



**Arbitration CAS 2014/A/3621 JSC PFC Rostov v. Football Union Russia (RFU), award of 31 March 2015 (operative part of 23 June 2014)**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Efraim Barak (Israel); Mr Fabio Iudica (Italy)

*Football*

*Club licensing*

*General compliance of a national federation's licensing process with UEFA requirements and individual licensing process*

*CAS' full power of review and decision to revert the case back to the previous instance*

*Discretion of the national federation to impose stricter criteria regarding overdue payables*

*"Joint payments" or "solidarity contribution" under Article 25 of the RFU Regulations*

*Application of the CAS jurisprudence on the predictability of doping rules to club licensing requirements*

- 1. The fact that a national federation's licensing process was found by UEFA to comply with its club licensing requirements in general does not mean that each and every individual licensing process conducted by the national federation is necessarily conducted in accordance with the requirements set by UEFA.**
- 2. Procedural flaws may be cured by means of a full rehearing of the case before CAS. This authority is enshrined in Article R57 of the CAS Code pursuant to which the Panel has full power to review the facts and the law. Although under certain circumstances it might be more appropriate to refer a case back to the previous instance, if there is an urgency to render a binding decision in a specific matter (and following the parties' joint request), a CAS panel can render a new decision which replaces the decision challenged.**
- 3. The UEFA Club Licensing and Financial Fair Play Regulations (UEFA CL&FFPR) are a set of rules that provide only minimum criteria. As such, a national federation is in principle entitled to impose stricter criteria on its members as is required by UEFA. The national federation is therefore in principle entitled to determine that also overdue payables from clubs towards the national federation can be categorised as overdue payables in the sense of the national federation's Club Licensing Manual. This is enshrined in article 1(2)(a) of the UEFA CL&FFPR, which determines that the UEFA CL&FFPR define the minimum requirements to be fulfilled by a UEFA member association in order to act as a licensor for its clubs.**
- 4. Although article 25 of the RFU Regulations on Status and Transfers of Football Players (RFU Regulations) consistently refers to "joint payments", "solidarity contribution" would be a more appropriate translation. This conclusion is supported by the fact that article 25 of the RFU Regulations forms part of Chapter 7 of the RFU Regulations which**

is headed “Solidarity Mechanism”. Contrary to Annex 5 to the FIFA Regulations on the Status and Transfer of Players, article 25 of the RFU Regulations specifically determines that if a club finds that it has a claim for solidarity contribution, it must make a written request to the new club in order to be entitled to solidarity contribution.

5. CAS jurisprudence regarding the predictability and the constitutionality of doping rules is also applicable to regulations that govern procedures that may have very important consequences on a party, such as the refusal to issue a licence to participate in the UEFA club competitions, particularly in cases where the alleged overdue payables refer to payments that should have been paid, or not, to the same entity that drafted the regulations. Decisions of the licensing bodies of a national federation must be adopted in constitutionally proper ways and that they should not be the product of an obscure process of accretion.

## I. PARTIES

1. Joint Stock Company Professional Football Club Rostov (hereinafter: the “Appellant” or the “Club”) is a football club with its registered office in Rostov-on-Don, Russian Federation. The Club is registered with the Football Union of Russia, which in turn is affiliated to the Union des Associations Européennes de Football (hereinafter: “UEFA”).
2. The Football Union of Russia (hereinafter: the “Respondent” or the “RFU”) is the national governing body of football in the Russian Federation, with its registered office in Moscow, Russian Federation. The RFU is responsible for the issuance of licenses to all Russian clubs that are to enter into the international football competitions and tournaments at European level, which UEFA organises and manages.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 24 February 2014, the Club submitted a license application to the RFU, consisting of an application for an RFU license in order to participate in the Russian league in the 2014/2015

season and an UEFA license in order to participate in the UEFA European club competitions in the 2014/2015 season.

5. On 8 May 2014, the Club won the Russian Cup and accordingly acquired the right to participate in the 2014/2015 edition of the UEFA Europa League on the basis of sporting merit.
6. On 16 May 2014, the RFU Club Licensing Committee of the RFU (hereinafter: the “RFU Licensing Committee”) decided not to grant a license to the Club for participation in the RFU and UEFA competitions in the 2014/2015 season (hereinafter: the “RFU Club Licensing Committee Decision”). The RFU Club Licensing Committee Decision reads as follows:

*“Resolution summary:*

*For the reason of failure to comply with the financial criteria (F.03, F.04, F.05 and F.06), to reject the applications of FC Rostov (Rostov-on-Don) for the RFU License and the UEFA License for the 2014/2015 sporting season”.*

7. On 30 May 2014, following an appeal lodged by the Club, the RFU Club Licensing Appeal Committee issued its decision (hereinafter: the “Appealed Decision”), granting the Club a license to participate in the 2014/2015 RFU competitions, but refusing to issue a license to the Club for participation in the 2014/2015 UEFA competitions and finding the Club guilty of violating the financial criteria F.01, F.02, F.03, F.04, F.05 and F.06 of the RFU National Club Licensing Manual (hereinafter: the “RFU Club Licensing Manual”) and, consequently, imposed several monetary sanctions on the Club. The Appealed Decision reads as follows:

*“Resolution summary:*

1. *To uphold the Resolution of the RFU Club Licensing Commission of 16 May 2014 to reject the application of FC Rostov (Rostov-on-Don) for the UEFA License for the 2014/2015 sporting season.*
2. *To revoke the Resolution of the RFU Club Licensing Commission of 16 May 2014 to reject the application of FC Rostov (Rostov-on-Don) for the RFU License for the 2014/2015 sporting season.*
3. *To issue the RFU License No.34/14 to FC Rostov (Rostov-on-Don) for the 2014/2015 sporting season.*

*RFU License sanctions (if any):*

*Fine in the amount of 300,000 (three hundred thousand) Rubles as per Clause 3.4, Art.3 (F.03) of the Disciplinary Regulations;*

*Fine in the amount of 300,000 (three hundred thousand) Rubles as per Clause 3.4, Art.3 (F.04) of the Disciplinary Regulations;*

*Fine in the amount of 400,000 (four hundred thousand) Rubles as per Clause 3.1, Art.3 (F.06) of the Disciplinary Regulations;*

*Fine in the amount of 500,000 (five hundred thousand) Rubles as per Clause 2.1.c), Art.2 of the Disciplinary Regulations;*

*Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.02) of the Disciplinary Regulations;*

*Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.03) of the Disciplinary Regulations;*

*Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.04) of the Disciplinary Regulations;*

*Fine in the amount of 160,000 (one hundred and sixty thousand) Rubles as per Para 2.1 a), Art.2 (F.01) of the Disciplinary Regulations;*

*Fine in the amount of 1,470,000 (one million four hundred and seventy thousand) Rubles as per Para 2.1 a), Art.2 (F.02) of the Disciplinary Regulations”.*

8. On 2 June 2014, the RFU Licensing Manager notified the Appealed Decision to the Club.

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

9. On 6 June 2014, the Club filed a combined Statement of Appeal/Appeal Brief with the Court of Arbitration for Sport (hereinafter: the “CAS”). In these submissions, the Appellant requested the CAS Court Office to proceed in an expedited manner and to deliver the operative part of the award by 23 June 2014 at 9:00am (CET). The Appellant also requested, pursuant to Article R56 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”) to be allowed to supplement or amend its requests or arguments, to produce new exhibits, or to specify further evidence on which it intends to rely after the submission of the Respondent’s Answer. In addition, the Appellant nominated Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as arbitrator. The Appellant challenged the Appealed Decision, submitting the following requests for relief:

*“1. To set aside point 1 of the Decision passed on 30 May 2014 by the RFU Club Licensing Appeal Committee and to replace it with the following decision:*

*“1. JSC PFC Rostov has not breached the financial criteria F.03, F.04, F.05 and F.06 of the RFU Club Licensing Regulations.*

*2. The Decision issued on 16 May 2014 by the RFU Club Licensing Committee in the part denying a license to JSC PFC Rostov for participation in the UEFA club competitions in the*

*2014/15 season is set aside and replaced with the following decision: “JSC PFC Rostov is granted a license for participation in the UEFA club competitions in the 2014/15 Season”.*

