



**Arbitration CAS 2013/A/3062 Kevin Sammut v. Union of European Football Associations (UEFA), award of 28 May 2014**

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr João Nogueira Da Rocha (Portugal); Mr Efraim Barak (Israel)

*Football*

*Match fixing*

*Standard of proof*

*Sanction*

1. According to established case law of CAS in disciplinary cases, cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the relevant facts must be established to the comfortable satisfaction of the judging panel having in mind the seriousness of allegation which is made and the particular nature of the conduct under scrutiny.
2. If proven facts are sufficient to establish that a player was at a minimum an accomplice in the (proven) manipulation of a match and therefore infringed Art. 5 §2 lit. a) of UEFA Disciplinary Regulations (“*engage in or attempts to engage in active or passive bribery and/or corruption*”), but do not allow to establish/prove the extent of player’s involvement in the implementation of the fix, a life-time ban is disproportionate. A ten-year ban from any football-related activity is commensurate to the player’s infraction of the rules.

**I. FACTS**

**A. THE PARTIES**

1. Mr Kevin Sammut (“Mr Sammut” or the “Appellant”) is a Maltese football player, born on 26 May 1981.
2. Union of European Football Association (“UEFA” or the “Respondent”) is the governing body of football in Europe and a confederation recognised by FIFA.

**B. FACTS OF THE CASE AND ORIGIN OF THE DISPUTE**

3. Below is a summary of the relevant facts of the case, based on the Parties' submissions. The Panel shall discuss in detail under the "Legal Discussion" of the award those facts which are disputed by the Parties and which are decisive for the outcome of this case.

**a) Events leading to the alleged fixing of the Match**

4. On 2 June 2007, Norway and Malta disputed in Oslo a qualifying match for the 13<sup>th</sup> UEFA European Football Championship ("the Match"). Norway won the Match by a score of 4-0.

5. In 2010, during criminal proceedings started in Bochum, Germany, related to a network of match-fixing activities in Europe, two of the accused, Messrs Marijo Cvrtak and Ante Sapina, spontaneously admitted having fixed the Match.

6. Mr Cvrtak and Mr Sapina both made statements in the course of the criminal proceedings, as well as before UEFA and during the present proceedings. From their statements, it appears that Mr Sapina intended to manipulate the Match, together with a certain "Almir", a man living in Sarajevo with whom he had been in contact for about a year, exchanging tips and betting together. "Almir" explained to Mr Sapina that several Maltese players were willing to fix the Match. Mr Sapina wanted to verify this allegation before betting on the Match. He therefore asked Mr Cvrtak to travel to Oslo, first by telephone on 1 June 2007, then during a meeting at a rest stop on the highway between Nuremburg and Berlin on 2 June 2007. Mr Cvrtak was to meet the involved player(s) and assure that they were indeed ready to fix the Match.

7. As agreed, Mr Cvrtak flew from Berlin to Oslo on 2 June 2007 and checked into the hotel, where the Maltese team was staying.

8. After his arrival, Mr Cvrtak and Mr Sapina had several telephone conversations with each other during the course of the day in order to arrange for Mr Cvrtak to meet a player who would confirm to him the fixing of the Match.

9. The identity of the player, as well as the circumstances of such meeting between Mr Cvrtak and the player, are the main factual issues of this case (given the parties' antagonistic positions and their opposing legal arguments). The Panel shall therefore examine the issue of the identification and the identity of the player, as well as his alleged meeting with Mr Cvrtak, in the "Legal Discussion" of the award.

10. For the purposes of the present summary, the Panel simply notes that, before the German police and before the UEFA, Mr Cvrtak identified the player as being Mr Sammut.

11. Eventually, according to Mr Cvrtak he reached an agreement with the player, that Malta would lose 0-4. No money was exchanged during the meeting, as Mr Cvrtak's role was limited to

contacting the involved player(s) and making sure that everything would work according to plan.

12. Mr Cvrtak testified that after the meeting in his hotel room he and the player by chance met again the same afternoon in the elevator of the hotel. The player was with other players, to whom he introduced Mr Cvrtak with words such as "*this is our man*". Mr Cvrtak had the impression that the other players knew about the fix of the Match and were participating in the scheme. According to Mr Cvrtak, one of the players in the elevator wore glasses and had black curly hair.
13. The Match took place on 2 June 2007 and Norway won 4-0. The first goal was scored by Norway while Mr Sammut made a strategic mistake. Mr Sammut was substituted at half time, with the score at 1-0. The three other goals were scored in the final 17 minutes, the last goal even in the extra time. Mr. Cvrtak did not go to the stadium but watched the match on TV.
14. Mr Sapina and "Almir" invested € 200'000 in a bet on the Match. They won € 340'000, of which € 70'000 were to be paid to the Maltese players. The precise manner in which the payment took place is unknown to Mr Sapina, as "Almir" took care of this. Mr Sapina's share of the profit was therefore € 35'000 (i.e. € 340'000 - € 200'000 = € 140'000 – 70'000 = € 70'000 : 2 = € 35.000) and he left this amount with "Almir", as they had a "current account" relationship.

**b) Police investigations regarding the Match**

15. The Bochum police's investigations (and the criminal proceedings that followed) mostly concerned matches that took place from 2009 onwards. However, Mr Cvrtak and Mr Sapina were both also interrogated regarding the Match and they explained the relevant facts.
16. The Maltese police also started investigations in June 2011 and requested the file from the Bochum police. In January 2012, a team of the Maltese police, led by Inspector Ian Joseph Abdilla, interrogated all the members of the Maltese contingent, among them Mr Sammut and members of his family. Mr Sammut was detained for 48 hours then released without formal charges being brought against him. To date, no criminal proceedings were initiated in Malta against Mr Sammut.

**c) Investigation of the MFA and of UEFA**

17. Based on the investigations of the Maltese and the German police and parallel to those, the Maltese Football Association ("MFA") also initiated investigations in 2011, eventually holding, as of November 2011, a series of meetings with all the members of the national team who were present in Oslo at the time of the Match. Mr Sammut was also questioned and he denied any involvement in manipulations related to the Match.
18. On 16 May 2011, the MFA received an anonymous letter from a person claiming to have been present in Oslo on the day of the Match and listing five players as having been involved,

including Mr Sammut. Around the same date, Mr Bjorn Vassallo, CEO of the MFA, received an account from persons whose names he did not disclose and who incriminated Mr Sammut.

19. Early 2012, UEFA informed the MFA that it was assuming jurisdiction for the disciplinary proceedings and requested the MFA to hand over the file, which was done in March 2012.
20. UEFA then proceeded to interview Mr Cvrtak in Germany. It also questioned several Maltese national team players, including Mr Sammut, who denied any involvement in the fixing of the Match.

**d) Proceedings before UEFA's judicial bodies**

21. The UEFA Disciplinary Inspector, Mr Karl Dhont, issued a report to the UEFA Control and Disciplinary Body ("CDB") on April 30, 2012.
22. Based on this report, on 11 May 2012, UEFA instigated disciplinary proceedings against Mr Sammut on the basis of Art. 42 *et seq.* of the Disciplinary Regulations ("DR"). The proceedings were also directed against another player, Mr Stephen Wellman.
23. An initial hearing took place in Nyon on 31 May 2012 in front of the CDB. Mr Sammut was not present at that hearing. On that occasion, the CDB requested further investigations and an additional report was filed by Mr Jean-Samuel Leuba, UEFA Disciplinary Inspector, on 10 August 2012. This report incriminated a further player, Mr Kenneth Scicluna, and requested that all three players be banned for a period to be determined from all football-related activities, with worldwide effect.
24. On 17 August 2012, the CDB conducted a second hearing, attended by the Appellant and his counsel. The Appellant made submissions regarding the facts of the case and the applicable legal provisions, participated in the questioning of Mr Cvrtak who was present as a witness. At the outset of his testimony, Mr Cvrtak pointed to Mr Sammut as being the player whom he had met in his room. A second witness, Mr Bjorn Vassallo, CEO of the MFA, was not heard although initially envisioned, upon decision of the panel after having heard the parties on that matter.
25. The operative part of the CDB's decision was announced on the day of the hearing and the reasons of the decision were handed down on 12 September 2012. In summary, the CDB was comfortably satisfied that Mr Sammut was the player involved and that he must accordingly be banned from any football-related activity for ten years, with FIFA extending the ban worldwide. The CDB further considered that the evidence against Messrs Scicluna and Stephen Wellman was not sufficient to establish to the panel's comfortable satisfaction that they also participated in the fixing of the Match. Therefore, the CDB did not sanction these players.

