 2016/16 [sic] seasons) unless the club is able to prove by 31 January 2014 that the amounts that were identified as overdue payables on 30 September (i.e. five hundred and nineteen thousand Euros €519,000) have been paid.*
3. *To impose a fine of fifty thousand Euros (€50,000) on FC Petrolul.*
4. *FC Petrolul is to pay one thousand five hundred Euros (€1,500) towards the costs of these proceedings.*
5. *The fine and cost of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of the reasoned Decision to FC Petrolul”*

(hereinafter referred to as the “UEFA Decision”).

16. In its reasoning the CFCB Adjudicatory Chamber specifically rejected the Appellant's argument that the overdue payables towards employees in the amount of EUR 200,000 were solely attributable to the Association and thus not imputable to the Appellant.

17. The UEFA Decision was notified to the parties on 20 December 2013.

2. ARBITRAL PROCEEDINGS

2.1 CAS Proceedings

18. On 30 December 2013, the Appellant submitted to CAS a Statement of Appeal with a request to extend the deadline to file its Appeal Brief until 17 January 2014. At the same time, the Appellant requested CAS to conduct an expedited proceeding based on the parties' written submissions until 29 January 2014. The Appellant appointed Mr Efraim Barak as arbitrator.

19. On 3 January 2014, the Appellant requested CAS that Article R65.2 of the Code of sports-related Arbitration (hereinafter referred to as the “CAS Code”) be applied to the case and that

the proceedings should be free of charge. Should CAS decide that Article R65.4 of the CAS Code be applied because of the predominant economic nature of the case, the Appellant requested that a sole arbitrator be nominated instead of a panel constituted of three arbitrators.

20. On 6 January 2014, the Respondent agreed to an expedited proceeding in which the Appellant would submit its Appeal Brief by 17 January 2014 and the Respondent would file its Answer by 24 January 2014. The Respondent appointed Mr Denis Oswald as arbitrator.
21. On 6 January 2014, CAS suggested the following expedited procedural calendar to the parties:
 - i. Appeal Brief to be filed by 17 January 2014, 3 pm;
 - ii. Answer to be filed by 24 January 2014, 3 pm;
 - iii. Possible hearing to be held on 27 or 28 January 2014;
 - iv. Operative part of the Award to be notified to the parties on 29 January 2014.

The Respondent was also invited to express its consent to the Appellant's request for the case to be decided by a sole arbitrator.

22. On 6 January 2014, the Appellant agreed to the procedural calendar.
23. On 7 January 2014, the President of the CAS Appeals Arbitration Division informed the parties that in accordance with Article R65.4 of the CAS Code, in view of the predominant economic nature of the dispute which concerns an issue of overdue payables, Article R64 of the CAS Code should apply to the proceedings. On the same day, the Respondent agreed to the procedural calendar and to the appointment of a sole arbitrator. The Respondent further expressed its preference for the Sole Arbitrator to decide on the basis of the parties' written submissions.
24. The Appellant also confirmed that it agreed to have an award rendered on the basis of the submissions, without the holding of a hearing.
25. On 8 January 2014, the parties were informed that the case would be decided by Dr Dirk-Reiner Martens, attorney-at-law in Munich, Germany, acting as Sole Arbitrator.
26. On 17 January 2014, the Appellant filed its Appeal Brief with CAS.
27. On 23 January 2014, the Respondent filed its Answer with CAS.

2.2 The Parties' Positions and Prayers for Relief

28. The following section summarizes the parties' main arguments in support of their respective

prayers for relief.