2. *To establish that the RFU Club Licensing Appeal Committee was precluded from imposing any monetary sanctions on JSC PFC Rostov in relation to the financial criteria F.01, F.02, F.03, F.04, F.05 and F.06 of the RFU Club Licensing Regulations in the absence of an appeal/request to this extent from the RFU Licensing Manager.*
  3. *To annul all monetary sanctions imposed by the RFU Club Licensing Appeal Committee on JSC PFC Rostov in its decision dated 30 May 2014.*
  4. *To order the RFU to immediately declare to UEFA that JSC PFC Rostov has a license for participation in the UEFA club competitions in the 2014/15 Season, with effect as of 30 May 2014, and to order the RFU to immediately announce to UEFA the participation of JSC PFC Rostov in the 2014/15 UEFA Europa League, withdrawing any previous announcement made to UEFA regarding the participation of another club replacing JSC PFC Rostov in the 2014/15 UEFA Europa League, if any.*
  5. *To order the RFU to bear all the costs incurred with the present procedure.*
  6. *To order the RFU to pay JSC PFC Rostov a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel”.*
10. On 11 June 2014, the Respondent agreed with an expedited procedure as suggested by the Club.
  11. Also on 11 June 2014, the CAS Court Office informed the parties, pursuant to Article R52.3 of the CAS Code, of the following procedural calendar:
    - 12 June 2014 at 5.00pm (CET): nomination of the Respondent’s arbitrator;
    - 17 June 2014: filing of the Answer by the Respondent;
    - 19, 20 or 21 June 2014: hearing (only if necessary);
    - 23 June 2014 at 8.30am (CET): notification of the award.
  12. On 11 June 2014, the Appellant informed the CAS Court Office that it insisted on a hearing to be held.
  13. On 12 June 2014, the Respondent informed the CAS Court Office that it did not deem it necessary to hold a hearing. Furthermore, the Respondent nominated Mr Fabio Iudica, attorney-at-law in Milano, Italy, as arbitrator.
  14. On 16 June 2014, the CAS Court Office informed the parties that a hearing would be held on Saturday 21 June 2014 in Lausanne, Switzerland.

15. Also on 17 June 2014, in view of the urgency of the present matter and although the Panel had not been constituted for the time being, the Panel (already provided with the Statement of Appeal/Appeal Brief) decided to grant the Appellant until 19 June 2014 at 4.00pm (CET) to file its Reply to the Respondent's Answer. Subsequently, the Respondent was invited to file its Rejoinder no later than 20 June 2014 at 4.00 pm (CET).
16. On 18 June 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter is constituted as follows:
  - Mr Manfred Nan, attorney-at-law in Arnhem, the Netherlands, as President;
  - Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, and;
  - Mr Fabio Iudica, attorney-at-law in Milano, Italy, as arbitrators
17. Also on 18 June 2014, the Respondent filed its Answer, whereby it requested the CAS to decide the following:
  - “1. *Rejecting the Appeal;*
  - and -
  2. *Ordering the Appellant to (i) pay any arbitration costs in full and (ii) pay in full, or pay a contribution towards the legal fees and other expenses incurred by the Football Union of Russia in connection with these proceedings”.*
18. Also on 19 June 2014, the Appellant filed its Reply.
19. Also on 19 June 2014, upon the request of the President of the Panel and pursuant to Article R57 of the CAS Code, the RFU produced a copy of the RFU Club Licensing Appeal Committee's file related to the matter in the Russian language.
20. On 20 June 2014, the Respondent filed its Rejoinder. In this submission, the Respondent requested Mr Alexander Kuzmin, Legal Advisor to the RFU, to be heard as witness by telephone conference.
21. On 21 June 2014, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Panel.
22. In addition to the Panel, Mr Dennis Koolaard, Ad hoc Clerk, and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Georgi Gradev, Counsel;

- Mr Mikhail Prokopets, Counsel;
- Mr Yuri Zaitsev, Counsel

For the Respondent:

- Mr Jan Kleiner, Counsel;
- Mr Vincent Guignet, Counsel;
- Mr Denis Rogachev, Deputy Chairman of RFU Club Licensing Committee;
- Mrs Ekaterina Gerasimova, Finance Expert of RFU

23. At the outset of the hearing, the Club argued that if Mr Rogachev and Mrs Gerasimova were to be heard as witnesses, they should not be allowed to attend the hearing, but that they should only be allowed to enter the hearing room to give testimony.
24. Upon an inquiry from the Panel as to whether the RFU intended to hear Mr Rogachev and Mrs Gerasimova as witnesses or as party representatives, the RFU clarified that both persons were party representatives. Accordingly, and with the approval of the Club, Mr Rogachev and Mrs Gerasimova were allowed to attend the hearing.
25. Furthermore, the Panel asked the Club whether it had any objection to the late announcement by the RFU of Mr Kuzmin as a witness.
26. The Club indeed objected to the testimony of Mr Kuzmin.
27. After discussing the issue, the Panel decided to allow the testimony of Mr Kuzmin in light of its discretion pursuant to Article R56 of the CAS Code on the basis of exceptional circumstances. However, this issue was finally not relevant as the RFU voluntarily decided not to hear Mr Kuzmin.
28. As such, finally no witnesses and experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the counterparty and the Panel.
29. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Panel, that their right to be heard had been respected and that they were treated equally.
30. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.
31. On 11 September 2014, the CAS Court Office granted both parties the opportunity to file submissions on the costs incurred in the course of the proceedings, following a request from the RFU, to which the Club agreed.

32. On 18 September 2014, both parties filed submissions on costs.
33. On 23 September 2014, the Club requested the Panel to exclude the entire submission of the RFU submitted on 18 September 2014 from the file since there was “*no single word regarding the costs of the Respondent*” and that “[*i*]t is now obvious that the latter requested a submission on costs just to supplement or amend its arguments on the merits and to produce new exhibits without the agreement of the Appellant”.
34. On 6 October 2014, on behalf of the Panel, the CAS Court Office informed the parties that the Panel noted that the RFU’s “submission on costs” included also a part which is considered by the Panel as an attempt to submit a late and unauthorized submission on the merits and contained new evidence, which was not agreed upon by the Club, nor by the Panel, and in fact was not applied for by the RFU. Therefore, the Panel decided, on the basis of Article R56.1 of the CAS Code, to accept the submission on costs filed by the RFU insofar as it relates to the costs of these proceedings only, but to exclude the elements related to the merits of the present dispute. Finally, the parties were informed that the new evidence presented by the RFU was rejected and would be disregarded by the Panel.

#### IV. SUBMISSIONS OF THE PARTIES

35. The submissions of the Club, in essence, may be summarized as follows:
  - The Club maintains that the 2012 edition of the UEFA Club Licensing and Financial Fair Play Regulations (hereinafter: the “UEFA CL&FFPR”) demands that decisions of the RFU Club Licensing Committee and Club Licensing Appeal Committee must contain a detailed reasoning for the refusal of a license, which were the basis for the decision of the relevant RFU committee.
  - The Club also argues that, although both RFU committees refer to some of the financial criteria listed in the RFU Club Licensing Manual that it considers relevant to deny the license to the Appellant for participation in the 2014/2015 UEFA club competitions, both decision-making bodies fail to adequately explain the significance of each of the criteria and what the Appellant’s breach consists of. On this basis, the Appellant concludes that the Appealed Decision is invalid for having failed to meet the formal requirements laid down in article 7(10)(k) of the UEFA CL&FFPR, article 4.13 of Annex III and article 5.9 of Annex IV of the RFU Club Licensing Manual.
  - Furthermore, the Club finds that the RFU Club Licensing Appeal Committee had no jurisdiction to inflict monetary sanctions on the Club in the absence of a specific request/appeal by the RFU Licensing Manager against the RFU Licensing Committee Decision. The Club finds that, as the RFU Licensing Committee did not impose monetary sanctions, the Appealed Decision is *ultra petita*.

- On the basis of the above, the Club requests the Panel to grant it a license for participation in the 2014/2015 UEFA club competitions and to cancel all fines inflicted on it by virtue of the Appealed Decision, unless the RFU is able to explain in detail what the Club's breaches of the financial criteria consist of and to corroborate its position with tangible evidence proving that the Club indeed breached the relevant financial criteria.
- The Club maintains that it had indicated certain due amounts payable after 31 March 2014 as "*overdue payables as at 31 March 2014*" by mistake in the documents adduced to the RFU's Club Licensing Committee.
- Contrary to article 12.4.1 of the RFU Club Licensing Manual, the Club avers that the UEFA CL&FFPR do not provide that accounts payable to national football associations arising from the distribution of solidarity payments under the solidarity mechanism should be included under the heading "*no overdue payables towards football clubs*". In particular, the Club finds that the UEFA CL&FFPR do not provide that debts due by the license applicant to the licensor should be considered in the licensing process. Moreover, as the RFU did not request the payment of the due amounts relating to certain players in writing and did not adduce to the Club the pertinent player passports proving its entitlement to payment, on or before 31 March 2014, the RFU (as creditor) was in default, which cannot be held to the detriment of the Club. Also in respect of the other alleged overdue payables, the Club purports that these amounts were not overdue, because they had been paid before 31 March 2014, became overdue only after 31 March 2014, agreements were made with creditors before 31 March 2014 to defer the payments to a date after 31 March 2014 and creditors were in default, which cannot be held against the Club.
- As to the representation letter, the Club argues that this letter was sent to the RFU on 5 May 2014. The Club maintains that this was on time, but nevertheless stresses that the "*supposed insignificant one-day earlier submission of the representation letter cannot be considered as breach of criterion F.05*".
- Regarding the alleged breach of article F.06 of the RFU Club Licensing Manual, the Club finds that the existence of "doubts" is not supported with tangible evidence by the RFU, nor did it specify the nature of the doubts and what has caused them. The Club finds that the denial of a license for participation in the UEFA club competitions cannot be based on unclear doubts.