26. After an appeal from Mr Sammut asking for the annulment of the CDB's decision or at least for a more equitable punishment, as well as from UEFA requesting a life-time ban, the UEFA Appeals Body ("Appeals Body") held a hearing on 30 November 2012.
27. Mr Sammut, assisted by counsel, was present at the hearing. The Appeals Body heard Mr Cvrtak, Mr Sapina, Mr Vassallo and Mr Franz Tabone (Integrity Officer working at the MFA) as witnesses. During the hearing, Mr Sammut proposed an additional witness (Mr Abdilla from the Maltese police). However, the Appeals Body rejected this proffer of evidence, considering that it would not prove relevant facts.
28. The Appeals Body notified its judgment on 10 January 2013 ("the Judgment"). Mr Sammut's appeal was rejected and the Appeals Body did not find any violation of Mr Sammut's right to be heard. Furthermore, the Appeals Body considered that the fixing of the Match was proven. As to Mr Sammut, his involvement was sufficiently proven, in particular through the testimonies of Mr Cvrtak and Mr Sapina. In conclusion, the Judgment held that Mr Sammut violated Art. 5 DR and, accordingly, banned him for life from all football-related activities and requested FIFA to extend the decision in order to give it worldwide effect. One third of the costs of the proceedings were charged to Mr Sammut (€ 5'000, less the appeal fee).
29. The present award will deal below in more detail with the Judgment, to the extent necessary.

### **C. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

30. Mr Sammut filed his Statement of Appeal with the CAS on 19 January 2013.
31. On 22 January 2013, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited Mr Sammut to file his Appeal brief within the time limit established by Art. R51 of the Code of Sports-related Arbitration (the "Code").
32. The Appeal Brief was filed on 29 January 2013 and the Appellant nominated Mr João Nogueira Da Rocha as Arbitrator.
33. On 30 January 2013, the Respondent was invited to file its Answer within twenty days and to nominate an arbitrator within ten days of receipt of the CAS Court Office's letter.
34. In a letter of 31 January 2013, the Respondent nominated Mr Efraim Barak as Arbitrator.
35. On 5 February 2013, the Respondent requested a suspension of the time-limit to file its Answer, given that the Appeal Brief contained a list of several unidentified witnesses which was not admissible according to UEFA. Indeed, several witnesses were unnamed and identified only through their function / their official position, without production of their witness statements.
36. On 6 February 2013, Mr Sammut expressed his position regarding the Respondent's request, explaining that all testimonies concerned relevant facts and that witness statements were not

mandatory. The Appellant also opposed UEFA's request for a suspension of the time-limit to answer the appeal.

37. Despite the Appellant's explanations, the Respondent maintained its request and the issue was submitted on 12 February 2013 to the Deputy President of the CAS Appeals Arbitration Division who decided on 13 February 2013 to suspend the time-limit for filing the Answer, pending a decision of the Panel to be constituted shortly. Further to observations submitted by the Appellant on 18 February 2013, this decision was confirmed on 19 February 2013.
38. On 20 February 2013, the CAS Court Office informed the Parties of the formation of the Panel composed of Mr Dirk-Reiner Martens as President and Mr Efraim Barak and Mr João Nogueira Da Rocha as Arbitrators.
39. The Panel issued procedural directions on 25 February 2013 and decided that the Appellant was to submit a complete list of all witnesses with their full names, along with a brief summary of their expected testimony. The Panel also recalled the contents of Art. R44.2 of the Code, applicable by reference in Art. R57 of the Code.
40. On 5 March 2013, the Appellant filed a list of witnesses.
41. The next day, UEFA was invited to file its Answer within 20 days. However, on 12 March 2014, the Respondent protested that the Appellant's latest list still contained several unnamed witnesses. On 20 March 2013, the Panel invited Mr Sammut to comply with its previous instructions.
42. On 26 March 2013, the Appellant filed a list of witnesses, complete with personal names, and the Respondent was accordingly invited by the CAS Court Office to file its Answer within 20 days.
43. UEFA filed its Answer on 16 April 2013. The CAS Court Office then invited the parties to inform it whether they preferred a hearing to be held or whether they wanted the Panel to issue an award based on the written submissions.
44. The Appellant indicated that he requested a hearing to be held and Respondent agreed with this request.
45. On 8 May 2013, the CAS Court Office requested additional information from the Parties concerning the witnesses they intended to call at the hearing. The parties replied on 8 and 14 May 2013, but were in disagreement regarding the production of several of the Appellant's witnesses. The Panel issued additional instructions on 16 and 17 May 2013 regarding the witnesses and hearing dates. After further correspondence by the parties, the Panel recalled, on 5 June 2013, that according to Art. R44.2 of the Code (applicable by reference of Art. R57), each party was responsible for the availability and costs of the witnesses and experts called to be heard. The Panel also authorized several witnesses of the Appellant to be heard through video-conference, decided on the admission of several other witnesses and invited the

Appellant to endeavour to produce the missing witness statements or at least a list of questions. The Panel also offered to assist the Appellant in obtaining witness statements.

46. On 13 June 2013, the Appellant contacted several of his intended witnesses in order to obtain their statements and, after being invited to do so, provided additional information on the reasons for which he did not request such statements from all the witnesses (who were not under his control or within his sphere of influence).
47. The date of the hearing was fixed for 29 and 30 October 2013 with the agreement of the parties, as confirmed by the CAS Court Office on 21 June 2013.
48. On 28 June 2013, Mr Sammut produced two witness statements, as well as Mr Sammut's bank statements from 1 May 2007 to 31 December 2007.
49. On 13 September 2013, the CAS Court Office, acting on behalf of the Panel, invited three of the witnesses to answer Mr Sammut's request for a written statement. The same day, the CAS Court Office summarised the situation regarding the witnesses called by the Appellant, invited the Appellant to produce an additional missing witness statement and accepted to hear others also in the absence of such statement, given the circumstances. The parties were also invited to submit an English translation of the parts of the UEFA file, which were not in that language, to the extent they intended to rely on them. They were finally invited to produce transcripts of any audio-recording of the UEFA file on which they intended to rely.
50. On 19 September 2013 and on 1 October 2013, Mr Sammut produced two witness statements which had been requested by the Panel.
51. The Respondent informed the Panel that it agreed to help in producing Mr Sapina as a witness to be called by the Appellant and summarised its endeavours in a letter dated 23 September 2013.
52. On 2 October 2013, the CAS clarified additional issues regarding the appearance of witnesses at the hearing and invited the parties to communicate their respective positions on this matter. Further to an evidentiary request formulated by the Appellant, the CAS furthermore invited the MFA to submit the list of the results of the Maltese National team over the past ten years. This list was submitted on 8 October 2013.
53. On 8 October 2013, the CAS Court Office informed the parties of the appointment of Ms Nora Krausz as ad hoc clerk.
54. The CAS Court Office and the parties further exchanged correspondence regarding the appearance of witnesses at the hearing and the availability of their written statements.
55. The parties received the Procedural Order on 15 October 2013 and they duly signed and returned a copy thereof within the set time limit.

