



Arbitration CAS 2012/A/2873 European Federation of American Football (EFAF), American Football Verband Deutschland (AFVD), Schweizerischer American Football Verband (SAFV), Belgian American Football League (BFL) & Irish American Football Association (IAFA) v. International American Football Association (IAFA), award of 3 July 2013

Panel: Mr John Faylor (Germany), President; Mrs Sophie Dion (France); Mr Jean-Philippe Rochat (Switzerland)

American football

Termination of a continental federation's status as an affiliated member of the international federation

Language obligation regarding the submission of a version of a draft amended statutes

Validity of the termination of an affiliated member of a federation

1. According to the applicable statutes of the international federation and to the applicable national jurisprudence, there is no express obligation on a member to submit proposals to a federation's congress in both of the official languages. The consequence of adopting an amendment proposal by the congress in only one of the official languages is not the automatic nullification of the amendment, but rather the need for the objecting members to seek inside or outside of the congress a resolution of their differences.
2. The termination of a continental federation's status as an affiliated member of an international federation (IF) by the adoption of an amendment of the statutes, is tantamount to a *de facto* revocation resulting from an organisational change within the IF. However, this *de facto* exclusion is not a violation of the IF statutes if a continental federation never was a "member" of the IF within the definitional meaning of the rules, nor was a continental federation subject to the provisions governing "membership" under the relevant provision of the IF Statutes. If the continental federation is not a "member" having voting rights within the definitional meaning of the IF's statutes, it cannot claim the same rights which are accorded to members. Whereas "membership" of a "member" may be terminated either by voluntary resignation or according to a regulated procedure, no equivalent procedure can be found in the provisions governing continental federations. Therefore, a continental federation was not deprived of its fundamental rights by the procedure applied to adopt the amendment and resulting in its revocation.

1. THE PARTIES

- 1.1 The Appellant, European Federation of American Football (hereinafter “**EFAF**”), is the continental governing body of American football in Europe. Its declared goal is the development and promotion of American football in Europe and the organisation of European club competitions for both contact football and its non-contact version, flag football.
- 1.2 The EFAF organizes and oversees several European tournaments, the highest level tournament being the European Football League for contact football, competition in which culminates in the annual Eurobowl championship which brings together the top-level European clubs.
- 1.3 Members of EFAF consist of the national associations which compete in American football in their respective countries (Article 2 sec. 2 of the EFAF Statutes (2010 version)). Only one association is recognized in each country. Currently, EFAF claims a total of thirty-three (33) member national federations, among them the Appellants further described in Pts. 1.5 and 1.6 below.
- 1.4 EFAF is one of two Continental Federations currently recognized by the Respondent. It is the oldest and largest of the five affiliated Continental Federations recognized by the Respondent pursuant to Article 5 of the IFAF Statutes. Other Continental Federations are foreseen representing Africa, Oceania and Pan America (see Article 5 of the IFAF Statutes).
- 1.5 The Appellant, **American Football Verband Deutschland** (hereinafter “**AFVD**”), a German registered association, is the national organisation which governs American football and cheerleading in Germany. AFVD, in addition to being a member of EFAF, is a direct member of the Respondent within the meaning of Art. 1 of the IFAF Statutes.
- 1.6 Similarly, the remaining Appellants, the **Schweizerischer American Football Verband** (hereinafter “**SAFV**”) with three (3) national clubs, the **Belgian American Football League** (hereinafter “**BFL**”) with 17 national clubs and the **Irish American Football Association** (hereinafter “**IAFA**”) with 17 national clubs are national federations which represent, promote and organize competitions for their respective national clubs. Like the AFVD, in addition to being members of EFAF, each of them is a direct member of the IFAF within the meaning of Art. 1 of the IFAF Statutes.
- 1.7 The Respondent, **International Federation of American Football** (hereinafter “**IFAF**”) is the international governing body of American football associations worldwide. It is a registered French association with its headquarters at La Courneuve, France.
- 1.8 The object of IFAF, as set out in Article 3 of its Statutes amended as of 14 July 2011 is the development of sporting relationships between its members, the promotion of the game of American football all over the world without racial, religious, political or gender discrimination and “*to oversee the organization of the competitions and tournaments such as the World Championships and the World Cup of American Football for men and women*”.

- 1.9 Article 2 of the IFAF Statutes states that IFAF, a non-profit organisation,
“... shall consist of the national federations that are affiliated to it and recognized by it as controlling American football in their respective countries. Only one federation shall be recognized in each country. IFAF is duly organized under French law specifically under the provisions of the July 1st, 1901 law as amended from time to time”.

2. SUBJECT MATTER OF THIS DISPUTE

- 2.1 On 4 June 2012, the President of the IFAF, Mr. Tommy Wiking, issued an invitation to all of the member federations of the IFAF to attend its 15th general meeting, called “Congress” under the IFAF Statutes, which was to take place in Austin, Texas, on 5 and 6 July 2012.
- 2.2 Attached to the invitation was an agenda containing, among other items, a list of proposed changes to the IFAF Statutes which were last amended by the IFAF Congress on 14 July 2011.
- 2.3 Item No. 16 of the Agenda to the invitation proposed a resolution for wide-ranging changes to the organisational structure of the IFAF. The resolution read, in part, as follows:
“16. Vote on any proposal sent according to the statutes and proposals by the Executive Board.
Proposal of the Executive Board
1. The Executive Board proposes that the IFAF Congress accepts the proposal for New Governance structure and that the necessary statutes changes (art. 1,2,4,5,7,8,9,10,11,12,13,16,17 and 18) and that these changes come into effect immediately. Elections shall be held in accordance with the new statutes. For the positions where the elections shall be held between Winter Olympic Games the elections shall be for a two-year term”.
- 2.4 With regard to the proposed amendment of Article 1 and other Articles of the Statutes, the IFAF Executive Board proposed to delete the existing definition of the “Continental Federations” as “a federation, affiliated to IFAF, of national federations and belonging to the same continent” (Article 1) and to replace it with “Continental Executive Committees” (Article 5).
- 2.5 The effect of these changes was to eliminate these previously independent corporate bodies, the Continental Federations, each of which had been (or would be) organized under the laws of the respective countries in which they were domiciled. Their function as coordinating bodies interposed between the IFAF and the national federations was to be dropped.
- 2.6 In their place, the proposed item No. 16 was also intended to rewrite Article 5 of the Statutes which had dealt with the Continental Federations. Article 5 was to be re-titled “Continental Zones and Continental Executive Committees”. The Continental Federations were to be replaced by “Continental Executive Committees”, each of which would be

responsible for the “*promotion and coordination of the development and activities of American football within their respective continental zones*”.

- 2.7 In essence, at the core of this dispute is the proposed elimination of the EFAF and its Asian counterpart, the only two previously existing and operating Continental Federations. These were to be replaced by internal, fully integrated committees responsible directly to the IFAF management. Three new Continental Executive Committees would be created, thus bringing the total to five: IFAF Africa, IFAF Americas, IFAF Asia, IFAF Europe and IFAF Oceania.
- 2.8 At the 15th IFAF Congress on 5 July 2012, the members adopted the amendment resolution contained in item No. 16 (“**Resolution No. 16**”). The Appellants seek to nullify the adoption of the resolution on the grounds that the Congress (i.) violated the rules governing the official languages to be applied in the interpretation of the Statutes (ii.) violated the substantive membership guarantees accorded to all members of IFAF resulting in the *de facto* exclusion of the EFAF and (iii.) ignored the qualified quorum rules set out in Article 8 J of the Statutes.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 26 July 2012 their Appellants filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) requesting the “complete reversal” of Proposal No. 16 of the Agenda resolved by the IFAF General Assembly on 5 July 2012.
- 3.2 Enclosed with the Statement of Appeal was a request for provisional measures pursuant to Article R37 CAS Code. The Appellants referred to this request as their “*Application to stay the execution of the Decision appealed against*”.
- 3.3 Appellants’ Appeal Brief was filed with the CAS Court Office on 6 August 2012, followed by the Respondent’s Answer 14 September 2012 after the grant of a time extension by the CAS Court Office and with the consent of the Appellants.
- 3.4 The Deputy President of the Appeals Arbitration Division rejected Appellants’ updated request for provisional measures on 29 October 2012.
- 3.5 By letter dated 14 November 2012, the CAS informed the parties that the Panel had been constituted as follows: Mr John Faylor, attorney-at-law in Frankfurt, Germany, President, Mrs Sophie Dion, attorney-at-law in Paris, France, appointed by the Appellants and Mr Jean-Philippe Rochat, attorney-at-law in Lausanne, Switzerland, appointed by the Respondent, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel.
- 3.6 On 7 December 2012, the Panel granted the parties’ request for a suspension of the arbitral procedure until 6 February 2013 in order to enable amicable settlement discussions.