36. The submissions of the RFU, in essence, may be summarized as follows:

- The RFU maintains that it is undisputed that at the relevant point in time, *i.e.* on the control dates foreseen in the applicable license rules, the Club had several substantial overdue payables towards players, other clubs (including training compensation and solidarity contribution payables), national associations, employees, tax authorities, etc.

- The RFU also finds that the Club was well aware of the overdue payables reproached to it, because these amounts have been admitted by the Club and discussed in detail before both RFU licensing bodies. The Club's contention that it never knew the reasons for the refusal of the license is made contrary to good faith. Even assuming – *quod non* – that the Appealed Decision suffers from a formal error, it is established CAS jurisprudence that any such error is healed by the possibility to appeal to CAS.
- Based on the two reports dated 14 April 2014, issued by the auditor appointed by the Club, the RFU concludes that the Club had several overdue payables on 31 March 2014. The Club also provided a "Table of Accounts Payable towards employees and third parties" and a "Table of Accounts Payable towards clubs and agents", both signed and submitted by the Club, to the RFU, whereby the findings of the two reports of the auditor are confirmed. Finally, Mrs Gerasimova, the RFU's financial expert, reviewed the Club's financial statements and confirmed the existence of the Club's outstanding payments and specified which amounts were overdue as per 31 March 2014. Moreover, Mrs Gerasimova concluded that the Club failed to submit a representation letter, in breach of clause F.05 of the RFU Club Licensing Manual, and expressed doubts in the Club's ability to continue as a going concern until at least the end of the license season 2014/2015, in breach of clause F.06 of the RFU Club Licensing Manual.
- In connection with the licensing procedure before the two licensing bodies of the RFU, the RFU argues that the Club had numerous possibilities to file written submissions, which the Club did, to submit reports of own experts, which the Club did, to attend hearings before the licensing bodies, which the Club did, and also to participate in additional meetings with the RFU's experts, which the Club did. As such, the RFU finds that the Club was treated in a fair and proper manner and maintains that the single amounts of overdue payables were discussed during both hearings and relies on witness statements of Mr Rogachev and Mrs Gerasimova in this respect.
- The RFU maintains that in the proceedings before the RFU Club Licensing Appeal Committee, the Club relied on reports that were amended based on payments that were made to creditors after 31 March 2014.
- In respect of the Club's argument, that the Appealed Decision constituted a ruling *ultra petita*, the RFU maintains that the RFU Club Licensing Committee Decision was, according the RFU Club Licensing Manual, allowed to, instead of refusing a domestic license, to impose a fine as a lower, reduced sanction.
- As to the arguments of the Club related to the inclusion of overdue payables to the RFU under the heading of overdue payables to other clubs, the RFU maintains that the UEFA CL&FFPR only provide for minimum criteria and that a national association may go beyond these minimum requirements. The RFU has done so by

means of Rule F.03, which expressly includes solidarity contribution payments among the applicable licensing criteria.

- As to certain individual overdue payables, the RFU disputes several contentions made by the Club and argues, *inter alia*, that certain debts became overdue before 31 March 2014, that there is no need for a written request in order for debts to be categorized as overdue, that it is not allowed under Russian law to defer payments towards a pension fund and relies on the statements of a witness in this respect.

## V. ADMISSIBILITY

37. The appeal was filed within the deadline of 10 days set by article 8.1 of Annex IV to the RFU Club Licensing Manual. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
38. It follows that the appeal is admissible.

## VI. JURISDICTION

39. The jurisdiction of CAS, which is not disputed, derives from article 8.1 of Annex IV to the RFU Club Licensing Manual, as it determines that “[t]he decisions of the Appeal Committee, including those on imposition of sanctions envisaged by these Regulations, and on withholding (revocation) of licenses, come into force with immediate effect, but may be appealed against by the club or a RFU licensing manager with the Court of Arbitration for Sport (Lausanne) (...)”.
40. In addition, article 47(1) of the RFU Statutes determines that “[i]n accordance with the relevant provisions of the FIFA, UEFA and RFU Statutes, any appeal against final and legally binding decisions of the FIFA, UEFA and RFU shall be heard by the CAS”.
41. The jurisdiction of CAS is further confirmed by article R47 of the CAS Code, a statement in the Appealed Decision contemplating that “[t]his Decision of the Appeal Committee may be appealed to the Court of Arbitration for Sport (Lausanne) (...)” and by the Order of Procedure duly signed by the parties. The jurisdiction of CAS further remained undisputed by the parties at the hearing.
42. It follows that CAS has jurisdiction to decide on the present dispute.

## VII. APPLICABLE LAW

43. Article R58 of the CAS Code provides the following:

*“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”.*

44. The Panel observes that both parties agree to the primary application of the UEFA CL&FFPR and the RFU Club Licensing Manual. The Parties also agreed upon the subsidiary application of Russian law.
45. Since the parties agreed to the application of the UEFA CL&FFPR and the RFU Club Licensing Manual, the Panel is satisfied to accept the application of these regulations and to the subsidiary application of Russian law, if necessary.

### **VIII. PRELIMINARY ISSUES**

#### **A. The case file of the RFU**

46. In its Appeal Brief, the Club requested the Panel to order the RFU to produce the file at its disposal, which served as the basis for the Appealed Decision.
47. On 17 June 2014, on behalf of the Panel and pursuant to Article R57.1 of the CAS Code, the RFU was requested to produce the file which served as the basis for the Appealed Decision, which was done by the RFU on 19 June 2014. This RFU case file was however not translated into English.
48. At the start of the hearing the Panel inquired the parties about the file.
49. The Club did not object to the file of the RFU being included in the case file before CAS. The Club indicated that throughout the hearing it intended to refer to the RFU file and would translate the relevant documents where necessary.
50. The RFU agreed that the parties could translate specific documents from the RFU file where necessary during the hearing.
51. After deliberating on the admissibility of the RFU file, the Panel considered that the proceedings are conducted in English and that documents submitted in Russian are therefore in principle not admissible. However, considering; (a) the urgency of the matter at stake; (b) the fact that due to this urgency the parties agreed on an expedited procedure; (c) the understanding that in such circumstances it may be impossible or very difficult for a party to submit translations of large files on time; and above all (d) in light of the parties' agreement on the suggested practical solution which preserved the rights of both parties, the Panel tried to reach a practical and fair solution and therefore concluded that the RFU file would be admitted to the case file in the proceedings before CAS, but that there were two limitations:

1) both parties would have to agree which specific documents from the RFU case file may be considered by the Panel; and 2) both parties would have to agree on the translation of these documents. The Panel clarified that in case of disagreement between the parties regarding any of these conditions, the relevant document from the RFU file would not be admitted to the case file before CAS.

**B. Translation into English of the RFU Club Licensing Manual**

52. During the hearing, reference was made to a full translation of the RFU Club Licensing Manual, whereas the Panel was only provided with abstracts from this manual. Consequently, in order to have a complete translated version of the RFU Club Licensing Manual at its disposal during the deliberations, the Panel requested the RFU to send such document to the CAS Court Office by email in order to be added to the case file, which was subsequently done with the agreement of both parties.

**IX. MERITS**

**A. The Main Issues**

53. In view of the above, the main issues to be resolved by the Panel are:

- i. Does the Appealed Decision violate the formal requirements laid down in the applicable regulations?
- ii. Did the Club have any overdue payables on 31 March 2014 that arose before 31 December 2013?
  - a) F.03 No overdue payables towards other football clubs
  - b) F.04 No overdue payables towards employees, extra-budgetary funds and tax authorities
  - c) F.05 Written representations prior to the licensing decision
  - d) F.06 Budget (future financial information)
- iii. Did the RFU Club Licensing Appeal Committee rightly reject to issue an UEFA license to the Club?