56. On 15 October 2013, the CAS Court Office established a list of witnesses who will be present at the hearing and proposed a hearing schedule. The parties were also reminded of their responsibilities under on Art. R44.2 of the Code.
57. On 25 and 28 October 2013, the Respondent gave the Panel details concerning Mr Sapina's availability at the hearing through audio-conferencing.
58. The (first) hearing took place at the CAS headquarters in Lausanne on 29 October 2013. The parties were present and assisted by counsel. At the outset of the hearing, the Respondent informed the Panel and the Appellant that, despite its prior arrangements, Mr Cvrtak was unable to travel to Lausanne and to appear in person at the hearing. UEFA proposed to hear Mr Cvrtak through video-conferencing or, in the event that the Appellant would prefer the witness to appear in person, UEFA declared that it would cover all costs related to a new hearing.
59. The Appellant, after having duly discussed the matter, requested another hearing to be convened and accepted the Respondent's offer to cover the related costs.
60. In agreement with the parties, a new hearing was fixed for 12 February 2014.
61. The CAS Court Office sent to the parties an indicative hearing schedule on 7 February 2014.
62. The (second) hearing took place on 12 February 2014, in presence of the following persons: Mr Kevin Sammut, assisted by Messrs Drs Lucio Sciriha and Michael Sciriha, attorneys-at-law; UEFA represented by Messrs Dr Emilio Garcia, James Mungavin and Urs Kluser and assisted by Messrs Antonio Rigozzi and William McAuliffe, attorneys-at-law. The parties all confirmed having no objection regarding the composition of the Panel. Messrs Ante Sapina and Cvrtak, witnesses, also appeared in person for their audition.
63. At the hearing, Mr Ante Sapina, Mr Franz Tabone, Mr Samuel Gauci on behalf of the Maltese Lotteries and Gaming Authority (instead of Mr Galea or Mr Xuareb) and Ms Theresa Comodini Cachia were heard as witnesses for the Appellant and Mr Cvrtak was heard as a witness for Respondent. Mr Sammut also made an oral statement and answered the Panel's questions. The contents of these declarations are examined in the "Legal Discussion" below.
64. The parties had the opportunity to present their case, comment on the evidence on file, submit their arguments and answer the questions posed by the Panel.
65. During the hearing, the Appellant produced a document containing a list of principles applicable to identification (Annex E to CODE D of PACE (England's Police and Criminal Evidence Act 1984)) the contents of which the Appellant's counsel also read aloud. This document was not formally accepted into the file of the case, as set out below in the "Legal Discussion".
66. After their final oral submissions, the parties stated that they did not have any objection with respect to their right to be heard or the conduct of the proceedings.

**D. THE PARTIES' SUBMISSIONS**

67. In his Appeal Brief, Mr Sammut requested the following relief:

*"In view of the above statements and arguments, and all the evidence, produced by the UEFA in this appeal, player Kevin Sammut humbly requests this Honourable Court of Arbitration for Sport to*

*1. To annul and revoke in its entirety the decision of the UEFA Appeals Body delivered on the 30<sup>th</sup> of November 2012 against Kevin Sammut and to declare him not guilty for the allegations brought against him;*

*2. Without Prejudice to the above, should this Honourable Court of Arbitration still find that the charges against Mr Kevin Sammut have been proven, appellant humbly requests that a more equitable punishment be imposed which fits better the facts of the case and in line with recent decisions by both national and international bodies;*

*3. To order UEFA to pay unto appellant all costs and legal fees incurred by appellant both in these arbitration proceedings as well as those before the UEFA Control and Disciplinary Body and the UEFA Appeals Body on a full indemnity basis;*

*4. To award any such other relief as the Panel may deem necessary or appropriate".*

68. On the merits, Mr Sammut's arguments can be summarised as follows:

- The procedure before the UEFA did not respect the Appellant's right to a fair trial, given the inequality of arms during the preparation of the hearing before the CDB and the significant difference in the parties' financial means. The Appellant also criticizes the fact that both the CDB and the UEFA Appeals Body refused to hear certain witnesses proposed by him and that the entire proceedings before these bodies were rushed and did not give sufficient opportunity for Mr Sammut to defend himself properly.
- The evidence relied upon by the Appeals Body is insufficient and cannot lead to incriminate the Appellant, as the link between him and the alleged match-fixing was not established to a comfortable satisfaction. In particular, the Appellant questioned the reliability of Mr Cvrtak's testimony and criticized the way in which this witness identified him. The Appellant highlighted alleged contradictions between the declarations of Mr Cvrtak and Mr Sapina and pointed to several illogical factual statements. Mr Sammut also explained that UEFA's investigation had been conducted in a biased manner and was incomplete.
- If the charges against him were to be upheld, a more lenient sanction should be imposed, *inter alia* in view of the sanctions imposed in other cases.

69. The Respondent's Answer contains the following prayers for relief:

*“Based on the foregoing developments, UEFA respectfully requests the CAS to issue an award:*

*i. Rejecting the reliefs sought by Mr Sammut.*

*ii. Confirming the Decision under appeal.*

*iii. Ordering Mr Sammut to pay a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings”.*

70. The Respondent’s position is that:

- The Match was fixed by arrangement through Mr Cvrtak and Mr Sammut who played a central role in the manipulation of the Match;
- Mr Sammut therefore violated Art. 5 DR and his appeal should be rejected;
- The Appellants arguments relating to an alleged violation of his right to a fair trial before the UEFA are unfounded and can, in any event, not be taken into account, as the CAS hears the case *de novo*;
- The evidence against Mr Sammut is sufficient, taking into account the “comfortable satisfaction” standard of proof, applicable in this matter;
- The sanction imposed is proportionate to the seriousness of the infringement and is in line with the case law of the CAS, as well as that of national and international judicial bodies.

## II. LEGAL DISCUSSION

### A. JURISDICTION OF THE CAS

71. As the CAS is an arbitral tribunal with seat in Switzerland and as the Appellant does not have his domicile or habitual residence in Switzerland, pursuant to Art. 176 of the Swiss Private International Law Act (“PILA”), Chapter 12 of this Act (Art. 176 to 194 PILA) applies to the present arbitration (CAS 2005/A/983 & 984 marg. no. 61; CAS 2006/A/1180 marg. no. 7.1).

72. According to Art. 186 PILA, the arbitral tribunal shall rule on its own jurisdiction.

73. Art. R27 of the Code provides the following: *“These Procedural Rules apply whenever the parties have agreed to refer a sports related dispute to the CAS. Such disputes may arise out of an arbitration clause [...] or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings). [...]”.*

74. In the case under scrutiny, Art. 62 of the UEFA Statutes provides that all decisions rendered by a UEFA organ can be appealed to CAS. In addition, none of the parties raised any objection regarding the jurisdiction of the CAS to decide on the prayers for relief submitted to it. On the contrary, the parties confirmed CAS jurisdiction by signing the Order of Procedure.
75. In conclusion, the Panel finds that it has jurisdiction to rule upon the present dispute.

**B. ADMISSIBILITY OF THE APPEAL**

76. The appeal was filed within the time-limit set by Art. 62 of the UEFA Statutes and it fully complies with the requirements of Art. R47 and R48 of the Code.
77. The appeal is therefore admissible.