- 3.7 On 13 February 2013, the Appellants requested a further extension of the suspension period for “at least” two months to enable settlement negotiations with the Respondent to continue.
- 3.8 On 19 February 2013, the Respondent rejected the Appellants’ request for a further two month extension of the suspension period, having stated in its letter of 14 February 2013 that the Respondent desired the holding of a hearing.
- 3.9 On 9 April 2013, the CAS Court Office informed the parties that the hearing in the arbitration would take place in Lausanne on 24 May 2013.
- 3.10 The Respondent informed the CAS Court Office by letter dated 16 April 2013 that Messrs. Tommy Wiking and Roope Noronen would appear at the hearing in person and that Mr. Jim Elias would testify by teleconference from Indianapolis, Indiana (USA). The Appellant informed the CAS Court Office on the same date that they would not call any expert or witnesses.
- 3.11 On 14 May 2013, the parties were informed by the CAS Court Office that the Deputy President of the CAS Appeals Arbitration Division had extended the period for communicating the operative part of the award until 15 July 2013.
- 3.12 By letter dated 15 May 2013, the President of the Panel, in the exercise of his powers under Article R56 of the CAS Code, agreed to Appellants’ request of the previous day to submit additional documents alleged to have been received by the Appellants on 3 May 2013.
- 3.13 The Appellants thereupon submitted the 2012 financial report of the IFAF and the Respondent’s agenda for the 2013 IFAF Congress together with additional pleadings.
- 3.14 The Respondent’s response to the Appellants’ additional pleadings was submitted within the deadline set by the Panel on 22 May 2013.
- 3.15 On 22 May 2013, the CAS Court Office received the executed Order of Procedure from both the Respondent and the Appellants.
- 3.16 On 24 May 2013, a hearing was held in Lausanne. All Panel members were present. On that occasion Respondent’s witnesses Wiking, Noronen and Elias were heard. Following their testimonies, the witnesses Wiking and Noronen assumed their position as representatives (President and Vice President) of the Respondent. The EFAF as Appellant was represented by its Vice President, Mr Michel Daun.
- 3.17 At the end of the hearing, the parties confirmed that their right to be heard had been fully respected.
- 3.18 On 6 June 2013, the Panel rejected the Appellants’ post-hearing request for the admission of additional documents in support of its pleadings.

4. OVERVIEW OF THE PARTIE'S POSTIONS

4.1 The following rendition of the parties' positions represents a summary and does not purport to include every contention, assertion or rebuttal put forward by them in the course of this arbitration. However, the Panel has carefully considered all of the submissions put forward by them both in their written briefs and at the hearing, even if there is no specific reference to these arguments in the following Award.

A. Summary of the Appellants' Submissions

4.2 Appellants assert in their Appeal Brief dated 6 August 2012 that Resolution No. 16 is intended to eliminate the Continental Federations as an intermediary and independent level of jurisdiction interposed between the IFAF and the national federations. The Continental Federations will be replaced by non-independent, internal commissions which will be directly accountable to the IFAF.

4.3 The replacement of the Continental Federations is, in the view of the EFAF, only the first step in the IFAF's larger plan. The second step aims "*to get hold of the competitions that the EFAF organises and the income it derives therefrom*". This plan ultimately foresees the calling of a special general meeting of EFAF for the purpose of dissolving it. Moreover, the new Article 4 G 3 of the revised Statutes, as set out in Resolution No. 16, provides that any European national federations which continue to enter their national teams or authorise their clubs to be entered in competitions organised by the EFAF henceforth risk suspension by the IFAF's Executive Board.

4.4 At the beginning of the Congress, the representative of the Belgian Football League was told that it would be denied voting rights because it had not paid its annual membership fee for 2012 to IFAF. The Appellants assert that this denial violated the governing IFAF Statutes last amended on 14 July 2011. Failure to make timely payment of a Member Federation's membership fees, in contrast to the earlier version of the Statutes, permitted suspension of voting rights only "*after due process for important reasons*" (Article 4 I 2 in conjunction with Article 4 G 5). The BFL had not been accorded "due process".

4.5 Moreover, prior to the opening speech of the Congress, the representative of the EFAF had submitted a letter of protest challenging the legitimacy of the organisational reform set out in Item No. 16 of the Agenda. This letter, in addition to numerous protests that the quorum requirements set forth in Article 8 J of the Statutes (at least one-half of the Member Federations entitled to vote must be present "in their places") had been violated, were later not found in the Minutes of the 15th Congress which were sent to the member federations only a few days after the Congress closed on 5 July 2012.

4.6 With regard to the vote on Item No. 16 of the Agenda, the Appellants assert the following:

"The representatives of the AFVD and the BFL ultimately left the Congress to show their disapproval, so that at the time of voting on resolution no. 16 only 31 members were present in the room (Exhibit no. 1). The representative of the Irish Federation, Mr. Michael Smith, again placed on record that the quorum had

not been attained and that, consequently, the resolution was not to be put to the vote. In spite of this ultimate opposition, resolution no. 16 was submitted to the vote of the members who were present, who approved it, except for Italy which voted against it; the representatives of the IFAF however refused to take part in the vote they considered as being unlawful (Exhibit no. 1)”.

4.7 Pursuant to Article 8 M of the Statutes, which permits the filing of objections to the minutes within 4 weeks following their receipt, the EFAF, the AFVD, the IAFA and the BFL issued a registered letter to the IFAF dated 18 July 2012 in which they challenged the adoption of Resolution No. 16 on the basis of the “irregularities” which had taken place at the Congress, to wit:

- the absence of communication of a French version of the draft amendment of the Statutes;
- the de facto exclusion of the EFAF [from the IFAF], without observance of the procedure provided therefore;
- the absence of a quorum.

4.8 Against the background of the above and the three challenges raised against Resolution No. 16 of the Agenda, the Appellants proceed to set out the foundation of each challenge.

a) *The Obligation to submit a French Version of the Draft Amended Statutes*

4.9 Appellants cite Article 2 of the IFAF Statutes which provides as follows:

“The official languages of IFAF are English and French. English is the standard language for the minutes, the official correspondence and the communications. Each member shall be responsible for his own translation. In the event of any divergence in the interpretation of statutes, the French text shall be regarded as the authoritative”.

4.10 Appellants assert that it must be inferred from the above Article 2 that amendments to the Statutes must be drafted in both the English and the French languages. This rule represents the “*lex generalis of Article 2, the only exception (lex specialis) being that English is the standard language for the minutes, the official correspondence and the communications*”.

4.11 Moreover, citing Article 8 B of the IFAF Statutes, Appellants claim that the Executive Board should have submitted the amendment proposal in both official languages at least 30 days prior to the Congress. However, because Article 8 B 2nd sent. requires that “all proposals” to be submitted to the Congress must be sent in writing in one of the two official languages to the Secretariat at least 60 days before the Congress, it was incumbent upon the Executive Board to procure an official French translation during the first 30 day “administrative” period.