***i. Does the Appealed Decision violate the formal requirements laid down in the applicable regulations?***

*a) The positions of the parties*

54. The Club maintains that the RFU Club Licensing Committee and the RFU Club Licensing Appeal Committee failed to meet the requirements of article 7(10)(k) of the UEFA CL&FFPR, article 4.13 of Annex III and article 5.9 of Annex IV to the RFU Club Licensing Manual, since although both referred to some of the financial criteria listed in the RFU Club Licensing Manual, neither decision adequately explained the significance of each of the criteria and what the Club's breach consisted of. Notably, the RFU Club Licensing Committee failed to set the "required by the club remedial actions".
55. On this basis, the Club concludes that the Appealed Decision is invalid for having failed to meet the formal requirements set out in the above-mentioned provisions.
56. In addition, the Club argues that the RFU Club Licensing Appeal Committee decided *ultra petita*, since no monetary sanctions were imposed by the RFU Club Licensing Committee and only the Club lodged an appeal with the RFU Club Licensing Appeal Committee.
57. In view of the above, the Club requests the Panel to render a new decision, pursuant to Article R57 of the CAS Code.
58. The Club maintains that because the RFU Club Licensing Committee and the RFU Club Licensing Appeal Committee did not indicate what the Club's breaches consisted of, the Club argued that it was not in a position to present a detailed defence on the merits. On this basis, the Club requested the Panel to order the RFU to produce a copy of the file at its disposal and that it would be allowed to supplement or amend its requests or arguments, to produce new exhibits, or to specify further evidence on which it intends to rely after the submission of the RFU's Answer.
59. The RFU maintains that it is undisputed that at the relevant point in time, *i.e.* on the control dates foreseen in the applicable licensing regulations, the Club had several substantial overdue payables. The RFU maintains that, as from the beginning of the relevant licensing proceedings, the Club was "*absolutely well aware of the overdue payables reproached to it*", because these amounts have been admitted by the Club and discussed in detail before both RFU licensing bodies.
60. As to the content of the RFU Club Licensing Committee Decision and the Appealed Decision, the RFU argues that both decisions have been issued using the official, approved standard format, as requested by the applicable UEFA Club Licensing Quality Standard rules. The rules do not require the national licensing bodies to add long and detailed comments on the legal reasons of their view, because a licensing decision of a national football licensing body is not something comparable to, for instance, a CAS award. The RFU's licensing procedures and decision have been tested very recently by Société Générale de Surveillance SA (hereinafter:

“SGS”), a Swiss-based independent expert company that performs, on a yearly basis, audits of the documents used and of the procedures applied. Mr Alexey Peretolchin, auditor at SGS, made two recommendations to the RFU, namely “to include into the decision a place of FIB and AB meetings” and “to ensure that the AB minutes of meetings are signed also by the Secretary of the AB meetings, and not only by the Chairman”. These comments did however not prevent Mr Peretolchin from issuing a license to the RFU, valid for the 2013/2014 season. Also UEFA confirmed to the RFU that “the regular controls that are performed by UEFA and its partners have to date demonstrated that the club licensing system is managed with the utmost professionalism by the [RFU] in full compliance with the CL&FFP and directives of UEFA”.

61. The RFU maintains that the Club had the possibility to properly present its case before two competent licensing bodies of the RFU. The fact that the RFU decisions state the grounds for the sanction imposed, without repeating all such detailed information is not only in conformity with the applicable rules, but also completely logical, since the Club very well knows which amounts have been determined as overdue payables in the meaning of the RFU Club Licensing Manual. In consequence, that the Club now suddenly claims that it never knew the reasons for the license refusal is contrary to good faith.
  62. Furthermore, the RFU contends that pursuant to long and well-established CAS jurisprudence, the *de novo* nature of CAS proceedings cures all alleged procedural defects of lower instances. Therefore, the claim that the Appealed Decision must be set aside simply because of a procedural error is of no avail to the Club. Furthermore, according to the RFU this is particularly true in the present case because the burden of proof that the decisions of the RFU licensing bodies were wrong lies entirely on the Club.
  63. Finally, in respect of the Club’s argument that the Appealed Decision was *ultra petita*, the RFU maintains that instead of refusing the domestic license, it imposed a fine as a lower, reduced sanction. As such, the RFU Club Licensing Appeal Committee did nothing else than to partially uphold the Club’s appeal.
- b) *The position of the Panel*
64. The Panel observes that article 2.07(c) of the Regulations of UEFA Europa League 2012-2015 Cycle – 2014/15 Season (hereinafter: the “UEL Regulations”) requires that:

*“To be eligible to participate in the competition, a club must fulfil the following criteria: [...] c) it must have obtained a licence issued in accordance with the UEFA Club Licensing and Financial Fair Play Regulations (2012 edition) and by the deadline set by the UEFA administration to the licensors for submitting their lists of licensed clubs”.*
  65. Article 14(1) of the UEFA CL&FFPR determines the following:

*“Clubs which qualify for the UEFA club competitions on sporting merit or through the UEFA fair play rankings must obtain a licence issued by their licensor according to the national licensing regulations, except where Article 15 applies”.*

66. Article 7(10) of the UEFA CL&FFPR reads as follows:

*“The decision-making bodies must operate according to procedural rules – to be defined by the licensor – that, as a minimum, must regulate the following standards:*

[...]

*k) Decision (e.g. in writing with reasoning, etc.)”.*

67. Article 4.13 of Annex III to the RFU Club Licensing Manual determines as follows:

*“If the Commission refuses a license to a license applicant club, the decision must specify the reasons for refusal and the corrective actions to be undertaken by the club”.*

68. Article 5.9 of Annex IV to the RFU Club Licensing Manual reads as follows:

*“If the Appeals Committee decides to rescind or amend the decision of the Commission, the decision rendered by the Appeals Committee must specify in detail the circumstances that served as the grounds for that decision”.*

69. The Panel observes that Article R57 of the CAS Code determines the following:

*“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]”.*

70. On the basis of article 2.07(c) of the UEL Regulations and article 14(1) of the UEFA CL&FFPR, the Panel is satisfied that the RFU is the responsible organ to issue an UEFA license to a club that qualifies for the UEFA club competitions on the basis of sporting merit.

71. In view of the requirement set in article 4.13 of Annex III and article 5.9 of Annex IV to the RFU Club Licensing Manual, the Panel finds that the RFU Club Licensing Committee Decision and the Appealed Decision do not comply with the said regulations. More particularly, the RFU Club Licensing Committee Decision failed to give *“the reasons for refusal and the corrective actions to be undertaken by the club”* and the Appealed Decision failed to *“specify the circumstances in detail”* that lead to the amendment of the RFU Club Licensing Committee Decision.

72. The Panel finds that although SGS granted a license to the RFU, valid for the 2013/2014 season, and that UEFA confirmed that *“the regular controls that are performed by UEFA and its partners have to date demonstrated that the club licensing system is managed with the utmost professionalism by the [RFU] in full compliance with the CL&FFP and directives of UEFA”*, thereby determining that

the RFU's licensing process in general complies with the requirements, does not mean that each and every individual licensing process conducted by the RFU is necessarily conducted in accordance with the requirements set by UEFA.

73. However, although acknowledging that the Appealed Decision does not comply with the regulatory requirements, the Panel finds that procedural flaws may be cured by means of a full rehearing of the case before CAS. This authority is enshrined in Article R57 of the CAS Code pursuant to which the Panel has full power to review the facts and the law.
74. In this respect, the Panel refers to the considerations of another CAS panel:
- “The Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R57 of the CAS Code (“The Panel shall have full power to review the facts and the law”) to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation’s (or other sports body’s) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made” (CAS 2009/A/1880-1881, §18-21, with further references to CAS 2003/O/486, §50; TAS 2004/A/549, §31; CAS 2006/A/1153, §53; CAS 2008/A/1594, §109; TAS 2008/A/1582, §54; CAS 2008/A/1394, §21; TAS 2009/A/1879, §71).*
75. Although under certain circumstances it might be more appropriate to refer a case back to the previous instance, in light of the urgency to render a binding decision in the present matter and as per the parties’ joint request, the Panel found it appropriate to render a new decision which replaces the decision challenged. As such, the Panel will render a new decision and will take into account all the evidence at its disposal.
76. Whereas the Club might have been aware of the reasons why the licensing bodies of the RFU did not grant it an UEFA license for the 2014/2015 sporting season, the Panel finds that by failing to set out the grounds for such refusal in the RFU Club Licensing Committee Decision and/or in the Appealed Decision, the burden of proof to evidence that the Club did not comply with the RFU Club Licensing Manual lies with the RFU. As such, the Panel finds that the Club did not act in bad faith by not providing the evidence at its disposal in its Statement of Appeal/Appeal Brief, as the Appealed Decision did not formally determine on which grounds the decisions of the RFU club licensing bodies were based.
77. The Panel finds that the RFU Club Licensing Appeal Committee did not decide *ultra petita*. Although no monetary fines were imposed in the RFU Club Licensing Committee Decision and the RFU Club Licensing Appeal Committee decided to do so, the Panel observes that whereas the RFU Club Licensing Committee decided not to grant the Club an RFU license, the RFU Club Licensing Appeal Committee decided to grant it an RFU license.

78. The Panel finds that these issues are interrelated and that the RFU Club Licensing Appeal Committee was entitled to grant the Club an RFU license for the 2014/2015 season, but to impose a fine instead as a lower, reduced sanction. The possibility to “*change the appealed decision [...] or revoke it and adopt a new decision*” is contemplated in article 5.6 of the RFU Club Licensing Manual.
79. Consequently, the Panel finds that the Appealed Decision violated the regulatory requirements set in article 4.13 of Annex III and article 5.9 of Annex IV to the RFU Club Licensing Manual, but that such procedural flaw may be repaired by a full rehearing of the case before CAS, as was done in this case.