**C. APPLICABLE LAW**

78. According to Art. R58 of the Code, *“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
79. In the case at hand, the parties agree that the rules and regulations of UEFA are applicable, in particular the UEFA Disciplinary Regulations (DR), 2006 Edition (the facts under scrutiny having taken place in 2007).
80. Match-fixing, if proven, violates Art. 5 DR, in particular lit. *a* and *j* (and possibly also lit. *d*) (see CAS 2009/A/1920, par. 78). This article provides:

*“Article 5 Principles of conduct*

*1 Member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.*

*2 For example, a breach of these principles is committed by anyone:*

*a) who engages in or attempts to engage in active or passive bribery and/ or corruption;*

*...*

*d) whose conduct brings the sport of football, and UEFA in particular, into disrepute;*

*...*

*j) who commits any other act likely to exert an improper influence on the progress and/or the result of a match”.*

81. According to Art. 11 lit. a) DR:

*“Disciplinary measures provided for in Articles 14 and 15 of the present regulations may be taken against member associations or clubs if a team, player, official or member is in breach of Article 5 of the present regulations”.*

82. Finally, Art. 15 DR reads as follows:

*“The following disciplinary measures may be imposed against individuals in accordance with Article 54 of the UEFA Statutes:*

*a) warning,*

*b) reprimand,*

*c) fine,*

*d) suspension for a specified number of matches or for a specified or unspecified period,*

*e) suspension from carrying out a function for a specified number of matches or for a specified or unspecified period,*

*f) ban on exercising any football-related activity,*

*g) withdrawal of a title or award”.*

83. In addition, Swiss law applies in a subsidiary manner, given that the seat of UEFA is in Switzerland.

84. Accordingly, the Panel shall apply the rules and regulations of UEFA (especially Art. 5 DR) and Swiss law.

#### **D. MERITS OF THE CASE**

85. According to Art. R57 of the Code, *“the Panel has full power to review the facts and the law”.* Accordingly, and as confirmed in the jurisprudence of the CAS (CAS 2009/A/1920, par. 88 and cases cited), this provision entails the possibility for the Panel to hear the case *de novo* and to decide on all relevant issues in an independent manner, including the assessment of evidence.

86. Accordingly, even if a violation of the principle of due process or of the right to be heard occurred in the prior proceedings before the CDB or the Appeals Body of UEFA, it is cured in the appeal proceedings before CAS. Therefore, all submissions of the Appellant with

respect to the conduct of the proceedings by the UEFA internal jurisdictional bodies must be rejected, because any prior violation of procedural rights is remedied in the proceedings before CAS. In particular, the parties both confirmed at the hearing before CAS that they had no objections regarding the way in which the present proceedings were conducted. While Mr Sammut might indeed have had some difficulties in having all witnesses heard in the previous instances, he had ample occasion to do so before CAS and even benefited from assistance from the Panel and the Respondent in bringing witnesses before CAS.

87. In conclusion, the Panel shall not deal further with Mr Sammut's allegations regarding the way the proceedings were conducted before UEFA.

88. Therefore and given the parties' submissions, the Panel shall first decide on the applicable standard of proof (a), before examining whether the evidence on file demonstrates a violation by Mr Sammut (b) and deciding on the sanction to be imposed, if any (c).

**a) The applicable standard of proof**

89. At the outset, the Panel notes that both parties agree that the standard of proof in this case is that of "comfortable satisfaction".

90. Neither the DR, nor Swiss law contains an express provision regarding the standard of proof to be applied in cases of alleged match-fixing.

91. According to established case law of CAS in disciplinary cases:

*"Taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts 'to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made' (CAS 2005/A/908)" (CAS 2009/A/1920, par. 85).*

92. *"This standard is higher than the civil standard of 'balance of probability' but lower than the criminal standard of 'proof beyond a reasonable doubt'", as set out by CAS case law (CAS 2011/A/2426, par. 88).*

93. Another CAS panel also noted in a case of alleged match-fixing:

*"In the particular case, when assessing the evidence, the Panel has well in mind that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing" (CAS 2010/A/2172, par. 54).*

94. The Panel shall accordingly apply the "comfortable satisfaction" standard when assessing the evidence, bearing in mind the particular nature of the conduct under scrutiny.

95. Finally, both parties agree that UEFA bears the burden of proof, *i.e.* that it is for the Respondent to prove that Mr Sammut indeed committed a violation of Art. 5 DR.

**b) The evaluation of the evidence**

96. In the case at hand, the Panel is comfortably satisfied that the Match was fixed with the assistance of Mr Sapina and Mr Cvrtak. Indeed, Mr Cvrtak's presence in Oslo on 2 June 2007, duly established through documentary evidence (cf. *infra*), could have had no other purpose than abetting the manipulation of the Match. Furthermore, the fact that both Mr Sapina and Mr Cvrtak spontaneously admitted having fixed the Match, even though the German criminal proceedings did not specifically relate to this case, can only be explained if they indeed told the truth.

97. During their interviews with the MFA, the players and other members of the national team present in Malta denied that the Match was fixed.

98. In particular, Mr Sammut explained to the MFA on 1 December 2011 and 9 February 2012 that he was not involved in any manipulation regarding the Match and that he did not hear anything suspicious from other players, that would have indicated that the Match was fixed.

99. During the hearing before CAS, Mr Sammut did not make any statement on a possible fixing of the Match, but strongly denied that he was involved in any manipulation, stating that he did not know Mr Sapina or Mr Cvrtak before seeing their pictures in the Maltese newspapers and that he did not know "Almir". Mr Sammut also added that he did not have any contact with these persons.

100. On the other hand, Mr Dhont, the UEFA Inspector, explained in his report of 30 April 2012, that the betting on the Match clearly showed a tendency favouring the outcome of 0-4. This tendency is another indication that the result of 0-4 was the desired outcome of the Match to be reached by manipulation.

101. Ultimately, the Panel has to weigh the evidence pro and contra a manipulation of the Match. On the one hand, the players of the Maltese team, including Mr Sammut, denied that the Match was fixed. Their motivation for such denial is obvious if the Match was in fact fixed: any admission would put – at a minimum – their career as football players at risk. On the other hand, Mr Sapina and Mr Cvrtak had no such motivation: the Panel is unable to find any reason why they would "invent" a (fairly complicated) story before the following background:

It has been established beyond reasonable doubt that Mr Cvrtak travelled to Oslo on 2 June 2007 and that he checked into the hotel in which the Maltese team stayed (both of these issues have been confirmed by a letter of the Football Association of Norway to UEFA dated 13 August 2012). Why would someone who has probably seen hundreds of football matches and who admits having been involved in the manipulation of more than 50 games, travel to Oslo to watch on TV in his hotel room a qualifier between Norway and Malta? The only reasonable explanation under the circumstances is that Mr Cvrtak was in fact involved in the fix of the

Match and that the reason for his trip was exactly what he and Mr Sapina testified, *i.e.* to verify through a meeting with (a) Maltese player(s) whether the fix was in place.

102. The Panel is thus comfortably satisfied that the Match was in fact fixed.

This conclusion is corroborated by the anonymous letter and the statement by an undisclosed person, both confirming the fix (see par. 18 above) as well as the suspicious betting pattern (par. 100 above) and Mr Haber's testimony before the MFA (no. 157 below).

103. This first conclusion being reached, the Panel must decide whether the evidence at hand answers the following questions:

- i. Did a meeting between Mr Cvrtak and a player of the Maltese team take place on 2 June 2007?
- ii. And, in the affirmative, was the player who entered Mr Cvrtak's room Mr Sammut?

i) *Did a meeting between Mr Cvrtak and a player of the Maltese team take place on 2 June 2007?*

104. The Judgment of the UEFA Appeals Body does not dwell on the details of the meeting on 2 June 2007. It only holds that "*some discrepancies have emerged, particularly in relation to whether Kevin Sammut and Marijo Cvrtak met in the player's hotel room or that of the witness*".