4.12 In the view of the Appellants, any subsequent translation of the Resolution No. 16 into the governing French language would not be subject to the approval and control of the Congress. This would lead to the curious result that the governing statutes “*would not be those*

voted by the Congress of the IFAF as [a] sovereign body, but those translated into French by an undetermined and uncontrolled person who was not voted on by the Congress". The inability of the Congress to vote upon the official French version of the amendment renders the resolution of the amendment at the 15th IFAF Congress null and void.

b) *The de facto Exclusion of the EFAF*

- 4.13 The Appellants further assert that the resolution of Agenda item No. 16 results in the *de facto* exclusion of the EFAF from the IFAF. The deletion of any reference to the Continental Federations implies their *de facto* exclusion and replacement by the Continental Executive Committees. This represents a violation of the "substantive guarantees" in the Statutes which govern the revocation of membership in the IFAF.
- 4.14 Article 4 H 2 of the IFAF Statutes provides that membership in the IFAF may be terminated by revocation decided "*by the Congress deciding with the majority of two-thirds of the votes only after a proposal put to Congress by the Executive Committee. Notes of the same having been given to Congress on the agenda submitted with the notification of Congress*".
- 4.15 Moreover, Appellants claim that Article 8 C No. 11 of the Statutes provides that the exclusion of a member federation must be entered as such on the agenda of the Congress.
- 4.16 In the case at hand, as the Appellants contend, the Statutes of the IFAF define a Continental Federation as "*a Federation, affiliated to IFAF, of national federations and belonging to the same continent (Article 1)*". In addition, in Article 5, it is specified that the EFAF is a Continental Federation.
- 4.17 The Appellants conclude herefrom that "*being affiliated under the statutes to the IFAF, the EFAF is a member thereof within the meaning of [French] civil law. The combination of Articles 1 and 5 of the Statutes of the IFAF is the literal proof of the reciprocal consent given by the IFAF and the EFAF to the latter's affiliation to the IFAF*".
- 4.18 Moreover, based on [French] Civil Code, Art. 1341, EFAF's consent to such association agreement may also be freely proved, in particular, by *prima facie* evidence in the form of writing, indicia and presumptions.
- 4.19 Accordingly, the Appellants cite "evidence" of EFAF's membership in the following: EFAF is acknowledged by the IFAF in its Statutes; EFAF has paid annual dues upon receipt of invoice from the IFAF; EFAF possesses authority, as an affiliated member, to propose resolutions which may be submitted to vote in the Congress; EFAF appears in the IFAF membership list in 2007; the IFAF Congress decided in 2004 to permit the Continental Federations to pay a "*continental members membership fee set at 1,000 Euros*".
- 4.20 On the basis of the above "evidence", it must be presumed, so the Appellants, that EFAF has consented to being a party to the IFAF's association agreement and that IFAF accepted it as a member within the meaning of French civil law.

- 4.21 With regard to EFAF, the absence of voting rights of the Continental Federations pursuant to the IFAF Statutes (Article 5 – “*Continental Federations do not have any voting rights at Congress but have the right to attend and speak*”) and the fact that the term “Member” means national federations and not continental federations such as the EFAF (Article 1) is “*totally possible*” and “*very frequent in practice*”.
- 4.22 The Appellants assert that the [French] Law of 1 July 1901 and its implementing decree did not create or define the status of “association members”. It results therefrom, in the view of the Appellants, that “*the rights and obligations within an association of which they are members arise solely from provisions of the statutes or internal rules and regulations, as the case may be*”.
- 4.23 Accordingly, the definition of “Member” in the IFAF Statutes “*does not whatsoever mean that a contrario those persons who are not designated under the term “Members” could not be members within the meaning of civil law*”.
- 4.24 Because EFAF must be deemed a “full member” of the IFAF, even if two types of “Members” exist – Members having voting rights and Continental Federations having observer status – both must be considered under French civil law “full members”.
- 4.25 It follows herefrom that the IFAF cannot deny EFAF the same “substantive guarantees” as those accorded to the national federations.

c) *The Absence of a Quorum*

- 4.26 Article 8 J of the IFAF Statutes relating to the holding of Congresses provides as follows:
“Proposed amendments of the statutes may only be adopted by a majority of two thirds of valid votes cast. Such proposals shall neither be discussed nor voted upon [unless] at least half of the Member Associations, entitled to vote are present in their places”.
- 4.27 The Appellants assert that prior to the 15th Congress, the IFAF had 62 Members. During the Congress, two additional Members were admitted by vote of the Congress, to wit, Kuwait and Puerto Rico (resolution no. 15). This took place prior to deliberation of Item No. 16 of the Agenda, namely the amendment of the Statutes. Hence, the IFAF had 64 Members at the time of the discussions and vote on resolution of Item No. 16. The qualified one-half quorum amounted to 32 votes.
- 4.28 However, prior to the vote of Item No. 16, Appellants contend that “*AFVD and the BFL left the Congress before the vote to show their disapproval of the draft amendment*”. This resulted in only 31 Members of the IFAF being present “in the room of the Congress” at the time of the vote on Resolution No. 16. This also appears, so the Appellants, from the minutes of the Congress and the notes taken by the IFAF’s representative during the session.

4.29 The Appellants continue: “*As the quorum is set at half of the Members and the IFAF has 64 members, the required quorum in the case at hand was 32 Members. Such quorum was not attained since 31 Members only were present in the room of the Congress at the time of voting on resolution no. 16*”.

Upon the taking of the vote and despite the opposition of the representatives of the IAFA, the AFVD and the EFAF, the resolution was approved by 30 votes, the representatives of the IAFA having refused to take part in a vote which they considered “unlawful”.

d) *The Appellants’ Prayer for Relief*

4.30 In consideration of French civil law and the evidence submitted in challenge to the validity of Resolution No. 16, the Appellants request the CAS Panel to grant their following prayer for relief:

- to declare and adjudge the action of the EFAF and the Appellant federations admissible in accordance with Articles R. 47 et seq. of the Procedural Rules of the CAS;
- to declare and adjudge that the language of the procedure be English;
- to declare and adjudge that the applicable law be French law;
- to appoint a sole arbitrator who is a French citizen understanding English or, failing this, place on record the choice of the Appellants to appoint Me Sophie Dion as arbitrator;
- to have recourse to an accelerated procedure in order to render an award between now and 15 October 2012;
- to find that the deliberation of the Congress of the IFAF of 5 July 2012 in Austin, Texas (USA) concerning resolution o. 16 submitted by the Executive Board of the IFAF is irregular;
- to consequently
 - void the deliberation of the Congress of the IFAF concerning resolution no. 16 submitted by the Executive Board of the IFAF;
 - to order the reintegration of the EFAF as member of the IFAF as from notification of the award to be rendered, under pain of 1 000 euros per day of delay;
- to order the IFAF to reimburse the appellants for all arbitration costs incurred by them for the procedure;
- to order the IFAF to pay the appellants 10,000 Euros for the barrister’s fees incurred by them for their defence.