**ii. *Did the Club have any overdue payables that arose before 31 December 2013 on 31 March 2014?***

80. The RFU maintains that the *rationale* behind the licensing rules is to require a club to behave, financially, in a proper manner, and not to have any overdue payables towards other parties and that CAS has recognised the importance of “no overdue payables-principle” and has on various occasions confirmed that a club that has overdue payables can, and must be, sanctioned.
81. In its Answer, the RFU submitted that the Club breached the following criteria:

*F.03: No overdue payables towards other clubs.*

*The breach was caused through the following debts of Appellant:*

- *Overdue payables to other clubs relating to player transfers/loans, including training compensation and solidarity contribution: RUB 4,832,000 (i.e. approx. EUR 96,000).*

*F.04: No overdue payables towards employees, tax authorities, etc.*

*The breach was caused through the following debts of Appellant:*

- *Overdue salaries, bonuses, other payments to employees: RUB 31,767,000 (i.e. approx.. EUR 680,000);*
- *Overdue payables to extra-budgetary funds: RUB 21,698,000 (i.e. approx.. EUR 460,000);*
- *Overdue personal income tax: RUB 44,486,000 (i.e. approx. EUR 950,000).*

*F.05 Written representations prior to licensing decision.*

*The breach was caused through the fact that Appellant did not submit the representation letter requested by the Rules in time.*

*F.06: Budget*

*The breach was caused through the fact that under consideration of the finances of Appellant, doubts had to be raised in connection with the ability of Appellant to continue as a going concern until at least the end of the season 2014/15”.*

82. The RFU argues that during the meetings that took place with representatives of the Club, no valid arguments were adduced to justify the long list of overdue payables. Furthermore, any measure which the Club took to correct its financial situation were taken after 21 May 2014, *i.e.* the date on which the Club filed its submission before the RFU Club Licensing Appeal Committee. Since these alleged measures were thus taken after 31 March 2014, they are irrelevant to correct the financial situation which is decisive to be granted a license to participate in UEFA club competitions.
83. Furthermore, the RFU refers to an interview of Mr Alexander Shikunov, Vice-President of the Club, where he allegedly admitted the existence of all overdue payables.
84. The Club maintains that it is a modest club that has not participated in the UEFA club competitions for 14 years. Therefore, it could be expected that it would make certain mistakes in the filing process, as it will be demonstrated. In particular, the Club has indicated certain due amounts payable after 31 March 2014 as “overdue payables as at 31 March” by mistake in the documents adduced to the RFU’s licensing organ, which is also evident comparing the tables of accounts presented by the Club with the expert report of Mrs Gerasimova. For example, the Club erroneously declared overdue payables pursuant to criterion F.03 of RUB 10,915,000, whereas the expert alleged that this sum was far lower, *i.e.* RUB 4,832,000 (which is however also incorrect according to the Club, as it should be zero).
85. The Club denies that it violated any of the criteria mentioned by the RFU and put forward several specific arguments in respect of the different criteria in the RFU Club Licensing Manual.
86. Considering the above, the Panel will proceed to analyse the criteria that were allegedly violated by the Club one by one below.
  - (a) *F.03 No overdue payables towards other football clubs*
    - (i) The positions of the parties
87. In its Answer, the RFU maintains that the Club violated criterion F.03 of the RFU Club Licensing Manual on the following basis:

*“The breach was caused through the following debts of Appellant:*

- *Overdue payables to other clubs relating to player transfers/loans, including training compensation and solidarity contribution: RUB 4,832,000 (i.e. approx. EUR 96,000)”.*

88. The Panel observes that article 12.4 of the RFU Club Licensing Manual defines criterion F.03 as follows:

*“The license applicant must prove that as at March 31<sup>st</sup> preceding the season for which the [RFU] and/or UEFA license is issued it has no overdue payables arising from transfer activities undertaken prior to December 31<sup>st</sup> of the previous year (reporting year for licensing purposes)”.*

89. From the Expert Report (hereinafter: the “Report”) prepared by Mrs Gerasimova, submitted with the Answer of the RFU in the present appeal arbitration proceedings, it appears that the amount of RUB 4,832,000 consists of the following sums:

Solidarity contribution:

- Kanga Kaku – RUB 268,000;
- Margasov T. – RUB 151,000;
- Lepsky M. – max RUB 50,000;
- Belyaev M. – max RUB 368,000;
- Nikolich Nemanja – max RUB 245,000;
- Hrvoje Milić – max RUB 300,000;
- U Ben Su – max RUB 1,625,000;
- Bartolomeu Quissanga – max RUB 1,071,000

Training compensation:

- Fandeev A. – around RUB 454,000;
- Sidenko A. – RUB 300,000

90. In its Joinder, the Club adduced arguments in respect of all these amounts.

91. First of all, the Club maintains that the amount of RUB 4,832,000 included solidarity contribution to be paid to the RFU for the transfers of the football players Mr Margasov, Mr Lepsky and Mr Belyaev, as well as training compensation to be paid to the RFU for the signature of the first employment contract by Mr Fandeev.

92. The Club argues that there is an inconsistency between the RFU Club Licensing Manual and the UEFA CL&FFPR. Whereas the former determines that “[a]ccounts payable to national football associations arising from distribution of solidarity payments [...] are also treated as accounts payable to football clubs”, the latter does not provide that such payments should be included. The Club finds that

such an inexplicit burden or additional criterion imposed on the Club by the RFU should not be considered by the Panel, as it goes against the principle of equal treatment, *i.e.* there is no such obligation inflicted on other participants in the UEFA club competitions. In particular, the UEFA CL&FFPR do not provide that debts due by the license applicant to the licensor should be considered in the licensing process.

93. Furthermore, the Club contends that, notwithstanding the above, the burden to prove entitlement to training compensation and/or solidarity contribution and the statutory obligation to request such payment in writing from the player's new club lies with the relevant training clubs. Such statutory obligations apply *mutatis mutandis* to the RFU, which did not request in writing the payment of the due amounts related to these players. The Club finds this to be a typical situation of a creditor in default, which cannot be held to the detriment of the Club and for which the Club bears no responsibility. The RFU was silent about these claims until 31 March 2014, when the RFU used this against the Club to deny a license to it.
94. In addition, the Club argues that the obligation to pay solidarity contribution in connection with the transfers of the above-mentioned players to the RFU matured only in April 2014, taking into account the relevant transfer agreements and article 2(1) of Annex 5 to the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations"), which applies *mutatis mutandis* in the absence of a deadline for payment fixed by the RFU Regulations and which provides that payment of solidarity contribution is due only 30 days after payment of the transfer fee to the former club. In the cases of Mr Margasov, Mr Lepsky and Mr Belyaev, the Club had to pay the due transfer fees in March 2013 and provided evidence in this respect. The entitlement to solidarity contribution for the training clubs arose only 30 days later, *i.e.* in April 2013. In turn, the entitlement to solidarity contribution for the RFU arose only 12 months later, *i.e.* in April 2014, thus after the statutory deadline under criterion F.03, which is 31 March 2014. Furthermore, the Club paid the RFU the due amounts on 8 April 2014.
95. In respect of the football player Mr Sidenko, the Club maintains that there was no overdue payable since the due amount of training compensation was deferred until 5 May 2014, by virtue of an agreement dated 30 January 2014.
96. In respect of the football players Mr Kaku and Mr Quissanga, the Club argues that no player passports of these players were uploaded to the FIFA Transfer Matching System (hereinafter: the "FIFA TMS"). The Club wrote to the relevant national associations to request the player passports, but did not receive an answer. The Club finds this to be a typical situation of creditor in default, which cannot be held against the Club.
97. In respect of the football player Mr Nikolich, the Club avers that no solidarity contribution is outstanding as only his previous club is mentioned in his player passport.
98. In respect of the football player Mr Milic, the Club contends that the solidarity contribution was paid to the training clubs on 29 October 2013 and 24 February 2014 respectively.