105. According to UEFA, the meeting indeed took place in Mr Cvrtak's room. This conclusion has been reached primarily on the basis of Mr Cvrtak's testimony which can be summarized as follows: First, Mr Cvrtak contacted Mr Sapina and told him his room number. Then, the player arrived shortly afterwards in Mr Cvrtak's room. He was dressed in a red tracksuit, was short and stocky, with light coloured hair. Mr Cvrtak and the player briefly discussed the manipulation of the Match and Mr Cvrtak then called Mr Sapina, who was to confirm the agreement with the player in English. They agreed that Malta was to lose the Match with a score of 0-4. This being done, the player left the room.

106. As to Mr Sammut, he explains that he never entered Mr Cvrtak's room and that he does not know of any other player having done so. Indeed, Mr Sammut testified that he never met Mr Cvrtak before the proceedings started against him.

107. In order to decide whether it is comfortably satisfied that Mr Cvrtak met a player on 2 June 2007 for the purpose of confirming the fix of the Match, the Panel shall assess the evidence at hand.

- Mr Cvrtak's presence in Oslo on 2 June 2007

108. As explained earlier (par. 101 above) Mr Cvrtak was indeed present in a particular hotel in Oslo from 2 June to 3 June 2007. This was the hotel where the Maltese contingent stayed.

109. There is therefore no doubt that Mr Cvrtak was in Oslo on the day of the Match.
- Mr Cvrtak's declarations before the police and before UEFA
110. During his interrogation by the German police on 2 September 2010, Mr Cvrtak explained that the purpose of this travel to Oslo was to determine whether the Match was indeed fixed, as Mr Sapina had been told by a third person. Mr Cvrtak stated that after his arrival in the hotel in Oslo, a Maltese player came to his room. Mr Cvrtak told the player that Malta was to lose 0-5, but the player denied. Mr Cvrtak then called Mr Sapina in order for him to arrange the matter with the player in English. After the conversation, the player left the room. Mr Cvrtak added that he did not discuss any financial matters with the player, nor did he hand over any money.
111. When questioned by the MFA and UEFA on 27 March 2012, Mr Cvrtak in substance repeated his statement before the police on 2 September 2010, adding that his arrival in Oslo was on the day of the Match, around midday and that, upon his arrival in the hotel, he called Mr Sapina to give him his room number. He explained that it was obvious that the man coming into his room was a Maltese football player. Mr Cvrtak also added that, upon being told that Malta was to lose 0-5, the player told him that the agreement had been 0-4. For the rest, Mr Cvrtak's declaration was identical to his statement before the police.
112. Mr Cvrtak also issued a written statement in the present proceedings (dated April 2013) confirming the above.
- Mr Cvrtak's declarations before CAS
113. During the hearing, Mr Cvrtak confirmed his written statement.
114. In answer to questions from the Panel, Mr Cvrtak explained that Mr Sapina had not told him the names of the player or players he was supposed to meet in Oslo, only the fact that he / they were Maltese.
115. Mr Cvrtak recognised at the hearing that he did not remember exactly the conversation during which he gave Mr Sapina his room number, as they had spoken several times on the telephone during that day. Mr Cvrtak however confirmed that he did not contact directly the player himself, before the player came to his room. When asked by the Panel, Mr Cvrtak confirmed that the player immediately entered the room from the corridor. Finally, he also admitted that he did not remember much about the hotel itself or the number of floors it had, although he could recall the layout of the room.
- Mr Sapina's declarations before the police
116. Mr Sapina was interrogated by the German police on 26 August 2010. He explained that upon being informed by "Almir" that four Maltese players were willing to fix the Match, he asked

Mr Cvrtak to travel to Oslo and ascertain that this arrangement was indeed in place, before betting on the Match. Mr Sapina added that the meeting between Mr Cvrtak and the player in Oslo took place on the day of the Match, in the hotel room of the player. Only one player met with Mr Cvrtak. Mr Sapina explained that Mr Cvrtak called him after the meeting and told him that everything had been arranged. Mr Sapina also stated that all the financial aspects (betting, bribe) were handled by “Almir”.

- Mr Sapina’s declarations before CAS

117. During the hearing, Mr Sapina explained that his relationship with “Almir” during the years 2006 and 2007 consisted of exchanging tips for bets or betting together and that they had only rigged one game together, *i.e.* the Match. Mr Sapina added that he did not give any money to Mr Cvrtak before he travelled to Oslo, but paid for the travel costs. Mr Sapina stated that he spoke several times with Mr Cvrtak on the day of the Match, before the Match actually started.
118. Upon being interrogated by the Panel, Mr Sapina explained that he won € 35’000 as a result of betting on the Match, after having “invested” €100’000. He and “Almir” both betted this amount and won €340’000, from which €70’000 were paid by “Almir” to the players as a bribe. He himself did not front any money and did also not retrieve his winnings, but left the amount with “Almir”, to be added to their “current account” relationship.
119. Mr Sapina also explained that he spoke with “Almir” on the telephone after having received confirmation from Mr Cvrtak that the arrangement was in place, *i.e.* after Mr Cvrtak had met the player.
120. Mr Sapina explained that Mr Cvrtak was supposed to meet four players initially and that he did not know why he finally only met one player. Mr Sapina also stated that he did not know the players’ names and accordingly could not give this information to Mr Cvrtak, but that this information was not relevant. Mr Cvrtak was to receive instructions from Mr Sapina and would know in time whom to meet and where.
121. Regarding the place of the meeting, Mr Sapina said that, not having been there, he did not know in which room the meeting took place and that this was not important for him. He also did not remember how often and when precisely he spoke to whom on that particular day. He remembered however that he spoke once with the player, who was handed the telephone by Mr Cvrtak during the meeting. Mr Sapina added that it was not him who gave to the player the information regarding Mr Cvrtak’s room number, but could not remember whether this information came from “Almir” and how the player was informed about Mr Cvrtak’s room number.

- Mr Sammut’s testimony before the MFA and before UEFA

122. Mr Sammut was interrogated by the MFA on 1 December 2011 and on 9 February 2012. He stated that he was not involved in any match fixing activities and that he did not know Mr Cvrtak or Mr Sapina, that he never met them or talked to either of them over the phone.

When being told by the MFA representatives that Mr Cvrtak's allegation was that the meeting took place in Mr Sammut's room, Mr Sammut explained that this was untrue and that, sharing his room with his teammate Mr Justin Haber, such a meeting would have been impossible.

123. UEFA heard Mr Sammut on 11 April 2012. He denied being involved in any match fixing. He explained that he never met Messrs Cvrtak and Sapina. He did not receive any phone calls related to match fixing in Oslo and did not make any "strange" encounter, in particular not in an elevator.

- Mr Sammut's testimony before CAS

124. At the hearing before CAS, Mr Sammut explained that he never met Mr Cvrtak before the proceedings started. He stated that Mr Cvrtak might have been present in Oslo at the same hotel as the Maltese team, but Mr Sammut did not know anything about Mr Cvrtak's presence, as he did not meet Mr Cvrtak in Oslo.

125. Mr Sammut added that he never spoke with Mr Cvrtak, Mr Sapina or "Almir" over the phone.

- The Panel's assessment

126. The Panel is comfortably satisfied that – as Mr Cvrtak testified – a meeting took place between him and a player of the Maltese team in the afternoon of 2 June 2007 in Mr Cvrtak's hotel room in Oslo (the question whether this player was Mr Sammut will be discussed further below).

Admittedly, Mr Sammut testified that he never met Mr Cvrtak until proceedings started against him and, consequently, that he was not in Mr Cvrtak's hotel room on the said day. Therefore, he was also unable to tell whether the said meeting took place at all and, if it did, who the player was who came to see Mr Cvrtak.