a. *The Appellant*

29. The Appellant deems the decision by the CFCB Adjudicatory Chamber to be invalid because it does not clearly establish the grounds upon which the decision is based and does therefore violate Article 22 (2) lit e) of the Procedural Rules Governing the UEFA Club Financial Control Body.
30. The Appellant further argues that the Association should not be included in the reporting perimeter under Article 46*bis* of the UEFA CL & FFP Regulations. The Appellant deems the Association “*immaterial*” in the sense of Article 46*bis* (4) lit a) of the UEFA CL & FFP Regulations. In this respect, the Appellant contends that the CFCB Adjudicatory Chamber did not establish that the payment obligations by the Association to players and staff of the Appellant were in fact substantial under the UEFA CL & FFP Regulations. Furthermore, the activities of the Association are not exclusively related to the Appellant but instead are focused on the development of sport in general.
31. In case the Sole Arbitrator finds that the Appellant was in breach of Articles 65 (1), 65 (8), 66 (1) and 66 (6) of the UEFA CL & FFP Regulations, the Appellant reckons that the appealed decision did not establish the circumstances to justify a double sanctioning of the Appellant, i.e. a monetary and a sporting sanction.
32. Additionally, the Appellant considers the deadline for proving that overdue payables have been paid until 31 January 2014 is too short. In this regard, it refers to Articles 49 (1) and 50 (1) of the UEFA CL & FFP Regulations which provide for a deadline until 31 March of each year.
33. Finally, the Appellant argues that the fine of EUR 50,000 is not proportionate when compared to the Appellant’s outstanding debts and not in line with previous CAS jurisprudence. It should therefore be cancelled or reduced to no more than EUR 10,000.
34. In light of the above, the Appellant submits the following prayers for relief:

“Primarily – ruling de novo

1. To set aside the decision passed on 20 December 2013 by the Adjudicatory Chamber of the UEFA Club Financial Control Body.
2. To establish that FC Petrolul Ploiesti has not breached Articles 65 (1), 65 (8), 66 (1) and 66 (6) of the UEFA Club Licensing and Financial Fair Play Regulations.

Alternatively, only if the above under items no. 1 to 2 is rejected

3. To revise the decision passed on 20 December 2013 by the Adjudicatory Chamber of the UEFA Club Financial Control Body so that:

- a. FC Petrolul Ploiesti shall be excluded from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three seasons (i.e. 2014/15, 2015/16 and 2016/17 seasons) unless the club is able to prove by 31 March 2014 that the amounts that were identified as overdue payables on 30 September 2013 (i.e. €519,000) have been paid; and
- b. FC Petrolul Ploiesti shall not pay any fine to UEFA.

Alternatively, only if the above under item no. 3.b is rejected

4. To reduce the fine of EUR 50,000 imposed by UEFA to a reasonable and proportionate amount (such as EUR 10,000).

In any event

5. To order the Respondent to bear all the costs incurred with the present procedure as well as with the procedure before the Adjudicatory Chamber of the UEFA Club Financial Control Body (EUR 1,500).
6. To order the Respondent to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel”.

b. The Respondent

35. The Respondent requests CAS:

“to dismiss the appeal and order payment by the Appellant of all costs of the arbitration as well as a contribution towards legal costs suffered by UEFA”.

36. The Respondent argues that the UEFA Decision complies with Article 22 (2) e) of the Procedural Rules Governing the UEFA Club Financial Control Body. The procedural requirement set forth in the provision does not mean that CFCB must provide a detailed reasoning in respect of every element of its decision. Moreover, potential violations of procedural rights in the first instance will be overcome by the *de novo* scope of review by CAS in the appeal proceedings.
37. The Respondent rejects the Appellant’s claim to not include the Association in its reporting perimeter. Since the amount in bonuses is substantial, the Association is not “*immaterial*” in the sense of Article 46*bis* of the UEFA CL & FFP Regulations. Moreover, the Association’s activities are related mainly to the Appellant. To consider otherwise would have far reaching consequences as it would be a means for clubs to circumvent the UEFA CL & FFP Regulations.
38. Regarding the Appellant’s request to review the sanctions of the UEFA Decision, the Respondent argues that CAS has only a limited scope of review in cases where a sanction is evidently and grossly disproportionate. Neither would be the case in the present proceeding. The Respondent argues that a double sanction consisting of a fine at a sensible level and the

exclusion from future competition is a suitable deterrent for clubs to disrespect UEFA CL & FFP Regulations.

39. The Respondent disputes that the deadline provided for in Articles 49 (1) and 50 (1) of the UEFA CL & FFP Regulations applies in the Appellant's case. It refers to clubs applying for a licence, not to those who already have a licence and are thus subject to the Respondent's monitoring requirements.
40. Finally, the Respondent rejects the Appellant's argument that the sanction is not proportionate when compared to previous jurisprudence. In this regard, the Respondent submits two cases decided by the CFCB Adjudicatory Chamber at the time of the UEFA Decision.

3. IN LAW

3.1 Jurisdiction

41. CAS has jurisdiction to decide the present dispute on the basis of Article 25 (2) of the Procedural Rules Governing the UEFA Club Financial Control Body in connection with Article 62 (1) of the UEFA Statutes and Article R47 of the CAS Code.
42. Moreover, both parties have accepted the jurisdiction of CAS in their submissions. It follows that the CAS has jurisdiction to decide the present dispute.