99. In respect of the football player Mr Su, the Club contends that the solidarity contribution was paid on 16 January 2014.
100. In its Rejoinder, the RFU maintains that whereas the Club pretended not to be aware of what these proceedings were all about, a mere 24 hours after the RFU's Answer, the Club filed a laboriously drafted Joinder, addressing in detail the entire reasoning at the basis of the RFU Club Licensing Committee Decision and the Appealed Decision. The RFU argues that this is an orchestrated manoeuvre, abusing the accelerated proceedings in front of CAS. By means of a guerrilla-style arbitration in front of CAS, the Club is trying to confuse the Panel, to distract it from the relevant issues and to hide the decisive facts of this matter. In order to illustrate how the Club tries to hide undisputable facts behind all the chaos it created, the RFU mentions two examples.
101. The RFU maintains that the UEFA CL&FFPR clearly state that they only set the minimum criteria to be fulfilled by a club in order to be granted a license. In consequence, a national association may obviously go beyond these minimum criteria, which was subsequently done by the RFU.
102. The RFU contends that Mr Lepsky was registered with the Club on 4 February 2013 and Mr Belyaev and Mr Margasov on 18 February 2013. With reference to article 25(3) of the RFU Regulations on Status and Transfers of Football Players (hereinafter: the "RFU Regulations"), the RFU maintains that the respective amounts of solidarity contribution to be paid to the RFU became due twelve months after the players' registration, following another 30 days deadline, i.e. the RFU avers that solidarity contribution became due on 2 March and 20 March 2014 respectively, thus before the relevant deadline of 31 March 2014.
103. In respect of the Club's argument that the RFU should have sent a written request for these payments, the RFU finds that this is not correct. Such request must only be made when a club ceases to exist or when a club cannot act as beneficiary, which is not the case. In all other circumstances, clubs must make payments entirely by themselves and without being requested to do so. This practise is evidenced by the payment of the relevant amounts by the Club to the RFU, without any written request being made by the RFU, these payments were however made after the relevant deadline of 31 March 2014.
- (ii) The position of the Panel
104. The Panel observes that the RFU contended in its Rejoinder that "[i]n order to illustrate how Appellant is trying to hide undisputable facts behind all the chaos it created, Respondent would like to take only two examples", which might be interpreted in a sense that the RFU fully supported the conclusions reached in the Appealed Decision and in the Report, i.e. for efficiency reasons it chose to highlight only two examples of wrong contentions of the Club. However, at the occasion of the hearing, the RFU unambiguously confirmed that the "overdue payables" mentioned in the Report in respect of Mr Sidenko, Mr Kaku, Mr Quissanga, Mr Nikolich, Mr

Milic and Mr Su did not constitute overdue payables under criterion F.03 of the RFU Club Licensing Manual. Instead, the charges in respect of these players were apparently dropped.

105. Furthermore, during the hearing, the Club argued that, regarding Mr Fandeev, the RFU did not even state in its Rejoinder that a written request for training compensation is a must. The Club maintains that the RFU accepted this position because they do not dispute it, which was not denied by the RFU at the hearing. As such, the Panel understands that this payment did not constitute an overdue payable under criterion F.03 of the RFU Club Licensing Manual.
106. As such, the Panel observes that the dispute between the parties in respect of criterion F.03 of the RFU Club Licensing Manual solely concerns the payments in respect of Mr Margasov, Mr Lepsky, and Mr Belyaev. Accordingly, the Panel will turn its attention only to the payments regarding these three players.
107. First of all, the Panel agrees with the RFU that the UEFA CL&FFPR are a set of rules that provide only minimum criteria. As such, the RFU is in principle entitled to impose stricter criteria on its members as is required by UEFA. The RFU was therefore in principle entitled to determine that also overdue payables from clubs towards the RFU could be categorised as overdue payables in the sense of criterion F.03 of the RFU Club Licensing Manual. This is enshrined in article 1(2)(a) of the UEFA CL&FFPR, which determines that “[t]hese regulations govern the rights, duties and responsibilities of all parties involved in the UEFA club licensing system (part II) and define in particular: a) the minimum requirements to be fulfilled by a UEFA member association in order to act as a licensor for its clubs [...]”.
108. The Panel then turns its attention to the question whether the RFU was required to submit a written request to the Club in order to be entitled to the solidarity contribution, or whether such entitlement arose automatically without the need to submit such written request and, if no written request was necessary, when these payments fell due.
109. It is undisputed between the parties that no written request was submitted to the Club by the RFU in respect of the solidarity contribution of Mr Margasov, Mr Lepsky and Mr Belyaev and that article 25 of the RFU Regulations was applicable.
110. Article 25 of the RFU Regulations determines, *inter alia*, the following:

*“1. Based on the obtained written and grounded requirement (hereinafter referred to as “requirement”), the new professional football club of the professional football player shall calculate and pay joint payment to each football club and (or) each sports school (except for the former club), in which a given football player was trained on the basis of the football player’s passport after the date of football player’s registration in a professional football club in [RFU] or corresponding League in accordance with the payments made of which the joint payment shall be calculated.*”

2. *The responsibility to send the Requirement and the burden of proving the right to receive joint payment with the mandatory provision of documents shall lie on the corresponding football club (sports school) in which the football player was trained. [...]*
3. *If a football club (sports school) in which the football player was trained does not declare the right (file a claim) to receive the joint payment within 12 (twelve) months from the date of registration of the football player in his new club, or [...] if the football player's football club (sports school) specified in the passport ceased to exist (including liquidated or does not participate in competitions under the auspices of [RFU]) [...] the joint payment shall be calculated for the relevant years of education and training and made by the new professional football club football [sic] of the professional football player in [RFU], [...].*

*[RFU] shall upon written request of the new professional football club provide information and supporting documents on termination of the football club, having the right to receive joint payment. [RFU] is obliged to respond to such a request and provide supporting documents within 10 (ten) business days of receipt of such request.*

*In this case the amount of joint payments attributable for the period of the football player's training in the former professional club shall not be paid by the new professional club in [RFU]."*

111. Although article 25 of the RFU Regulations consistently refers to "*joint payments*", the Panel has no doubt that "*solidarity contribution*" would be a more appropriate translation. The Panel feels comforted in this conclusion by the fact that article 25 of the RFU Regulations forms part of Chapter 7 of the RFU Regulations which is headed "*Solidarity Mechanism*", nor did any of the parties raise any doubts as to the meaning of the reference to "*joint payments*".
112. The Panel observes that contrary to Annex 5 to the FIFA Regulations, article 25 of the RFU Regulations specifically determines that if a club finds that it has a claim for solidarity contribution, it must make a written request to the new club in order to be entitled to solidarity contribution.
113. The Panel finds that, in view of the fact that allegedly no club filed such written request with the Club within 12 months from the date of registration of these three players, the RFU would in principle be entitled to receive this amount. There is however an exception to this rule as the third paragraph of article 25(3) of the RFU Regulations determines that in cases where the club "*having the right to receive joint payment*" terminated its activity "*the amount of joint payments [...] shall not be paid by the new professional club in [RFU]*".
114. Having considered the parties' submissions at length, the Panel does not find itself persuaded by the RFU to determine that the solidarity contribution in respect of these players can be considered as overdue in the sense of criterion F.03 of the RFU Club Licensing Manual, for the reasons set out below.

115. The Panel deems the following consideration by a previous CAS panel in respect of doping regulations important:

*“The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-apppliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders”* (CAS 94/129, §34).

116. The Panel finds that this longstanding jurisprudence regarding doping is also applicable to regulations that govern procedures that may have very important consequences on a party, such as the refusal to issue a license to participate in the UEFA club competitions, particularly in this case where the alleged overdue payables refer to payments that should have been paid, or not, to the same entity that drafted the regulations, *i.e.* the RFU. The Panel is of the opinion that decisions of the RFU licensing bodies must be adopted in constitutionally proper ways and that they should not be the product of an obscure process of accretion. With this principle in mind the Panel will review the relevant arguments of the parties.

117. The Panel finds that, in the absence of any provision to the contrary, as football clubs in the Russian Federation are required to file a written request to the new club to claim solidarity contribution, also the RFU would, in principle, have to file a written request before being entitled to solidarity contribution. The Panel is not convinced by the RFU’s arguments that such request is not necessary. Although the RFU provided evidence that Mr Lepsky was registered with the Club on 4 February 2013 and Mr Belyaev and Mr Margasov on 18 February 2013 and that this would in principle lead one to the conclusion that these amounts would have to be paid by the Club to the RFU in March 2014 and that these amounts thus fell due before 31 March 2014 by failing to request the payment of these amounts in writing from the Club, these amounts did not become overdue and thus cannot be qualified as overdue payables in the sense of criterion F.03 of the RFU Club Licensing Manual.

118. As to the alleged overdue payable in respect of training compensation regarding Mr Fandeev is concerned, the Panel observes that article 22(6) of the RFU Regulations determines the following:

*“If the sports academy (amateur football club), in which the player was educated and trained, has not claimed its right to the compensation for education within 12 (twelve) [sic] after signing by the player of his first employment contract [...] then the amount of the compensation for education shall be calculated [...] and shall be paid by the professional football club to the RFU”.*

119. As such, insofar this was disputed by the RFU, the Panel finds that the same reasoning is to be applied to the training compensation of Mr Fandeev as in respect of the solidarity

contribution for Mr Lepsky, Mr Belyaev and Mr Margasov and that the RFU should thus have claimed this amount from the Club in order to be entitled to it.