127. The Panel thus has to weigh Mr Cvrtak's and Mr Sapina's testimony that the meeting in Mr Cvrtak's hotel room took place against an "I do not know"-statement by Mr Sammut.

128. The Panel is comfortably satisfied that a meeting took place between Mr Cvrtak and a player of the Maltese team on 2 June 2007 in Mr Cvrtak's hotel room. It reaches this conclusion not only because of the foregoing testimony, but also on the basis of the proven circumstances of Mr Cvrtak's presence in Oslo on the day of the Match and the Panel's reflections on the motivation for Mr Sammut's statement on the one hand and Mr Cvrtak's and Mr Sapina's on the other. While Mr Sammut has a clear reason to deny any involvement in the fix of the Match, there is no plausible explanation why Mr Cvrtak would falsely invent a conspirative meeting with a Maltese player. If that meeting did not take place, does it make any sense at all for Mr Cvrtak to travel to Oslo and watch on TV in hotel room a football match between Norway and Malta? Admittedly, there are some discrepancies in the statements by the various persons involved (*e.g.* did the meeting take place in the player's or Mr Cvrtak's room) and a number of "suspicious" elements such as the identity and residence of the mysterious "Almir",

but on balance, considering the obvious conspirative nature of corruption cases (see par. 93 above), these uncertain elements do not put into question the Panel's comfortable satisfaction that a meeting between Mr Cvrtak and a Maltese player took place on 2 June 2007, in Mr Cvrtak's hotel room in Oslo.

ii) *Was the player who entered Mr Cvrtak's room Mr Sammut?*

129. The UEFA Appeals Body reviewed the manner in which Mr Cvrtak identified Mr Sammut during his interrogation by the German police and later during his interview with UEFA, as well as at the hearing before the CDB and before the Appeals Body itself. In conclusion, the Judgment held that the identification of Mr Sammut by Mr Cvrtak was reliable and consistent and that Mr Cvrtak did not have any reason to suggest Mr Sammut as being the player involved, had it not been the case.
130. According to UEFA, the identity of the player as Mr Sammut was beyond doubt, given the testimonies of Mr Sapina and Mr Cvrtak. In particular, UEFA stresses that Mr Cvrtak's description of the player as being "short and chubby" with "slightly longer fair hair" is not inaccurate when seen from Mr Cvrtak's perspective, who is 1,90 m tall with very dark hair. UEFA adds that additional evidence points to Mr Sammut, *i.e.* his poor performance during the Match, the anonymous letter received by the MFA in May 2011, as well as the unnamed persons who allegedly told Mr Vassallo that Mr Sammut was involved in the fixing of the Match (see par. 18 above).
131. According to Mr Sammut, he never met Mr Cvrtak in Oslo or elsewhere and the first time he heard of Mr Cvrtak was during the proceedings. The Appellant strongly denies having been involved in any match-fixing activities.
- Identification procedure before the German police
132. During his interrogation on 2 September 2010, Mr Cvrtak was shown pictures of some Maltese players. These pictures were not a complete set of the entire Maltese squad, as the translation of the interrogation report mentions: "*At this point, Mr Cvrtak is shown photos of the Maltese footballers who have been identified so far. At this stage Mr Cvrtak cannot positively identify any of them*". The pictures are not included in the report.
133. When asked at the hearing before CAS about the reason why he was unable to identify Mr Sammut on 2 September 2010 at the police, Mr Cvrtak explained that the pictures presented were of a very bad quality and that he could not have identified anyone on those photographs.
134. On 20 October 2011, Mr Cvrtak was again heard by the German police regarding the Match and was shown a photo folder of 18 photos. He stated: "*I looked at the photos and am 99% sure that the person on the photo with the number 1 is the person who I met and negotiated with in the hotel room. I still know that the player played for the club Marsaxlokk*". The pictures are included in the police report of 20 October 2011 and Mr Sammut's picture is marked with the number 1.

- Identification procedure before UEFA

135. During his interview with the MFA and UEFA on 27 March 2012, Mr Cvrtak said that when he had been shown photos in Bochum by the police (he did not specify which interview he was referring to), it was “*very late*”. He added that there was a similarity between Kevin Sammut and another player “*who looked very similar*”.
136. When interrogated by the MFA and UEFA on 27 March 2012, Mr Cvrtak was asked whether he remembered the positions the players involved in fixing the Match played in the game. He indicated that the player (the man who came to his room) played in the position number 10 and was a “playmaker”. He described the player as short and stocky (about 1.75 m tall), with fair, quite long hair. Mr Cvrtak added that he was not 100% sure, but thought that he player was substituted and did not play the whole match. Later during the interview, Mr Cvrtak was shown several photographs of Maltese players (20 pictures). He recognised the player who came to his room on 4 pictures (one of which was a group picture). He was later told that the man on these 4 pictures, whom he recognised as the player, was Mr Sammut. Mr Cvrtak signed these 4 pictures, which are included in the transcript of the 27 March 2012 interview. These 4 pictures indeed show Mr Sammut.
137. During the hearing before the CDB on 17 August 2012, the chairman asked the three players (Messrs Sammut, Wellman and Scicluna) to stand up and then asked Mr Cvrtak to designate the man whom he met in his room in Oslo. Mr Cvrtak then pointed to Mr Sammut without hesitation.
138. As stated by the Appellant at the hearing before CAS, during the hearing before the CDB, his name was written in front of him on a board, so that it was not difficult to identify him. UEFA did not deny this fact.
- Mr Cvrtak’s declarations regarding two subsequent meetings with Mr Sammut
139. According to Mr Cvrtak, two further meetings between him and Mr Sammut took place by chance.
140. First, according to Mr Cvrtak he met Mr Sammut together with other Maltese players in the elevator of the hotel, shortly after the meeting in his hotel room on 2 June 2007. The players came down from their floor and when Mr Cvrtak stepped into the elevator at his floor, the players were already inside.
141. Mr Cvrtak first described this event during his interrogation by the German police on 2 September 2010 and said that he met Mr Sammut with two other players in the lift. During his second interrogation by the police (20 October 2011), he repeated this statement and identified Messrs Michael Mifsud and Kenneth Scicluna as the two other players. He added that he was certain that one of the players in the elevator wore glasses.

142. During his interview with the MFA and UEFA, on 27 March 2012, Mr Cvrtak said that Mr Sammut was with three other players in the elevator and that Mr Sammut told the others “*this is our man*”, referring to Mr Cvrtak. Mr Cvrtak explained that his room was on the second floor and that the four players were already in the elevator going down when he stepped in. They all went down to the ground floor and exchanged a few words, hinting humorously to the fixing of the Match. Mr Cvrtak also added that one of the players in the elevator had glasses, dark skin and curly hair and was thinner and a bit taller than Mr Sammut. He explained that he could not remember any details regarding the other players who were also in the elevator, but all of them seemed aware of the arrangement to fix the Match.
143. In his written testimony, Mr Cvrtak repeated that he met Mr Sammut with approximately two or three other players in the elevator, they had a brief good-humoured exchange and that Mr Sammut presented him to the others with the words “*that’s our man*”. Mr Cvrtak added that he could not remember clearly the other players, except for the one who wore glasses and that they all seemed to have shorter hair than Mr Sammut.
144. During the hearing before CAS, Mr Cvrtak repeated the same statement.
145. According to Mr Cvrtak, the second accidental meeting between him and Mr Sammut happened in Malta.
146. During his interrogation by the German police, Mr Cvrtak did not mention that he met Mr Sammut in Malta.
147. In his interview with the MFA and UEFA, Mr Cvrtak stated that he met by chance Mr Sammut a few months after the Match, at a roundabout in Valletta next to the sea. This place was near the office building of a company he had a business relationship with, related to betting. During the interview, Mr Cvrtak made a drawing of the location (which is included in the transcript). Mr Cvrtak explained that there were several tall buildings and a restaurant, as well as a casino in the area. Mr Sammut told him that he was living or working in the buildings next to the restaurant, but Mr Cvrtak could not recall precisely anymore. He also vaguely remembered that Mr Sammut might have complained to somebody, stating that he thought Mr Cvrtak was following him to Malta.
148. In his written testimony, Mr Cvrtak explained that he travelled to Malta on business in September 2007 and was near the offices of the company he had business with, when he saw Mr Sammut near a roundabout. Mr Cvrtak approached him and they recognised each other and had a short conversation. It was possible that Mr Cvrtak may have given Mr Sammut his telephone number and suggested a further meeting, but it did not take place. He stated that Mr Sammut was wearing a white shirt and black trousers.
149. During the hearing before CAS, Dr Samuel Gauci of the Maltese Lotteries and Gaming Authority was heard. He stated that the Authority did not have any records on Mr Cvrtak’s betting activity in Malta and that he was not a registered licence holder nor affiliated. However, the Authority had found traces in their files of a betting shop that Mr Cvrtak’s wife had in Germany (Neumünster).