B. Summary of the Respondent's Submissions

- 4.31 In its Answer Brief dated 14 September 2012, Respondent alleges that since 2010 discussions took place in various bodies of the Respondent regarding changes to its international organisational structure. The reason for these discussions was that *“American Football as a sport had not developed on the five continents of the world in the way it was originally envisaged at the foundation of the Respondent in 1998”*.
- 4.32 The Respondent explains the reason for the change as follows:
“In reality four of the five Continental Federations recognized by the Respondent representing Asia, Africa, Oceania and Pan America have never organized any continental club or national team competitions as they do not have sufficient resources (financial and otherwise) to do so. Only the European Federation of American Football (“EFAF”) was capable of complying with Article 5 of the IFAF Statutes, in particular to organize competitions. The revenue generated by these competitions was spent to a large extent on EFAF’s administration”.
- 4.33 At the Respondent’s 2011 IFAF Congress held in Vienna on 14 July 2011, its Executive Board submitted a proposal to amend the IFAF’s Statutes and to abolish the recognition of the Continental Federations. However, abolishing the Continental Federations had been “vehemently opposed” by Mr. Robert Huber, President of EFAF and, at the same time, also President of AFVD.
- 4.34 Prior to the 2011 IFAF Congress, AFVD and EFAF had filed a request for preliminary measures before the Tribunal de Grande Instance de Bobigny requesting that the court declare, inter alia, that the invitation to the IFAF Congress in 2011 was irregular, to declare that the proposed amendment of the Statutes aiming at the “de facto exclusion of EFAF” would violate the Respondent’s Statutes which contain a special procedure for the exclusion of a member; to postpone the 2011 Congress; and to render a judgment which would declare any decision taken at the Congress in violation of the Court’s order to be null and void.
- 4.35 As reported by the Respondent, the Tribunal de Grande Instance de Bobigny rejected the request of AVFD and EFAF to issue preliminary measures, finding, inter alia (1) that the agenda for the 2011 Congress did not violate the IFAF Statutes as EFAF was not a member of the IFAF; (2) that AFVD had received the agenda for the 2011 IFAF Congress in compliance with the IFAF Statutes.
- 4.36 The Respondent alleges that the transition working group set up by the Vienna Congress concluded that the Continental Federations should be abolished and replaced by continental committees for the purpose of organizing continental competitions.
- 4.37 On 5 June 2012, one month prior to the 15th Congress on 5 July 2012, the Respondent claims to have sent to its members the agenda for the Congress together with the proposal of the transition working group (the “**Proposal**”). Both the agenda and the Proposal were in

the English language. Submission of the Proposal in the English language corresponded to past practice with respect to all other proposals for changes to the IFAF Statutes.

- 4.38 On 28 April 2012, the Respondent asserts that the AFVD sent to IFAF a proposal for changes of certain articles of the IFAF Statutes, this proposal being submitted also in only the English language. This counter-proposal was attached by the Respondent to the agenda for the 2012 Congress in English.
- 4.39 The Respondent further claims that, on 25 June 2012, AFVD and EFAF filed again a similar request for preliminary measures to the Tribunal de Grande Instance de Bobigny. AFVD and EFAF petitioned the court (1) to declare that the Proposal violated the IFAF Statutes in that it aimed at the *“de facto exclusion of EFAF”*; (2) to declare that the absence of a French translation of the proposal violated the IFAF Statutes; (3) to order the postponement of the 2012 IFAF Congress; and (4) to declare that any decision taken by the IFAF Congress in violation of its decision be deemed null and void.
- 4.40 The Respondent asserts that the Tribunal de Grande Instance de Bobigny decided on 3 July 2012, two days prior to the beginning of the IFAF 2012 Congress, *inter alia*, that (1) IFAF was not obliged to submit proposals for changes to the IFAF Statutes in English and in French; and (2) that EFAF was not a member of the Respondent.
- 4.41 With regard to the happenings at the IFAF Congress on 5 July 2012, the Respondent confirms that the BFL was denied its right to vote, *“because it had not paid its membership fee until 31 January 2012”*. This, however, could not influence the validity of the decisions made at the Congress.
- 4.42 This conclusion, so the Respondent, is supported by French state court jurisprudence. *“Irregularities”* in the adoption of the resolution would only affect the decision taken if such irregularities can be shown to have had a decisive influence on the outcome of the voting on the decisions.
- 4.43 The Respondent asserts that, in the case at hand, thirty (30) IFAF members approved the Proposal set out in Resolution No. 16. The AFVD representative expressed its disapproval by leaving the room. Hence, the proposal was approved by more than ninety percent of the IFAF Members present. As a result, *“it can be left open whether the Respondent could refuse the BFL its right to vote; it would not have affected the outcome of the voting”*.
- 4.44 With regard to the Appellant’s individual challenges to the validity of the adoption of Item No. 16, the Respondent submits the following:
- a) ***The Respondent was not obliged to send a French version of the proposed amendment.***
- 4.45 Citing the language of Article 2 of the IFAF Statutes (cited above in marg. note 3.2), the Respondent submits that it is clear on the wording of Article 2 that proposals to amend the

IFAF Statutes fall within the category of “official correspondence”. Appellants’ interpretation of Article 2 is therefore “*directly opposed to the wording of this provision*”.

4.46 The Respondent further contends that since the creation of the IFAF, “*all proposed changes to the IFAF Statutes submitted by the Respondent’s Executive Board have always been communicated in English, i.e., the IFAF “standard language” without any objections*”. Indeed, even EFAF and AFVD themselves submitted their proposals without a French translation.

4.47 In response to Appellants’ charge that the requirement of the French language for amendments to the IFAF Statutes is intended to prevent a false translation for registration purposes, the Respondent asserts that

“In case of a wrong translation, the bodies of the Respondent could certainly object against the registration of an inaccurate French version of a Congress decision, as it would not reflect what has been decided by the Respondent’s Congress”.

4.48 The Respondent further asserts that the time limits set out in Article 8 B of the IFAF Statutes do not imply that the deadlines imposed – 60 days prior to the Congress in order to permit distribution to the members by no later than 30 days prior to the Congress – are to ensure timely translation of the proposal. Citing similar deadlines in the FIFA Statutes, the Respondent contends that “*there is no indication that this schedule is required for the translation of proposals by members*”.

4.49 Lastly, the Respondent cites the decision of the Tribunal de Grande Instance de Bobigny to the request of the Appellants AFVD and EFAF for preliminary measures on 3 July 2012. The Tribunal held that there is no obligation for the Respondent to submit the Proposal in English and in French. The Appellants can claim no prejudice caused to them by the proposed statutory changes being submitted in only English. They understand the English language and communicate their proposals only in English.

b) *The de facto Exclusion of the EFAF*

4.50 Citing the language of Article 4 H 2 of the IFAF Statutes (see marg. note 3.14 above), the Respondent asserts that “*such Article was not applicable to the Congress’ decision on the Proposal as EFAF never was a member of the Respondent*”.

4.51 According to the Respondent, the fact that the Continental Federations for American Football were not IFAF members derives from various Articles of the IFAF Statutes:

(1) Article 1 of the IFAF Statutes defines the word “Member” as follows:

“A national federation of American football affiliated to IFAF”.

(2) Article 2 of the IFAF Statutes provides that

“IFAF shall consist of the national federations that are affiliated to it and recognized by it as controlling American football in their respective countries”.

(3) Article 4 of the IFAF Statutes stipulates under the headline “Membership” the requirements for an IFAF membership as follows:

- “A. IFAF is open to all legally and / or recognized national federations controlling American Football at a national level.
- B. Only one Member from each country or self governed territory which is recognized by IOC as own NOC (subject to approval by IFAF Congress may be affiliated.
- C. A federation can only be admitted for membership by Congress. [...]
- E. A federation applying for membership shall address a written request to this effect to the Executive Board. [...]
- G. Members must at all times meet the following requirements (a federation applying to become a member must also meet the requirements):
 1. To have at least one regular season championship in its country.
 2. To represent the entire country and control the American football in its country.
 3. To be a member of the corresponding Continental Federation
 4. To be recognized by national sports or governmental authority or national Olympic committee, [...]

[Emphasis by the Respondent].

4.52 By averring that EFAF and the other “recognized” Continental Federations are not “national federations”, but rather “international federations”, Respondent emphasizes that EFAF does not meet any of the requirements for “Membership” as defined in Article 4 G 1 through 4 above.

- EFAF never applied for an IFAF membership;
- EFAF was not admitted by the IFAF Congress to membership;
- EFAF does not represent “one entire country”;
- EFAF is not a member of a corresponding Continental Federation;
- EFAF is not recognized “by a national sports or governmental authority or a national Olympic committee”.