3.2 Admissibility

43. In accordance with Article 62 (3) of the UEFA Statutes,
"[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question".
44. The UEFA Decision was notified to Appellant on 20 December 2013 and the Statement of Appeal was filed on 30 December 2013, thus within the required ten day time limit. It follows that the appeal is admissible.

3.3 Scope of the Arbitrator's Review

45. According to Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

3.4 Applicable Law

46. The Sole Arbitrator determines the applicable law in accordance with Article R58 of the CAS Code and Article 63 (3) of the UEFA Statutes.
47. Pursuant to Article R58 of the CAS Code, the Sole Arbitrator is required to decide the dispute
“... according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
48. Article 63 (3) of the UEFA Statutes provides:
“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.
49. The Sole Arbitrator notes that the parties throughout their submissions referred to the UEFA Statutes (2012 edition), the UEFA CL & FFP Regulations (2012 edition) and the Procedural Rules Governing the UEFA Club Financial Control Body (2012 edition).
50. As a result and in light of Article R58 of the CAS Code, the Sole Arbitrator rules that the abovementioned statutes and regulations of UEFA apply primarily and, additionally, Swiss law.
51. The Sole Arbitrator considers the following Articles and Annexes to the UEFA CL & FFP Regulations to be of particular importance:
52. Article 2 (2) of the UEFA CL & FFP Regulations defines the “objectives” of UEFA’s Financial Fair Play regime as follows:
“[...]
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 by ensuring that clubs settle their liabilities with players, special/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”.
53. Article 46bis of the UEFA CL & FFP Regulations contains provisions on the reporting entity and perimeter:

[...]

- (2) *The reporting perimeter must include all entities in whose books the following is accounted for:*
- a) *compensation paid to employees (as defined in Article 50) arising from contractual or legal obligations; and*
 - b) *costs/proceeds of acquiring/selling a player's registration.*

[...]

- (4) *An entity may be excluded from the reporting perimeter only if:*
- a) *it is immaterial compared with the overall group made by the licence applicant; or*
 - b) *its main activity is not related to the activities, locations, assets or brand of the football club".*

54. Article 49 (1) of the UEFA CL & FFP Regulations provides:

"(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) that refer to transfer activities that occurred prior to the previous 31 December".

55. Article 50 (1) of the UEFA CL & FFP Regulations provides:

"(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 its employees as well as social/tax authorities as a result of contractual and legal obligations towards its employees that arose prior to the previous 31 December".

56. Article 62 (3) of the UEFA CL & FFP Regulations states:

"If a licensee exhibits any of the conditions described by indicators 1 to 4, it is considered in breach of the indicator:

[...]

iv) Indicator 4: Overdue payables

The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence as further defined in Articles 65 and 66".

57. Article 65 the UEFA CL & FFP Regulations provides that:

"(1) The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards other football clubs as a result of transfer activities undertaken up to 30 June.

[...]

- (8) *If the licensee is in breach of indicator 4 as defined in Article 62(3) [The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence], then it must also prove that, as at the following 30 September, it has no overdue payables towards other football clubs as a result of transfer activities undertaken up to 30 September. Paragraphs 2 to 7 above apply accordingly".*

58. Article 66 the UEFA CL & FFP Regulations provides that:

“(1) The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards its employees and/or social/tax authorities (as defined in paragraphs 2 and 3 of Article 50) that arose prior to 30 June.

[...]

(6) If the licensee is in breach of indicator 4 as defined in Article 62(3), then it must also prove that, as at the following 30 September, it has no overdue payables (as specified in Annex VIII) towards employees and/or social/tax authorities that arose prior to 30 September. Paragraphs 2 to 5 above apply accordingly”.

59. Annex VIII of the UEFA 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 and 50) and by 30 June and 30 September (in respect of Articles 65 and 66) respectively that:

a) It has paid the relevant amount in full [...].”

60. Article 19 of the Procedural Rules Governing the UEFA Club Financial Control Body provides:

“The adjudicatory chamber may take the following final decisions in the case at hand:

[...]

c) to impose disciplinary measures in accordance with the present rules [...].”