150. Also at the CAS hearing, Mr Cvrtak explained that the passport he used in 2007 contained a stamp of his trip to Malta, through which he had been able to identify the date of his trip as September 2007.
151. Furthermore, at the CAS hearing, the name of the place at which Mr Cvrtak supposedly met Mr Sammut was referred to by both parties as St Julian's.
152. In addition, the UEFA file contains an email from a company (Tipico Co. Ltd.), based at St Julian's in Malta, explaining that Mr Cvrtak visited their company, at an uncertain date (but possibly after 2007).
153. Finally, Mr Sammut's bank statements from May to December 2007 show several withdrawals of cash at ATMs in St Julian's.
- Mr Sapina's declarations regarding the identity of the player who met Mr Cvrtak in the hotel room.
154. During his interrogation by the German police on 26 August 2010, Mr Sapina explained that he did not know the names of the players who were involved in fixing the Match. "Almir" had told him that there were 3 defence players and one midfielder. He stated that the player with the number 10 and the captain were those involved, although these two might have been the same person. Mr Sapina added that he did not know which player met with Mr Cvrtak.
155. At the CAS hearing, Mr Sapina stated that he did not know the player's telephone number and that he did not arrange himself the meeting between Mr Cvrtak and the player. It had been arranged through "Almir". When questioned by the Panel, Mr Sapina could not give any additional information regarding the identity of the player.
- Justin Haber's declarations before UEFA and his witness statement
156. Mr Haber was a member of the Maltese contingent and Mr Sammut's roommate in Oslo on 2 June 2007.
157. Mr Haber was interrogated by the MFA on 23 December 2011. His statement was summarised as follows: *"He told us he knows the names of the players who could have been involved and was surprised that we did not"*, Then, Mr Haber added that he *"would not divulge names as they are his team mates"*. On 27 February 2012, when interrogated for the second time by the MFA, Mr Haber stated that he could not state any names without evidence, which he did not possess. Mr Haber stated that in his view, Maltese football was in general corrupt.
158. Interrogated by UEFA on 11 April 2012, Mr Haber stated that Mr Sammut never told him anything about possible match fixing. He also explained that in the afternoons before matches he usually sleeps, so that he could not tell what Mr Sammut did during that time on 2 June 2007. He added that he could not imagine Mr Sammut fixing a game.

159. Finally, in a written statement dated 22 September 2012, Mr Haber explained that he did not notice any unusual behaviour by Mr Sammut on 2 June 2007, that Mr Sammut did not receive any phone calls or visitors on that afternoon and that Mr Sammut did not leave the room. He did not see Mr Sammut with any unknown persons in the hotel and did not notice him having large sums of money. Finally, according to Mr Haber, Mr Sammut never discussed any match fixing.
160. Although called as a witness and scheduled to be heard by CAS, Mr Haber did not appear.
- Mr Sammut's declarations before CAS
161. During the hearing, Mr Sammut again repeated that he never met Mr Cvrtak and did not go to Mr Cvrtak's room in the hotel in Oslo. He strongly denied ever having spoken to Mr Cvrtak, Mr Sapina or "Almir" and affirmed that he was not involved in any match-fixing activities.
162. Regarding the meeting in the hotel elevator, Mr Sammut was not asked any specific questions at the hearing given his statement that he never met Mr. Cvrtak before proceedings started against him.
163. Finally, regarding the alleged accidental meeting in Malta, Mr Sammut explained that he did not live or work near St Julian's in 2007. However, the ATM withdrawals could be explained by the fact that St Julian's is well-known for its nightlife. At the time, he often went out with friends in that area during the weekends and withdrew money on those occasions.
- The Panel's assessment
164. Having determined that a meeting took place between Mr Cvrtak and a Maltese player in Mr Cvrtak's hotel room for purposes of confirming the fix of the Match, the final crucial question remains whether that player was Mr Sammut.

With respect to this question the Panel is again faced with a scenario where either the Appellant or Mr Cvrtak as a witness did not tell the truth. The Panel's determination will thus depend on whether it finds one or the other testimony credible to an extent that UEFA can be seen as having discharged its burden of proof to the Panel's comfortable satisfaction.

165. At the outset of its assessment the Panel wants to stress that Mr Cvrtak's criminal record and a possible corruption history in Maltese football do not represent as such an argument pointing in one or the other direction.

On the other hand, the motivation to make false statements plays an important role in determining the credibility of witness/party testimony. In Mr Sammut's case, the majority of the Panel considers that motivation as obvious: if his presence in Mr Cvrtak's room is not proven, he will escape sanctioning by UEFA. With respect to Mr Cvrtak, this question is more difficult to answer. It has been suggested by the Appellant that Mr Cvrtak made up the story described by him, in order to earn at least moral points in criminal proceedings pending against

him before German courts. The majority of the Panel is unconvinced of this line of reasoning: Mr Cvrtak has admitted to have been involved in no less than 50 cases of manipulation of football matches. No reasonable person would believe that admitting yet another fix of a game would in any way impress judicial authorities in Germany. Moreover, the legal advisors for Mr Cvrtak will certainly have told Mr Cvrtak that it is unrealistic to believe that any benefit will arise from admitting one further manipulation not yet targeted by the authorities.

166. In order for the Panel to give credence to Mr Sammut's denial of having been the one who came to visit Mr Cvrtak in his hotel room, one of two scenarios must reflect the truth:

– Mr Cvrtak deliberately falsely accused Mr Sammut of having been the one who came to see him in his room, or

– Mr Cvrtak erred in recognising Mr Sammut on three occasions, in his hotel room, in the elevator and in Malta.

The majority of the Panel is unconvinced of the former theory: Why would Mr Cvrtak falsely accuse someone whom he never met before?

In respect of the latter theory, the majority of the Panel is of the view that it would be too much of an accident for Mr Cvrtak to mistakenly recognise Mr Sammut on three different occasions (see 134 and 136 above) and confirm his identity before various authorities.

167. The process for the identification may not have been perfect and may not have been in line with the way English police authorities would conduct an identification (no. 65 above). Indeed, the Appellant argued that these principles should have been respected. His expert witness, Dr Comodini Cachia also explained that the flaws in the identification process should invalidate the whole proceedings. But the fact remains that a witness, the credibility of whom the majority of the Panel has no reason to put in question in the circumstances of this case, has identified Mr Sammut as having been the one who came to his hotel room to confirm the manipulation of the forthcoming Match. In particular, the majority of the Panel wishes to stress that it does not know whether, when first interrogated by the German police on 2 September 2010, Mr Cvrtak was indeed shown a picture of Mr Sammut. Indeed, the pictures shown at that date are not included in the police report. However, when shown a picture of Mr Sammut among 18 photos of Maltese players during his interrogation of 20 October 2011 by the Bochum police, Mr Cvrtak clearly recognised Mr Sammut.