4.53 In conclusion, the Respondent takes the position that Article 4 of the IFAF Statutes “does not mention anywhere that a continental federation could apply for membership within IFAF. On the contrary, the IFAF Statutes define the role of the continental federations exclusively in Article 5 of the IFAF Statutes stipulating a duty of the Respondent to “recognize” them”.

4.54 Lastly, the Respondent cites the two decisions rendered by the Tribunal de Grande Instance de Bobigny to EFAF and AFVD’s request for preliminary measures which held that EFAF was not a member of the Respondent and that Article 4 H of the IFAF’s Statutes only applied to national federations and not to continental federations.

c) *The absence of a quorum*

- 4.55 The Respondent asserts that the qualified quorum requirements of Article 8 J of the IFAF Statutes were indeed met as half of the IFAF members entitled to vote were present during the decision of the Proposal at the IFAF Congress on 5 July 2012.
- 4.56 The Respondent avers that “*at least 31 out of 62 members of the Respondent entitled to vote were present when the Congress took the decision*”.
- 4.57 The Respondent claims that in 2011 it had 62 members entitled to vote. At the time of the 2012 IFAF Congress, the American Football Federation of Luxembourg was no longer an IFAF member because it had, by letter dated 13 January 2012, resigned from membership with the resignation becoming effective pursuant to Article 4 H 1 of the Statutes on 13 February 2012.
- 4.58 As a consequence, so the Respondent, the Respondent claimed only 61 members prior to the opening of the Congress on 5 July 2012.
- 4.59 Before the Congress resolved Item No. 16, the IFAF Congress approved the membership applications of the Kuwait Football Federation (KGFF) and the Puerto Rico American Football Federation (PRAFF). Because only the KGFF had paid its membership fee prior to the approval vote, only KGFF, not the PFAFF, was able to vote as provided in Article 4 F of the IFAF Statutes.
- 4.60 Hence, at the time of the vote taken on Resolution No. 16, the count of members entitled to vote had increased from 61 to 62. Accordingly, the necessary quorum required by Article 8 J of the IFAF Statutes was 31 members entitled to vote.
- 4.61 After the presentation of the Proposal and the submission of two letters of protest to the minutes of the Congress by the AFVD representative, both the AFVD and BFL left the Congress to demonstrate their disapproval. This accords, so the Respondent, with the Appellants’ own submission in their Appeal Brief.
- 4.62 However, the Respondent takes the position that, even if AFVD and BFL left the Congress at the time of taking the vote, the quorum requirement would still have been met, because 31 members would still have been present. 33 members were present at the Congress at the time the Proposal was discussed. Their departure (and removal from the quorum count) would have resulted in 31 members, sufficient to fill the required quorum, at the time of the vote.
- 4.63 According to the Respondent, however, “*in reality, only the AFVD representative left the Congress to show its disapproval*”. The departure of AFVD at the time of taking the vote must, however, be qualified – “*eventualiter*” -- as a waiver of its right to vote, not as a reduction of the quorum count. AFVD remained present. Its departure from the Congress must be qualified

as a vote of disapproval. Otherwise, in the view of the Respondent, “*a minority could always destroy the requirements for a quorum by simply leaving the room before a voting*”.

- 4.64 Alternatively, the Respondent raises – “eventualiter” -- the further proposition that
“A member which is present at an assembly, takes part in the discussion about a proposal, expresses its disapproval of such proposal and only leaves the room before the voting in order to manipulate the quorum, cannot be heard afterwards with the objection that the requirements for the quorum have not been fulfilled (because of its leaving the room). Such behaviour violates the bona fide principle and therefore cannot influence the decision taken”.
- 4.65 After all of the above, the Respondent submits the following request for decision by the CAS Panel:
- *“to dismiss the Appellants’ Appeal dated 26 July 2012”*
 - *“to order the Appellants to pay the costs of the present arbitration”*
 - *“to order the Appellants to pay the legal fees and expenses of the Respondent, to be determined at a later stage of the present arbitration”.*

5. ADMISSIBILITY, JURISDICTION AND APPLICABLE LAW

A. Admissibility of the Appeal

- 5.1 The Appellants’ Statement of Appeal dated 26 July 2012 was received by the CAS Court Office per facsimile on the evening of the same day. By letter dated 3 August 2012, the CAS Office set a 4 day deadline for the submission of additional documents. Appellants complied with these additional filing requirements within the set deadline.
- 5.2 Pursuant to Article 8 M of the IFAF Statutes, the minutes of the Congress are to be sent “*at the latest three months after [the] Congress to Members and Continental Federations, a summary being forwarded in the month following [the] Congress; objections shall be returned in writing to the Secretary within 4 weeks after the receipt of the minutes*”.
- 5.3 The Appellants state in their Statement of Appeal that the amendment Resolution No. 16 was notified to them in the minutes of the 2012 IFAF Congress received on July 9th 2012, i.e., 4 days following the closing of the Congress on 5 July 2012. This statement has not been challenged by the Respondent.
- 5.4 Appellants then filed an objection to the minutes of the 2012 IFAF Congress, specifically, an objection to Resolution No. 16 in a letter to the Respondent dated 18 July 2012 (Exhibit no. 21 to the Appeal Brief). This letter set a deadline for a response from the Respondent within eight (8) days.
- 5.5 The Respondent has challenged neither the date of notification of the minutes of the 2012 IFAF Congress on 9 July 2012 nor the letter of protest filed by the Appellants on 18 July

2012, nor the claim that Respondent failed to answer the letter of protest within 8 day period.

5.6 The Panel further notes that the IFAF Statutes as amended on 14 July 2011, in particular, Article 15 therein dealing with “Disputes”, contains no deadline within which the Appellants were to file their appeal to the CAS.

5.7 R49 of the Code of Sports-related Arbitration and Mediation Rules in the version governing on 26 July 2012 (the “CAS Code”), the date of filing of the Appellants’ Statement of Appeal, provided as follows:

“R49 Time limit for Appeal

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

5.8 Considering that Respondent undisputedly failed to respond to Appellants’ letter of protest dated 18 July 2012 within the eight day period set in that letter, receipt of the Appellants’ Statement of Appeal by the CAS Court Office on 26 July 2012 was well within the 21 day deadline set out in R 49 of the CAS Code.

5.9 Accordingly, and in the absence of any prior challenge by the Respondent, the Panel admits the Appellants’ appeal.

B. Jurisdiction

5.10 Article 15 of the IFAF Statutes in the version governing on 5 July 2012 provides as follows:

“Article 15: Disputes

Any dispute arising from these Statutes or other IFAF rules and regulations, and decisions of IFAF which cannot be settled amicably shall be finally settled by a tribunal constituted in accordance with the Statutes and Procedural Rules of the Court of Arbitration for Sport, Lausanne, Switzerland without recourse to the ordinary courts of law. The parties concerned shall undertake to comply with the Statutes and Procedural Rules of this Court of Arbitration for Sport and to accept and enforce its decision in good faith

IFAF as well as members, clubs, players and individuals commit themselves not to go to civil court with cases”.

5.11 The Panel notes that neither of the parties have objected to the jurisdiction of CAS in their respective submissions in the course of this dispute. Each of them have also reaffirmed the jurisdiction of the CAS in the Order of Procedure.

5.12 Accordingly, this CAS Panel accepts and confirms its jurisdiction to decide this dispute.

C. Applicable Law

5.13 Article 14 of the IFAF Statutes in the version governing on 5 July 2012 provides as follows:

“Article 14: Law

French law shall be applicable in all matters of dispute and Paris shall be the seat of decision. Should the legal seat be transferred to another country, this provision will be changed”.

5.14 R58 of the CAS Code provides as follows:

“R58 Law Applicable to the merits

The Panel shall 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 later case, the Panel shall give reasons for its decision”.