61. Article 20 of the Procedural Rules Governing the UEFA Club Financial Control Body states:

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

62. Article 21 of the Procedural Rules Governing the UEFA Club Financial Control Body provides:

“(1) The following disciplinary measures may be imposed against any defendant other than an individual:

[...]

c) fine,

[...]

b) disqualification from competitions in progress and/or exclusion from future competitions,

[...]

(3) *Disciplinary measures may be combined*".

3.4 Merits

63. In light of the parties' positions and prayers for relief, the Sole Arbitrator needs to address the following questions:
- i. Does the UEFA Decision comply with Article 22 (2) e) of the Procedural Rules Governing the UEFA Club Financial Control Body?
 - ii. Does the Association fall under the reporting perimeter of Article 46*bis* of UEFA CL & FFP Regulations?
 - iii. Are the sanctions imposed on Appellant proportionate?
64. Before entering into a detailed discussion about the legal issues raised in the appeal, the Sole Arbitrator notes that the Appellant ultimately does not contest the basic facts established in the UEFA Decision. The Appellant merely challenges the Respondent's determination to include the Association and its overdue payables in the amount of EUR 200,000 in the reporting perimeter when calculating the overall amount of overdue payables. Thus, while ignoring the disputed EUR 200,000 attributable to the Association, it remains undisputed that:
- i. as at 30 June 2013, the Appellant had overdue payables in the amount of EUR 244,000. This amount included (i) overdue payables towards other football clubs of EUR 42,000, and (ii) overdue payables towards social/tax authorities of EUR 202,000; and
 - ii. as at 30 September 2013, the Appellant had overdue payables in the amount of EUR 319,000. This amount included (i) overdue payables towards other football clubs of EUR 3,000, and (ii) overdue payables towards social/tax authorities of EUR 316,000.
65. In light of the above, the Sole Arbitrator determines that Appellant, by having (i) overdue payables towards other football clubs of EUR 42,000, and (ii) overdue payables towards social/tax authorities of EUR 202,000 as at 30 June 2013, breached Articles 62 (3), 65 (1) and 66 (1) of the UEFA CL & FFP Regulations. Furthermore, the Sole Arbitrator determines that the Appellant, by having (i) overdue payables towards other football clubs of EUR 3,000, and (ii) overdue payables towards social/tax authorities of EUR 316,000 as at 30 September 2013, breached Articles 65 (8) and 66 (6) of the UEFA CL & FFP Regulations.

a. The Legality of the UEFA Decision in Light of UEFA's Procedural Regulations

66. In regard to the first issue raised by the Appellant, i.e. the alleged illegality of the UEFA

Decision for lack of establishing the grounds upon which the decision is based, the Sole Arbitrator finds that the UEFA Decision meets the requirements of Article 22 (2) lit. e) of the Procedural Rules Governing the UEFA Club Financial Control Body.

67. Article 22 (2) lit. e) provides that a decision by the CFCB Adjudicatory Chamber must contain, among others, *“the grounds upon which the decision is based”*. In the Sole Arbitrator’s view it is a general rule of law and, in particular, part of due process that a judicial decision shall contain the reasoning which leads to the corresponding outcome. Without knowing the facts and legal norms which were relevant for the deciding body, the affected party is unable to evaluate the scope of the decision nor can it make an informed decision whether to appeal before a higher instance.
68. Considering the UEFA Decision, the Sole Arbitrator is satisfied that the CFCB Adjudicatory Chamber adequately established the legal reasoning for its decision. The UEFA Decision sets out the law applicable to the case and contains a comprehensive legal assessment of the facts in light of the relevant regulations. It addresses the Appellant’s overdue payables towards other clubs, employees or social/tax authorities on the relevant dates. Especially, with respect to Article 46*bis* of the UEFA CL & FFP Regulations, the CFCB Adjudicatory Chamber explains in several paragraphs why the Association needs to be included in the reporting perimeter and why overdue payables towards employees are attributable to the Appellant (UEFA Decision paras. 32-40). Regarding the disciplinary measures imposed on the Appellant, the UEFA Decision mentions aggravating and mitigating factors before deciding on the final sanctioning of the Appellant.
69. In addition, the Sole Arbitrator also considers the *de novo* principle set out in Article R57 of the CAS Code and notes that an alleged violation of procedural rights of the Appellant by the UEFA Decision, specifically the lack of, or insufficient, reasoning in the UEFA Decision, can be “cured” in the present appeal proceedings (cf. CAS Code Commentary by RIGOZZI/HASLER in: ARROYO, *Arbitration in Switzerland, The Practitioner’s Guide*, Chapter 5 - Sports Arbitration under the CAS Rules, R57, No. 10).