120. In respect of the exception to the general rule mentioned above, the Panel observes that whereas the second paragraph of article 25(3) of the RFU Regulations determines that the RFU shall provide “*information and supporting documents on termination of the football club*” within ten (10) business days upon a “*written request of the new professional football club*”, no deadline is provided before which the new professional football club should make such written request.
121. In light of the Club’s argument that the clubs that were entitled to solidarity contribution in respect of Mr Margasov, Mr Lepsky and Mr Belyaev terminated their activity, this issue, even if raised only during the hearing before CAS, is formally still pending, leading one to the conclusion that these payments cannot definitively be considered as overdue under criterion F.03 of the RFU Club Licensing Manual.
122. Furthermore, the Panel finds that the regulatory requirement that decisions of the RFU Club Licensing Committee need to determine the “*corrective actions to be undertaken by the club*”, implies that, if the club in question would comply with such corrective actions, the license would still have to be granted to the club in question. In relation thereto, the fact that the RFU Club Licensing Committee Decision and the Appealed Decision failed to provide the exact grounds for refusing the UEFA license created confusion, where it could be expected from a national governing body to provide clarity.
123. Additionally, the Panel finds that the Club acted in good faith by disclosing several amounts to the RFU, even though it is presently undisputed between the parties that many of these payments could not be qualified as overdue payables in the sense of criterion F.03 of the RFU Club Licensing Manual. It is therefore apparent that the Club did not entirely understand its duties under the RFU Club Licensing Manual very well, which might have been caused by the inexperience of the Club.
124. This good faith is also evidenced by the fact that, even if the payments could be qualified as overdue payables, quod non, the Club proceeded with the payment of these amounts shortly after the deadline of 31 March 2014, *i.e.* on 8 April 2014. Although the Panel emphasises that this should not be interpreted as allowing late payments, which would be contrary to the spirit of the licensing system, the Panel finds that it is an indication of the good faith displayed by the Club in a situation where the RFU failed to provide clarity and failed to request the payment as it should have done, and not as an indication that the Club accepted that the relevant amounts fell due despite the RFU’s failure to file a written request.
125. Consequently, the Panel finds that the RFU did not establish that the Club violated criterion F.03 of the RFU Club Licensing Manual.

(b) *F.04 No overdue payables towards employees, extra-budgetary funds and tax authorities*

126. In its Answer, the RFU maintains that the Club violated criterion F.04 of the RFU Club Licensing Manual on the following basis:

*The breach was caused through the following debts of Appellant:*

- *Overdue salaries, bonuses, other payments to employees: RUB 31,767,000 (i.e. approx. EUR 680,000);*
- *Overdue payables to extra-budgetary funds: RUB 21,698,000 (i.e. approx. EUR 460,000);*
- *Overdue personal income tax: RUB 44,486,000 (i.e. approx. EUR 950,000)".*

127. The Panel observes that article 12.5 of the RFU Club Licensing Manual defines criterion F.04 as follows:

*"The reporting entity must prove that as at March 31<sup>st</sup> preceding the season for which the UEFA and/or [RFU] license is issued, it has no overdue payables towards employees, extra-budgetary funds and tax authorities arising from contractual or legal obligations towards employees that arose prior to December 31<sup>st</sup> of the previous year (reporting year for licensing purposes)".*

128. During the hearing the parties clarified that the amount of RUB 31,767,000 referred to in the Report as "*overdue salaries bonuses, other payments to employees*", was no longer considered as overdue. The amount of RUB 31,767,000 consists of salary payments in the amount of RUB 17,657,805.83 that were deferred until after 31 March 2014 and bonus payments in the amount of RUB 14,108,794 that only fell due on 31 May 2014, *i.e.* after the relevant deadline of 31 March 2014.

129. As such, the Panel observes that no salaries, bonuses or other payments were overdue to employees of the Club. The Panel will proceed to analyse whether the Club had any overdue payables towards extra-budgetary funds or as income tax.

(i) No overdue payables to extra budgetary funds

130. As to the overdue payables to extra-budgetary funds it was not disputed between the parties that the amount of RUB 21,698,000 concerned a payment to be made to the pension fund of the Russian Federation.

131. The Club maintains that on 28 March 2014, the pension fund confirmed that the premiums were only payable until 30 May 2014 and that this amount can therefore not be considered as overdue.

132. In its Rejoinder, the RFU argues that under Russian law it is not possible to agree on such deferral since the respective payment deadlines are stipulated by mandatory law. In this respect, the RFU relied on a decision from Russia's Supreme Arbitration Court.

133. The Panel observes that the letter of the pension fund to the Club is indeed dated 28 March 2014 and states, *inter alia*, the following:

*“The outstanding amount against insurance premium due to the Pension Fund as of 01.01.2014 in relation to cameral re-inspection is due by 30.05.2014”.*

134. The Panel observes that the relevant parts of the decision of Russia’s Supreme Arbitration Court indicated by the RFU read as follows:

*“Consequently, neither the executive authority nor Pension fund has any right to determine the order and grounds for giving time on the debt service payment in the insurance fee.*

*As till the current moment neither Law No. 212-Federal Law nor any other federal laws contain rules, foreseen the mentioned mechanism, Fund doesn’t have the grounds for the providing suspension (extension) repayment of the debt for payers of insurance premium payments”.*

135. Although the letter of the pension fund does not specifically refer to the amount of RUB 21,698,000 as the amount that fell due on 30 May 2014, the Panel observes that this was not disputed by the RFU throughout the proceedings.

136. The Panel is not convinced by the arguments of the RFU in respect of mandatory Russian law. In particular, it is not convinced by the translation of short abstracts of the decision of Russia’s Supreme Arbitration Court. As such, it is not clear to the Panel in what context such decision was rendered.

137. Furthermore, even if the pension fund was not entitled to defer payments, the Panel finds that this would be an issue that would primarily have to be resolved between the pension fund and the RFU. In this respect, the Panel would like to stress that no evidence was provided in respect of any correspondence between the RFU and the pension fund during a period of three months that elapsed between the date on which the letter of the pension fund was issued (28 March 2014) and the date of the hearing (21 June 2104). The Panel is of the opinion that if indeed the extension granted by the pension fund was a violation of national law, the RFU would have dealt immediately with such event and not wait until the hearing before CAS in order to raise such argument. Therefore, the Panel finds that by providing a letter from the pension fund in the present appeals arbitration proceedings, the Club complied with the regulatory requirements to defer payment. A violation of mandatory Russian law by the pension fund can, in principle, not impair the Club.

138. Consequently, the Panel finds that the Club does not have any overdue payables towards extra budgetary funds.

(ii) No overdue personal income tax

139. The Club maintains that due to the fact that it signed relevant agreements with its employees to reschedule payments, it was not under the obligation to withhold and pay personal income tax on wages. The same is true for income tax over the bonuses to the players and the staff of the team, which only fell due on 31 May 2014.
140. The Club argues that, in support of the above position, the tax authorities, by letter dated 31 March 2014, informed the Club that it had no information on the availability of tax debts on personal income tax as at 31 March 2014.
141. The Club finds that if the tax authorities report no tax arrears up to 31 December 2014, the RFU has no right to decide on the existence of such arrears.
142. The Club therefore concludes that it had no debt to the tax authorities on 31 March 2014.
143. The Panel observes that the tax authorities of the Russian Federation indeed issued a letter to the Club on 31 March 2014, confirming that “[i]n accordance with Article 226 of the Tax Code of the Russian Federation (hereinafter – the Tax Code) tax agents shall calculate tax amounts against personal income tax running total for the tax period following each month for all income. Wherein the tax agents shall deduct calculated tax amounts directly from personal taxpayer’s income upon its actual payment”.
144. Although the content of the letter is not utterly clear, the Panel understands that it appears from this letter that the tax authority would only calculate the tax due upon actual payment of the salaries by the Club. By deferring the salaries and bonuses of its employees, no personal income tax had to be paid by the Club.
145. In light of the above and absent further arguments from the RFU as to why the amount of RUB 44,486,000 should be considered as overdue, the Panel finds that the Club does not have any overdue income tax.
146. Consequently, the Panel concludes that the Club did not violate criterion F.04 of the RFU Club Licensing Manual.