5.15 The Panel confirms the application of French law as the governing law of this dispute is clearly set out in Article 15 of the IFAF Statutes. Moreover, it is the law governing the country in which the IFAF, as the issuer of the decision, maintains its registered domicile. It is also the law which the Parties have confirmed in the Order of Procedure to be the applicable law in this dispute.

6. THE MERITS OF THE APPEAL

6.1 Prior to addressing the individual challenges raised by the Appellants to the validity of Resolution No. 16 on the Agenda of the IFAF 2012 Congress, the Panel wishes to note that disputes within a sports association or federation, indeed any organisation set up to pursue a common goal, will often have their roots in clashes and confrontations among and between groups and factions with regard to the sundry financial, organisational and political issues affecting the life of the organisation.

6.2 In the dispute at hand, it is not the task of the Panel to render judgment on the merits of the financial, political or personal considerations which may have generated this particular dispute. It is rather the responsibility of the Panel to determine whether the statutes, rules and regulations of the organisation provide a fair and democratic framework for the resolution of disputes and whether these have been correctly applied to the dispute in question in order to achieve a just decision between opposing interests.

6.3 The IFAF Statutes governing on the date of the IFAF Congress on 5 July 2012 were the IFAF Statutes last amended at the Vienna Congress on 14 June 2011 (the “**IFAF Statutes**”). It is the application of the IFAF Statutes especially with regard to the definition of Members, the rights and obligations of Members and the Continental Federations, and the operation of the IFAF’s annual Congress which become the focus of this adjudication.

6.4 In this regard, the Panel addresses each of the challenges raised by the Appellants to the validity of Resolution No. 16 in the same order as they are raised in the Appellants' Brief.

A. The Obligation to submit a French version of the draft amended Statutes

6.5 After consideration of the parties' opposing arguments and the requirements of French law, the Panel finds that the Respondent's failure to submit a French translation together with the English version of Resolution No. 16 to the IFAF Congress does not result in the *ipso jure* annulment of the amendment resolution adopted by the Congress on 5 July 2012.

6.6 The Panel has closely reviewed the language of Article 2 and the provision of the last sentence which states that

"In the event of any divergence in the interpretation of statutes, the French text shall be regarded as the authoritative".

"En cas de divergence dans l'interprétation des statuts, le texte français sera regardé comme faisant autorité".

6.7 Although the Panel takes the position that the above provision begs the question whether it is not logically advisable, if not necessary, to provide the Congress simultaneous translations of the proposed statutory amendment in French and English, it does not follow, in the view of the Panel, that failure to provide the Proposal in both languages "back-to-back" or "side-by-side" results in the automatic invalidity of amendment Proposal.

6.8 However, the Panel finds certain merit in the Appellants' argument that failure to provide a French translation, which in France is required for registration purposes, leads to the "curious result" that the *"governing statutes would not be those voted by the Congress of the IFAF as a sovereign body, but those translated into French by an undetermined and uncontrolled person who was not voted on by the Congress"*.

6.9 While it may be that the statutes of an association must be registered in the French language, this certainly does not mean that the association must prove to the registry authorities that the French translation has been duly voted upon and approved by the association's legislative body pursuant to the association's statutes. In short, the French registry in question may be perfectly happy to receive a French version of the statutes which has been subsequently (and informally) translated *"by an undetermined and uncontrolled person"*.

6.10 In this regard, it would also be reasonable to assume that the timing of the sixty day deadline for submission of proposals to the Congress, and the 30 day deadline prior to the Congress for the "dispatch" of the proposal to Members (Article 8 B of the Statutes) is intended, *inter alia*, to permit the Executive Board sufficient time to procure a translation into the other official language. The Panel fails to see, however, that these deadlines are intended to mandate the making of a translation into the other official language, the violation of which renders the amendment proposal null and void.

- 6.11 Even if the last sentence of Article 8 B provides that “*only those proposals sent in time and included in the agenda may be discussed at the Congress,*” the Panel fails to find that this provision compels a “dual language” requirement, the violation of which makes the proposal to the Congress invalid. The provisions of the IFAF Statutes provide little support for such a contention.
- 6.12 In this regard, the Panel notes that Article 8 B 2nd sentence states that
“All proposals to be submitted to the Congress by Members must be sent in writing in one of the two official languages to the Secretariat at least 60 days before Congress”.
“Toutes les propositions soumises au Congrès par les Membres doivent être envoyées par écrit au Secrétariat, dans l’une des deux langues officielles, au moins 60 jours avant le Congrès”
[Emphasis of the Panel].
- 6.13 Evident in the language above is the absence of any statement of consequence if a proposal is submitted in only one of the official languages. The provision places no express obligation on a Member to submit proposals to the Congress in both of the official languages and the provision remains silent on the question whether the Executive Board must assume such “administrative” obligation to provide the other translation to the Members 30 days prior to the Congress.
- 6.14 In the Panel’s view, the consequence of adopting an amendment proposal by the Congress in only one of the official languages is not the automatic nullification of the amendment, but rather the need for the objecting Members to seek inside or outside of the Congress a resolution of their differences, i.e. they must agree among themselves upon an acceptable translation into the other official language. This may, in the given case, require special vote of approval at the next Congress.
- 6.15 In this regard, the Panel concurs with the decision of the *Tribunal de Grande Instance de Bobigny* dated 3 July 2012. The Court held in its rejection of the Appellants motion for preliminary measures as follows:
“... contrary to the allegations of the plaintiffs [the Appellants in the instant dispute before CAS], the above mentioned Article [2 in fine of the IFAF Statutes] does not require that draft amendments of the statutes be communicated in both the English and French languages; indeed, such Article intends only to settle any possible divergence in the interpretation of the statutes in effect, in that the IFAF, as an association governed by French law is bound to draw up and file a French version of its statutes with the prefecture of the place of its registered office; even more so, it appears from such Article that English is the language used more specifically for official correspondence, which status can be given to the transmission of proposals for the amendment of the statutes, each member, pursuant to the statutes remaining “responsible for his own translation”. It is understood moreover that as the IFAF maintains, the plaintiffs do not deny that they themselves sent the IFAF their own proposed amendments of the statutes solely in the English language”.
- 6.16 On the basis of the above, the Panel rejects the Appellants’ argument that the Executive Board’s failure to submit an official French version of the amendment Proposal renders Resolution No. 16 null and void.

B. The *de facto* exclusion of the EFAF

- 6.17 The Panel concurs with the Appellants that the adoption of Resolution No.16 on 5 July 2012 resulted in the *de facto* exclusion of EFAF from the IFAF. This exclusion was, however, the result of reorganizational measures proposed by the Executive Board in the form of an amendment proposal to the IFAF Statutes. It does not entail a revocation of membership prescribed in Article 4 H 2.
- 6.18 The Panel takes the view that this *de facto* exclusion did not violate the IFAF Statutes governing the Congress on 5 July 2012 because (1) EFAF never was a “Member” of the IFAF within the definitional meaning of Article 1, nor was EFAF subject to the provisions governing “Membership” under Article 4 of the IFAF Statutes. EFAF was, at all time, a Continental Federation, the rights and obligations of which are set out exclusively in Article 5.
- 6.19 The Appellants take the position that the absence of voting rights in the IFAF for Continental Federations does not deprive them of the remaining rights accorded to “Members”. “*In all cases*”, so the Appellants claim, even those persons who have not been granted voting rights are still “*full members of the association*”. It is “*totally possible and very frequent in practice to be a member of an association without having voting rights*”.
- 6.20 The Panel disagrees. Citing French jurisprudence, the Appellants conclude themselves that under the Law of 1 July 1901 and its implementing decree, “*the rights and obligations within an association arise solely from provisions of the statutes or internal rules and regulations, as the case may be*”. Even if the Law of 1 July 1901 dealing with associations does not expressly create or classify the various possible statuses which association members may be granted, as the Appellants claim, the statutes of the association in question and its internal rules and regulations are free to make distinctions and qualifications to membership status. This is the case with the IFAF Statutes.
- 6.21 The IFAF Statutes in force on 5 July 2012 distinguished in Article 4 and Article 5 between the rights and duties of the Members (Article 4) and the rights and duties of the Continental Federations (Article 5). “Member” is defined in Article 1 as “a national federation of American football affiliated to IFAF”. A “Continental Federation” is defined as a “*federation, affiliated to IFAF, of national federations and belonging to the same continent*”.
- 6.22 Article 4 A of the IFAF Statutes addresses “Membership”, stating that “Membership” in the IFAF is “*open to all legally and / or recognized national federations controlling American Football at a national level*” [Emphasis by the Panel].
- 6.23 EFAF defines itself as a non-competing, non-profit association comprised of national federations, the declared purpose of which is, *inter alia*, to promote the game of American Football in Europe.