b. The Classification of the Association under the Reporting Perimeter

70. While the abovementioned findings alone suffice to establish the Appellant’s breach of the relevant provisions of the UEFA CL & FFP Regulations, the Sole Arbitrator also confirms the Respondent’s determination to include the Association into the reporting perimeter. As a result, the Appellant had additional overdue payables towards its employees of EUR 200,000, leading to a total of EUR 519,000 in overdue payables as at 30 September 2013.
71. According to Article 46*bis* (2) of the UEFA CL & FFP Regulations the reporting perimeter must include all entities in whose books *“the compensation paid to employees [...] arising from contractual or legal obligations”* is accounted for. In this regard, the Cooperation Contract of 21 January 2013 between the Association and the City of Ploiesti (and the agreement between the Association and the Appellant as described in the Appellant’s legal opinion of 18 October

2013) provides that the Association was contractually obliged to pay performance bonuses to the Appellant's employees. Since the performance bonuses are part of the Appellant's overall employee compensation, it follows that the Association falls under Article 46bis (2) of the UEFA CL & FFP Regulations.

72. Moreover, according to Article 46bis (4) of the UEFA CL & FFP Regulations an entity may be excluded from the reporting perimeter only if it is "*a) immaterial compared with the overall group made by the licence applicant*" or "*b) its main activity is not related to the activities, locations, assets or brand of the football club*".
73. The Appellant argues that the term "*immaterial*" in Article 46bis (4) lit a. of the UEFA CL & FFP Regulations is unclear and that the Respondent failed (i) to make a comparison between the activities of the Association and those of the Appellant and (ii) to prove that the performance bonuses owed by the Association to players are not completely secondary.
74. Contrary to the Appellant's assertion, the Sole Arbitrator finds that the burden of proof to establish the facts which classify the Association as "*immaterial*" rests with the Appellant, not with the Respondent. This follows from the context and structure of Article 46bis of the UEFA CL & FFP Regulations, which as a general rule provides for a wide scope of the reporting perimeter to allow for a comprehensive assessment of a club's financial status. It is only under the exceptional circumstances of Article 46bis (4) of the UEFA CL & FFP Regulations that an entity may be excluded from such reporting perimeter. Considering the relationship between the basic rule in Article 46bis (2) and (3) and the exception in Article 46bis (4), it is the club who needs to convincingly establish that the presence and activities of the entity are indeed secondary and therefore "*immaterial*". The Appellant failed to do so.
75. In the Sole Arbitrator's view, the term "*immaterial*" in Article 46bis of the UEFA CL & FFP Regulations is sufficiently clear to conclude that the Association falls within the scope of the reporting perimeter.
76. The interpretation of the statutes and rules of a sport association has to be objective and must be based foremost on the wording of the rule which is to be interpreted (cf. CAS 2011/A/2436, p. 10). Furthermore, the statutes and rules have to be interpreted in their regulatory context.
77. Considering the wording of Article 46bis (4) lit. a) of the UEFA CL & FFP Regulations, the Sole Arbitrator understands the term "*immaterial*" to refer in principle to entities that fall within the reporting perimeter but exceed almost no recognizable influence on the operations and activities mentioned in Article 46bis (2) and (3) of the UEFA CL & FFP Regulations. The Sole Arbitrator finds that the term "*immaterial*" must necessarily be interpreted narrowly as it constitutes an exception to the general rule under Article 46bis (2) and (3) of the UEFA CL & FFP Regulations.
78. In this respect, an entity charged with the payment of performance bonuses to players in the amount of up to EUR 4,000,000 per season, let alone an overall volume of EUR 20,000,000 for the entire contractual period of five years, cannot be considered "*immaterial*".