168. The Appellant also argued that his innocence results from the fact that the Maltese police investigations did not lead to charges being brought against him. The Appellant produced a written statement signed by the Inspector in charge of the case, Mr Ian Joseph Abdilla. However, in the opinion of the majority of the Panel, the absence of criminal proceedings in Malta is not sufficient to counterbalance the evidence at hand regarding Mr Sammut's involvement.

169. The Appellant also added that he could not have met Mr Cvrtak in this latter's room, as during match days, the team manager (Mr Ivan Vella at the time) made sure that all the players were

in their rooms and only allowed them to go out as a group. In the opinion of the majority of the Panel, this fact does not modify its assessment, because it is virtually impossible for a team manager to control all the players of the squad at all times.

170. Finally, the Appellant explained that he did not play the whole Match, but was substituted after the first half and that he therefore could not influence the outcome of the Match. However, the question the Panel has to decide is not whether Mr Sammut's conduct on the field caused the outcome of the Match. The Panel has rather to decide whether Mr Sammut was involved in fixing the Match, *i.e.* the arrangements which led to several players manipulating its result. In that regard, the majority of the Panel further notes that Mr Sammut's mistake during the first half indeed strongly contributed to the first Norwegian goal.
171. While the intentional character of such mistake cannot be considered as established, the majority of the Panel is however comfortably satisfied that Mr Sammut went to Mr Cvrtak's hotel room in Oslo on 2 June 2007 to confirm that arrangements have been made for Malta to lose the Match by 0-4 and therefore breached Art. 5 §2 lit. a) DR ("*engage in or attempts to engage in active or passive bribery and/or corruption*").
172. The majority of the Panel is thus comfortably satisfied that UEFA succeeded in discharging its burden of proof that Mr Sammut was involved in the fix of the Match and infringed Art. 5§2 lit. a) DR.

**b) The sanction**

173. Having reached the (majority) conclusion that Mr Sammut was indeed involved in fixing the Match, the Panel now has to decide on the sanction to be imposed.
174. The Judgment of the Appeals Body holds that, having violated Art. 5 DR, Mr Sammut should be punished according to Art. 17 §1 DR, which provides: "*the disciplinary body will determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances*" and Art. 15 DR, which contains a list of possible sanctions, ranging from a warning to the withdrawal of a title or award and containing also a "*ban on exercising any football-related activity*" (lit. f). Based on these provisions, the Appeals Body held that the offence committed by Mr Sammut was serious and that no mitigating circumstances existed. Match-fixing is, according to the Appeals Body, an activity which endangers the very essence of football. Therefore, in line with UEFA's policy of "zero tolerance" against this type of offence and with UEFA's case law in the matter, the Appeals Body concluded that a life-time ban from all football-related activities must be imposed on Mr Sammut.
175. The Appellant claims that the penalty inflicted upon him by the Appeals Body is excessive, if compared with similar cases in national and international football. Mr Sammut stresses that the sanction was so severe only because he came from a "relatively small" football jurisdiction. The Appellant also refers to judgments delivered in Italy and Finland (cited below, at par. 176) involving repeated corruption in numerous games in which the punishment involved was

much less than the penalty imposed on the Appellant. Finally, Mr Sammut points out that, if he was to be found guilty of match-fixing by the Panel, the fact should be taken into account that the case concerned only one game. In addition, the Panel should consider that UEFA had selected one match among the approximately 500 which Mr Cvrtak admitted having fixed, in order to use Mr Sammut as a “sacrificial lamb”.

176. According to UEFA, the sanction is proportionate and in line with the CAS case law, in comparison with other cases of similar seriousness, as well as with recent national decisions including decisions in Malta. UEFA also submits that the Panel should defer to the evaluation of the UEFA judicial bodies, who are in a better position to determine the appropriateness of the sanction for the Appellant.
177. Comparison with disciplinary measures imposed by national associations leads to a mixed result: in several cases, persons involved in match-fixing activities were banned for a limited period of time (e.g. decision by the Finland Football Federation versus Godfrey Chibanga et al. reported in the media on 30 April 2012; decision of the *Commissione Disciplinare Nazionale* of the Italian Football Federation, of 10 August 2012). Some decisions produced by the Appellant do not uphold the existence of the offence and can therefore not be compared to the case of Mr Sammut (judgment by the *Corte di Giustizia Federale* of the Italian Football Federation, of 21 August 2012 in the same matter). In other cases, the offenders were banned for life-time (e.g. decisions of the Korean Football Association and of the Croatian Football Federation reported in the media on 16 April 2013; decisions of the Korean Football Association, Lebanese Football Association and Italian Football Association reported in the media on 27 February 2013; Guatemala Football Association, reported in the media on 24 October 2012). The latter cases relate to direct involvement in match-fixing, to the failure to report match-fixing activities or to illegal betting.
178. The case-law of CAS shows a clear line:
  - In the case *CAS 2009/A/1920* (*par. 114 and 115*), the Panel upheld a life-time ban imposed on the President of a club who manipulated a match;
  - In the case *CAS 2011/A/2426* (*par. 164*), the Panel upheld a ban for a period of three years as well as a fine of CHF 10'000, stating that it was a relatively mild sanction given the seriousness of the offence committed (bribery of a FIFA official over FIFA World Cup votes);
  - In the case *CAS 2010/A/2172* (*par. 75-84*), the Panel considered that a referee who had not reported an attempted match-fixing committed an offence serious enough to justify a life-time ban.
179. Before this jurisdictional background it is worth recapitulating what has been proven in the eyes of the (majority of the) Panel: Mr Sammut went to Mr Cvrtak's hotel room in Oslo on 2 June 2007 to confirm that arrangements have been made for Malta to lose the Match by 0-4. These proven facts are sufficient to establish an infringement of Art. 5 §2 lit. a) DR (“engage in

*or attempts to engage in active or passive bribery and/or corruption*”): at a minimum Mr Sammut was an accomplice in the (proven) manipulation of the Match. What has not been established/proven in these proceedings is the extent of Mr Sammut’s involvement in the implementation of the fix. In the Panel’s view Mr Sammut’s “error” on the pitch which led to Norway’s first goal does not by itself prove his intention to allow this goal. At least in theory, Mr Sammut could have simply been a messenger between the unknown players who actually conspired to implement the fix and the persons who were willing to provide the money for it.

180. Under these circumstances, the Panel finds that despite the seriousness of a match-fixing offense and the Appellant’s involvement, in this case a life-time ban is disproportionate given the (proven) role played by Mr Sammut in the fix. His career as a football player has ended as a result of the episode which gave rise to these proceedings and the Panel finds that a ten year ban from any football-related activity is commensurate to Mr Sammut’s infraction of the rules.
181. Accordingly, the Panel partially sets aside the decision of the Appeals Body as far as it concerns Mr Sammut, imposes a ten-year ban on Mr Sammut from any football-related activities, such ban to be given worldwide effect by FIFA, and thus confirms the CDB’s decision of 17 August 2012.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr Kevin Sammut is partially upheld.
2. The judgment of the UEFA Appeals Body issued on 30 November 2012 and notified on 10 January 2013 is set aside, as far as it concerns Mr Kevin Sammut.
3. Mr Kevin Sammut is banned from any football-related activities for a period of ten years beginning on 17 August 2012.
4. UEFA shall request FIFA to extend this ban, so as to give it worldwide effect.
5. (...).
6. (...).
7. All other or further claims are dismissed.