- 6.24 With its jurisdiction stretching across the European continent, membership in EFAF is hence restricted exclusively to national federations. Article 26 of the EFAF Statutes (2010 version) states that *“only one member from each country may be affiliated, and such Member shall be recognized by EFAF as the only national governing body for all amateur American Football in such country”*.
- 6.25 The EFAF clearly does not fit the IFAF’s definition of a *“legally and/or recognized national federation controlling American Football at a national level”*. Because EFAF is primarily a coordinative body interposed between the IFAF and its national member federations, it is also not entitled to vote at IFAF Congresses, although it does have the right to attend and to speak.
- 6.26 Because EFAF is not a “Member” having voting rights within the definitional meaning of the IFAF Statutes, it also cannot claim the same rights which are accorded to Members. These rights of “Members” begin, as mentioned above, with the right to vote at Congresses and reach to include certain explicit rights upon termination. These, however, are accorded only “Members” and are set out in the provisions governing “Membership” under Article 4 of the IFAF Statutes.
- 6.27 Whereas “Membership” of a “Member” may be terminated either by voluntary resignation (Article 4 H 1 of the IFAF Statutes) or by means of revocation ordered by Congress deciding with a majority of two-thirds of the votes cast and only after a proposal put to Congress by the Executive Committee (Article 4 H 2 of the IFAF Statutes), no equivalent provisions are found in Article 5 governing Continental Federations.
- 6.28 The Panel holds that the Respondent’s failure to apply the revocation provisions of Article 4 H 2 to a Continental Federation such as EFAF has not violated a “Membership” right of the EFAF under Article 4 of the IFAF Statutes. Such a right does not apply to the Continental Federations. The rights of the latter are exclusively provided in Article 5 of the IFAF Statutes.
- 6.29 It is worth noting in this regard that, if even the IFAF Congress had followed the revocation procedure set out in Article 4 H 2, adoption of the revocation resolution would have required only a 2/3rds majority of the votes cast. This is the same qualified majority required in the case of an amendment of the IFAF Statutes under Article 8 J. The Congress, deciding under Article 4 H 2, would have been freed, however, from the quorum requirement of one-half of all Member Associations further discussed below. Under Article 4 H 2, revocation of “Membership” would have been less restrictive than the amendment of the Statutes.
- 6.30 The termination of EFAF’s status as an affiliated member of IFAF is indeed tantamount to a *de facto* revocation. However, it is the result of an organisational change within the IFAF which has affected all of the Continental Federations as affiliated members under Article 5 of the IFAF Statutes. The Panel fails to see, however, how EFAF was deprived of its fundamental rights as a Continental Federation by the procedure applied to adopt the amendment Proposal under Resolution No. 16.

C. The Absence of a Quorum

6.31 The IFAF Statutes in force on 5 July 2012 provided that only two categories of decision by the Congress required a qualified majority of the votes cast determined on the basis of prescribed quorums. Article 8 L required that *“IFAF Dissolution is to be decided by at least three-quarters of its full Members. The other quorum is found in Article 8 J governing the adoption of amendments to the IFAF Statutes. Any other decisions of the Congress required only “a majority of the valid votes cast”*.

6.32 Article 8 J governing the adoption of proposed amendments of the Statutes provides as follows:

“[8] J. Proposed amendments of the statutes may only be adopted by a majority of two thirds of valid votes cast. Such proposals shall neither be discussed nor voted upon [unless] at least half of the Member Associations, entitled to vote are present in their places”.

[The word “unless” is missing in the official version of the IFAF Statutes probably due to a clerical error. It has been restored by the Panel.]

6.33 The French translation of Article 8 J provided to the Panel during the hearing on 24 May 2013 contains the following wording:

“[8] J. Les propositions de modification des statuts peuvent seulement être adoptées à la majorité deux tiers des votes valables. De telles propositions ne pourront être discutées ou votées que si la moitié, au moins, des Fédérations Membres disposant du droit de vote, sont présentes”.

6.34 It is clear to the Panel that the term *“in their places”* in the English version of the IFAF Statutes and the French term *“sont présentes”* are not congruent in their respective meanings. It is not a good translation. *“In their places”* could be interpreted to mean *“in their chairs”* or *“in the room”*. It must be narrowly defined and has an obvious spacial connotation.

6.35 The French term *“sont présentes”* is broader in its meaning. The literal English translation would be *“are present”*. This could be interpreted as meaning *“present in the room”* or *“present at the site of the Congress”*.

6.36 The IFAF Statutes have anticipated that differences can arise between the two “official” languages of the Statutes. Article 2, last sentence, of the English version of the IFAF Statutes provides:

“Article 2: Title, constitution headquarters

[...]

In the event of any divergence in the interpretation of statutes, the French text shall be regarded as the authoritative”.

[En cas de divergence dans l’interprétation des statuts, le texte français sera regardé comme faisant autorité”].

- 6.37 The Parties have not specified, neither in their written submissions nor in their oral presentations at the hearing, whether the French translation of the Statutes submitted at the hearing is the official French translation amended and adopted by the IFAF Congress held in Vienna, Austria on 14 July 2011 or whether the translation was made informally subsequent to the Vienna Congress.
- 6.38 The Panel takes the view, however, that notwithstanding the discrepancy in the English and French versions with regard to the terms “*in their places*” and “*sont présentes*”, it is clear that the Member Associations entitled to vote must be in sufficient proximity to the place of the vote-taking to enable the visual communication of the vote to the keeper of the record.
- 6.39 A Member entitled to vote who cannot be seen or heard by the keeper of the record, who is not present in the room in which the vote is taking place and has not named a proxy or provided a written vote cannot be said to have participated in the vote.
- 6.40 In the case of Ireland, the minutes of the IFAF Congress state that Ireland “*did not vote*” on Resolution No. 16. Ireland, in contrast to AFVD, had undisputedly remained in the room in which the vote was taken. The vote withheld was recorded accordingly.
- 6.41 Before commencing a discussion of how the quorum count fluctuated during the course of the IFAF Congress on 5 July 2012 and whether a valid qualified quorum was present at the vote of Resolution No. 16, it is necessary to determine the number of registered Member Associations entitled to vote when the Congress commenced on 5 July 2012.
- 6.42 In this regard, the Respondent alleges in its Answer Brief that the IFAF “*had 62 members in 2011*”. However, on 13 January 2012, Respondent claims that Luxembourg resigned from the IFAF, the resignation becoming effective one month later on 13 February 2012. This is claimed to have reduced the total number of “members” at the start of the Congress on 5 July 2012 from 62 to 61.
- 6.43 The Appellants, on the other hand, allege in their Appeal Brief at Pt. 3.4.3 that “*before the Congress, the IFAF had 62 Members*”. The Panel infers from this statement that either the Appellants had no knowledge of Luxembourg’s resignation prior to the start of the Congress. They must have observed at the Congress, however, that Luxembourg was not represented. If Appellants admit the fact of Luxembourg’s resignation, they have not disclosed who the 62nd Member Association would be on the basis of their own count.
- 6.44 The Minutes of the Congress which date from 9 July 2012, only 4 days following the Congress, do not list Luxembourg as having been among the “*32 votes present*” at the Congress (Pt. 1 of the Minutes). Indeed, the minutes list no representatives at all from Luxembourg as having been among the “attendees” at the Congress.
- 6.45 The Panel concludes, therefore, that Luxembourg was not counted as a Member Association of the IFAF on 5 July 2012 and that the total number of Member Associations required in

order to calculate the “one-half” quorum was 61. Appellants have possibly erred in their count of the number of Member Associations by mistakenly including Luxembourg.