79. The Sole Arbitrator also notes that the principal objectives behind the UEFA CL & FFP Regulations are, *inter alia*, to protect the integrity of UEFA Club Competitions, to improve the financial capabilities of clubs, to protect creditors (players, tax authorities and other clubs) of clubs and to introduce more discipline in clubs' finances. All of these objectives are there to protect the long-term viability and sustainability of European club football (cf. Article 2 (2) of the UEFA CL & FFP Regulations; also CAS 2012/A/2824, p. 20). These objectives would be at risk if clubs were allowed to transfer obligations outside the core club structures in order to escape monitoring requirements under the UEFA Club Licensing and Financial Fair Play system. The Sole Arbitrator shares the Respondent's assessment that an interpretation of Article 46*bis* of the UEFA CL & FFP Regulations must prevent clubs from attempting to circumvent the rules by using third parties as a means to transfer their obligations in respect of the payment of compensation to employees.
80. Finally, the Appellant also fails to substantiate with sufficient evidence that the Association's "*main activity is not related to the activities, locations, assets or brand of the football club*". In contrast, the founding documents of the Association of 28 September 2012 provide that the Association's sole purpose is to defend the economic and legal interests of its members, namely the Appellant and three Romanian individuals. The Appellant did not provide any evidence to show that other members of the Association apart from it also benefitted from the activities of the Association. While the founding documents of the Association also appear to provide for a broad aim of the Association, i.e. to develop sport in general, the actual activities of the Association seem to have been limited to subsidizing the Appellant.

c. The Proportionality of the Sanctions

81. The CFCB Adjudicatory Chamber rendered its decision in accordance with Articles 19, 20 and 21 of the Procedural Rules Governing the UEFA Club Financial Control Body. The provisions provide for a wide discretion of the deciding body when sanctioning violations of the UEFA CL & FFP Regulations. *Inter alia*, disciplinary measures, such as a fine and a disqualification, may be combined according to the regulations.
82. In general terms, the Sole Arbitrator follows CAS jurisprudence under which the measure of a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (cf. CAS 2009/A/1870, para. 48, with further references).
83. In light of the above, the Sole Arbitrator finds that the sanctions imposed on the Appellant are neither evidently nor grossly disproportionate.
84. The Respondent convincingly explained the concept of a combined sanction consisting of a reasonable fine and a potential exclusion from future competition as an appropriate means to sanction clubs which do not respect UEFA CL & FFP Regulations. The imposition of a fine alone, which, in order to be a sufficient deterrent, would necessarily have to be very high, would have an adverse effect on the club's finances and would thus run counter to the

objective of the UEFA CL & FFP Regulations. On the other hand, where the exclusion of the club in breach of UEFA CL & FFP Regulations is suspended until payment of the overdue payables by a certain deadline, the imposition of a fine is necessary to deter clubs from abusing the system by regularly delaying payment until a subsequently imposed deadline.

85. With regard to the Appellant's request to extend the deadline to pay its overdue payables until 31 March 2014 in light of Articles 49 (1) and 50 (1) of the UEFA CL & FFP Regulations, the Sole Arbitrator finds that the provisions do not apply to the case at hand. The deadline stipulated in Articles 49 (1) and 50 (1) of the UEFA CL & FFP Regulations refers to clubs newly applying for a licence to participate in a UEFA competition. In the Appellant's case, the obligation to pay overdue payables derives from monitoring standards which apply to the Appellant as a current licensee under UEFA CL & FFP Regulations, according to which it was obliged to prove by the relevant deadlines (i.e. 30 June and 30 September) that it had no overdue payables (cf. Articles 65, 66 and Annex VIII of the UEFA CL & FFP Regulations). In light of the Appellant's failure to pay its overdue payables by 30 September 2013, the 31 January 2014 deadline constitutes an appropriate extension for the Appellant to finally meet its payment obligations.
86. If in another case concerning overdue payables, the CFCB Adjudicatory Chamber granted a club until 31 March 2013 to prove that its overdue payables towards tax authorities had been paid, the Respondent sufficiently distinguished said case from the present dispute by explaining, *inter alia*, that the grounds for the decision in the other case were not communicated before 14 January 2013. A deadline only until 31 January 2013 would have been too short for the affected club. However, in the present dispute, the full decision was notified on 20 December 2013. The 31 January 2014 deadline is thus appropriate.
87. Finally, the fine of EUR 50,000 is also proportionate comparing it to sanctions imposed in other case before CFCB Adjudicatory Chamber (cf. AC-05/2013, SIA Skonto FC; AC-10/2013, FC Metalurg Donetsk Ltd).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 December 2013 by FC Petrolul Ploiesti against the decision rendered by the Adjudicatory Chamber of the UEFA Club Financial Control Body on 20 December 2013 is dismissed.
2. The decision rendered by the Adjudicatory Chamber of the UEFA Club Financial Control Body on 20 December 2013 is confirmed.

(...)

5. All other motions or prayers for relief are dismissed.