(c) F.05 Written representations prior to the licensing decision

147. In its Answer, the RFU maintains that the Club violated criterion F.05 of the RFU Club Licensing Manual on the following basis:

*“The breach was caused through the fact that Appellant did not submit the representation letter requested by the Rules in time”.*

148. The Panel observes that article 12.6 of the RFU Club Licensing Manual defines criterion F.05 as follows:

*“Within seven days prior to the date when the licensing decision is to be made by the [RFU] Licensing Commission, the license applicant must make written representations to the licensor”.*

149. The Club maintains that it submitted a representation letter to the RFU on 5 May 2014 and provided evidence in this respect.
150. The Club contends that it was only informed of the date on which the meeting with the RFU Club Licensing Committee would take place on 13 May 2014, *i.e.* after it had already submitted the representation letter to the RFU. Since the representation letter was sent to the RFU on 5 May 2014 and the licensing decision was to be made on 16 May 2014 and because 9-11 May 2014 were public holidays, the Club maintains that the representation letter was sent in time.
151. Nevertheless, the Club stresses that the supposed insignificant one-day delay in providing the representation letter cannot be considered as a breach of criterion F.05 of the RFU Club Licensing Manual. At the occasion of the hearing, the Club clarified that it was fined for having filed the representation letter one day early, instead of one day late.
152. Whereas the RFU argued in its Answer that the Club *“failed to submit a representation letter”* and that it thereby violated criterion F.05 of the RFU Club Licensing Manual, it apparently imposed certain fines for the untimely filing of such representation letter.
153. At the occasion of the hearing, the parties agreed that this charge was dropped in the proceedings before the RFU Club Licensing Appeal Committee in respect of the issuance of the UEFA license. The parties agreed that criterion F.05 of the Club Licensing Manual was only relevant in respect of the issuance of the RFU license. Because of violating criterion F.05, the RFU apparently imposed fines on the Club in accordance with criteria F.01 and F.02 of the RFU Club Licensing Manual.
154. In the absence of further arguments from the parties, the Panel is satisfied to adopt their joint position that a violation of criterion F.05 of the RFU Club Licensing Manual is not important in respect of the issuance of the UEFA license, but that it is ground to impose a fine on the Club.
155. The Panel observed that the Club provided evidence that it sent a representation letter to the RFU on 5 May 2014.
156. As such, the Panel finds that the Club was indeed one day early in sending the representation letter with the RFU. However, the Panel finds that the Club cannot be sanctioned for submitting a representation letter one day early, particularly considering the short term notice of the date on which the licensing decision was to be made.
157. Consequently, the Panel finds that the Club did not violate criterion F.05 of the RFU Club Licensing Manual.

(d) *F.06 Budget (future financial information)*

158. In its Answer, the RFU maintains that the Club violated criterion F.06 of the RFU Club Licensing Manual on the following basis:

*“The breach was caused through the fact that under consideration of the finances of Appellant, doubts had to be raised in connection with the ability of Appellant to continue as a going concern until at least the end of the season 2014/15”.*

159. The Panel observes that article 12.7 of the RFU Club Licensing Manual defines criterion F.06 as follows:

*“The reporting entity must prepare and submit a budget (future financial information) in order to demonstrate to the licensor its ability to continue as a going concern until the end of the license season. The reporting entity must provide documentary evidence of the license applicant’s financial capabilities at least by the end of the period following the reporting period, and, if possible, before the end of the license season”.*

160. The Club contends that this charge was dropped by the RFU Club Licensing Appeal Committee after the Club provided additional information following the refusal of the license by the RFU Club Licensing Committee.

161. The Club further argues, that in any event, the existence of doubts is not supported with tangible evidence by the RFU, nor did it specify the nature of the doubts and what caused these doubts. The Club finds that one cannot deny a license for participation in the UEFA club competitions based on unclear doubts.

162. During the hearing, the parties confirmed that this charge was dropped in respect of the issuance of the UEFA license. The RFU however contended that the Club was fined for late submission of documents in this respect.

163. Consequently, in light of the positions of the parties, the Panel is satisfied to confirm that the Club did not violate criterion F.06 of the RFU Club Licensing Manual (*i.e.* there were no legitimate doubts as to the ability of the Club to continue as a going concern until the end the license season), but that certain documents were filed late and that it thereby violated the RFU Club Licensing Manual.

**iii. *Did the RFU Club Licensing Appeal Committee rightly reject to issue an UEFA license to the Club?***

164. In view of the above, it must be concluded that the only violation committed by the Club was the late filing of documents in respect of criterion F.06 of the RFU Club Licensing Manual.

165. Since it is not disputed between the parties that this violation could not lead to a refusal of the UEFA license and because the Panel finds that the Club did not violate criteria F.03, F.04 and

F.05 of the RFU Club Licensing Manual, the Panel finds that the RFU Club Licensing Appeal Committee should not have rejected to issue an UEFA license to the Club.

166. As to the fines imposed, the Panel observes that the Appealed Decision determined that the following nine fines would be imposed on the Club:

- “1. Fine in the amount of 300,000 (three hundred thousand) Rubles as per Clause 3.4, Art.3 (F.03) of the Disciplinary Regulations;*
- 2. Fine in the amount of 300,000 (three hundred thousand) Rubles as per Clause 3.4, Art.3 (F.04) of the Disciplinary Regulations;*
- 3. Fine in the amount of 400,000 (four hundred thousand) Rubles as per Clause 3.1, Art.3 (F.06) of the Disciplinary Regulations;*
- 4. Fine in the amount of 500,000 (five hundred thousand) Rubles as per Clause 2.1.c), Art.2 of the Disciplinary Regulations;*
- 5. Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.02) of the Disciplinary Regulations;*
- 6. Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.03) of the Disciplinary Regulations;*
- 7. Fine in the amount of 100,000 (one hundred thousand) Rubles as per Para 2, Clause 2.3, Art.2 (F.04) of the Disciplinary Regulations;*
- 8. Fine in the amount of 160,000 (one hundred and sixty thousand) Rubles as per Para 2.1 a), Art.2 (F.01) of the Disciplinary Regulations;*
- 9. Fine in the amount of 1,470,000 (one million four hundred and seventy thousand) Rubles as per Para 2.1 a), Art.2 (F.02) of the Disciplinary Regulations;”*

167. As explained to the Panel during the hearing, the fines referring to F.01 and F.02 were imposed in connection with the alleged violation of criterion F.05 of the RFU Club Licensing Manual.

168. Considering the considerations supra, the Panel finds that all the fines referring to criteria F.01, F.02, F.03, F.04 and F.05 shall be disregarded.

169. As such, fines number 3 and 4 remain.

170. As to fine number 4, the Panel observes that this fine does not refer to any of the F criteria of the RFU Club Licensing Manual. In the absence of any explanation by the RFU as to the legal basis for the imposition of this specific fine, the Panel finds that this fine must be dismissed.

171. The Panel finds that the only fine that was legitimately imposed, was fine number 3, specifically referring to criterion F.06. Consequently, the Panel confirms the fine of RUB 400,000 imposed on the Club.

**B. Conclusion**

172. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that:

1. The Appealed Decision violated the regulatory requirements set in article 4.13 of Annex III and article 5.9 of Annex IV to the RFU Club Licensing Manual. Nevertheless, such procedural flaw may be repaired by a full rehearing of the case before CAS.
2. The RFU did not establish that the Club violated criteria F.03, F.04 and F.05 of the RFU Club Licensing Manual.
3. The Club violated criteria F.06 of the RFU Club Licensing Manual.
4. The Club shall granted a license to participate in the UEFA club competitions for the 2014/2015 season.
5. The fines imposed on the Club by the RFU for violating criteria F.01, F.02, F.03, F.04 and F.05 are dismissed.
6. The fine of RUB 400,000 imposed on the Club by the RFU for violating criterion F.06 is confirmed.

173. Any further claims or requests for relief are dismissed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. As notified by way of a partial operative part on 23 June 2014:
  1. *“The appeal filed on 6 June 2014 by Joint Stock Company Professional Football Club Rostov against the Decision issued on 30 May 2014 by the Club Licensing Appeal Committee of the Football Union of Russia is upheld in respect of the denial of the UEFA License for the 2014/2015 sporting season.*
  2. *The Decision issued on 30 May 2014 by the Club Licensing Appeal Committee of the Football Union of Russia in respect of the denial of the UEFA License for the 2014/2015 sporting season is set aside.*
  3. *Joint Stock Company Professional Football Club Rostov is granted a license for participation in the UEFA club competitions in the 2014/2015 sporting season.*
  4. *All other motions or prayers for relief will be set out in the final award”.*
2. Furthermore, the appeal filed on 6 June 2014 by Joint Stock Company Professional Football Club Rostov against the Decision issued on 30 May 2014 by the Club Licensing Appeal Committee of the Football Union of Russia is partially upheld.
3. The Decision issued on 30 May 2014 by the Club Licensing Appeal Committee of the Football Union of Russia is partially set aside:
  - a. Joint Stock Company Professional Football Club Rostov is granted a license to participate in the UEFA club competitions in the 2014/2015 sporting season.
  - b. The fines imposed on Joint Stock Company Professional Football Club Rostov by the Club Licensing Appeal Committee of the Football Union of Russia for violating criteria F.01, F.02, F.03, F.04 and F.05 are dismissed.
  - c. The fine of RUB 400,000 imposed on Joint Stock Company Professional Football Club Rostov by the Club Licensing Appeal Committee of the Football Union of Russia for violating criterion F.06 is confirmed.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.