- 6.46 Resolution No. 15 of the Agenda at the Congress dealt with the admission of two new Member Associations. Upon proposal of the Executive Committee, the Congress voted “unanimously” to grant “full membership” to Puerto Rico and to Kuwait. However, the minutes reflect that an important distinction was made by Mr. Wiking with regard to the grant of “full membership” rights to Puerto Rico.
- 6.47 The minutes record under Agenda Item No. 15 that “*Mr. Wiking proposed an addition to the voting list as Kuwait earned voting rights*”. Puerto Rico, despite having been granted “full membership”, was not granted voting rights at the Congress.
- 6.48 Although not explicitly stated in the minutes, the Respondent has explained in its submission that only Kuwait could be accorded voting rights because Kuwait had previously paid its membership fees. This was not the case with Puerto Rico.
- 6.49 The withholding of voting rights from Puerto Rico was also warranted by the language of Article 4 F last sentence of the IFAF Statutes:
“A federation that has been granted membership and has paid its membership fee shall immediately be allowed to take part in the IFAF activities such as Congress and competitions provided that the entry deadline has not passed”.
- 6.50 This explanation for denying Puerto Rico the right to vote on Resolution No. 16 is also confirmed in the witness statement of Mr. Jim Elias, IFAF’s accountant since 2011.
- 6.51 Following the accession of Kuwait to the list of Member Associations entitled to vote, the count of IFAF Member Associations, based on the Respondent’s count, increased from 61 to 62. This would then require a qualified quorum for an amendment of the IFAF Statutes of 31 Member Associations entitled to vote.
- 6.52 In contrast to the clear distinction made in the minutes with regard to the grant of voting rights only to Kuwait, however, the Appellants indiscriminately place the total count of Member Associations entitled to vote at 64 Members (Pt. 3.4.3 of the Appeal Brief). They simply add two additional members, Kuwait and Puerto Rico, to their original count of 62 from the beginning of the Congress.
- 6.53 Indeed, if Appellants’ count were correct, the valid quorum for the adoption of the amendment resolution (Resolution No. 16) would be 32 and not 31. The Panel takes the position, however, that Appellants’ calculation following the accession of Kuwait and Puerto Rico is not correct. Puerto Rico should not have been counted.
- 6.54 Apart from the Appellants’ failure to identify and account for their assumption of 62 Members at the start of the Congress (did they erroneously include Luxembourg?), they

have also failed to address the issue of why Puerto Rico should be included in the total number of Member Associations if they have not been granted voting rights.

- 6.55 Having said the above, the Panel takes the position that Puerto Rico should not have been included. If a Member Association is denied voting rights, it cannot validly be included in the total number of Member Associations forming the base for the calculation of a qualified quorum under Article 8 J of the IFAF Statutes.
- 6.56 In this regard, the Panel also notes that in the Appellants' letter to the Secretary of the IFAF dated 18 July 2012, translated for the Panel into English by the Appellants, the Appellants state their "observations" following the Congress and their "objections" to the minutes in accordance with Article 8 M of the Statutes.
- 6.57 In this objection letter, the Appellants make no mention of Puerto Rico having been denied voting rights with regard to Resolution No. 16. They merely cite their contention that upon admission of two new Members (Kuwait and Puerto Rico) during the Congress, "effective forthwith", the Congress had 64 Members entitled to vote on Resolution No. 16.
- 6.58 With regard to Belgium, the minutes of the Congress also do not list the BFL as having been a registered vote at the Congress. A representative from Belgium is, however, listed among the "attendees", but the minutes expressly state under Agenda Item 1 that Belgium is the "1 non-voting member present".
- 6.59 The minutes also explicitly state under Pt. 17 that "*Belgium asked that it be noted Belgium does not have voting rights*". Belgium is therefore not included in the Respondent's quorum count.
- 6.60 Interestingly, and inconsistent with their treatment of Puerto Rico, even the Appellants do not include Belgium in their quorum count. Indeed, in Pt. 3.4.4 of their Appeal Brief, they claim that "*the AFVD and the BFL left the Congress before the vote on resolution no. 16...*". But instead of reducing their quorum by two Members from 32 to 30, the Appellants reduce the quorum by only one member, the AFVD. They agree that 31 Member Associations were present and entitled to vote.
- 6.61 In Pt. 3.4.5 of their Appeal Brief, Appellants state clearly, following their inclusion of Kuwait and Puerto Rico, that "the required quorum in the case at hand was 32 Members".
"Such quorum was not attained since 31 Members only were present in the room of the Congress at the time of voting on resolution no. 16".
- 6.62 In contrast with Puerto Rico, the Appellants (correctly) chose not to include Belgium in their calculation, because they were aware that the BFL, rightfully or wrongfully, had been denied voting rights.
- 6.63 The Panel notes that the issues surrounding BFL's exclusion from the voting at the Congress on 5 July 2012 is not the subject matter of this dispute. The Panel renders no ruling on the legality of Belgium's exclusion. The Panel wishes merely to establish that

neither the Respondent nor the Appellants have included Belgium in their respective quorum counts.

6.64 With regard to the fluctuating quorum count during the course of the Congress, the minutes state under Pt. 1 that “28 votes were present at the start of the meeting”. Korea, a registered Member Association, then joined the Congress during the vote on Agenda Item No. 10, thus increasing the count of the Member Associations entitled to vote from 28 to 29.

6.65 Upon conclusion of Agenda Item No. 15 and the inclusion of Kuwait, the number of Member Associations present in the room and entitled to vote totalled only 30 Members. The minutes record following the opening of discussions of Resolution No. 16 that Brazil and Colombia joined the Congress. This increased the Members present and entitled to vote from 30 to 32 just minutes before the vote was taken. The Appellants have not disputed this “last minute” increase in the Members present.

6.66 In the view of the Panel, the Appellants’ conclusion that

“before the issue of the amendment of the statutes was discussed, the IFAF had 64 Members at the time of the discussion and vote on resolution no. 16 concerning the draft amendment of the statutes...”

is for the purpose of calculating the size of the qualified quorum incorrect. 62 Member Associations were entitled to vote on Resolution No. 16. One half of this number was undisputedly present in the Congress on 5 July 2012 when Resolution No. 16 came up for vote.

6.67 This count resulted from reducing the 62 Member Associations claimed at the start of the year by Luxembourg to 61, but by then increasing the count by Kuwait upon the unanimous vote of Resolution No. 15.

6.68 The Panel does not share the view of the Respondent that AFVD’s departure from the Congress represented a “waiver of its right to vote” or a violation of “the bona fide principle”, thus permitting AFVD’s continued inclusion in the quorum count.

6.69 Following the departure of AFVD (with or without BFL), 31 votes were present and “in their places” when the vote was taken. Based upon a total of 62 Member Associations entitled to vote in the IFAF at that time, 31 votes still constituted a valid quorum in accordance with Article 8 J of the Statutes. Except for Ireland, unanimity existed upon the votes cast. A 2/3rd majority of the quorum adopted Resolution No. 16.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by the Appellants, European Federation of American Football, American Football Verbandes Deutschland e.V., Schweizerischer American Football Verband, Belgian American Football League and the Irish American Football Association against the adoption of Resolution No. 16 of the Agenda of the Congress of the International Federation of American Football held in Austin, Texas (USA) on 5 July 2012 is dismissed.
2. (...).
3. (...).
4. All other requests, motions and prayers for relief are rejected.