



Arbitration CAS 2015/A/4151 Panathinaikos FC v. Union des Associations Européennes de Football (UEFA) & Olympiakos FC, award of 26 November 2015 (operative part of 24 August 2015)

Panel: Mr Mark Hovell (United Kingdom), President; Mr Manfred Nan (the Netherlands); Mr Jan Räker (Germany)

Football

Eligibility of a club to participate in a UEFA competition

Sufficient interest to appeal

Distinction between admission and competition phases

Standing to sue after the competition phase has started

Standing to sue under Article 81.01 of the UEFA Champions League Regulations (UCLR)

1. It is the role of the organiser of the competition to safeguard its integrity. Ensuring there is a fair competition and that its integrity is preserved is not a sufficient interest for a club to appeal a decision. In order to have standing to appeal, a club needs to be “directly affected” by the decision, which is not the case of every club in the competition.
2. When considering the practicalities of the Champions League tournament, there needs to be an admissions phase. During that phase eligibility is considered, whether on alleged match fixing grounds, or licensing and financial grounds. But, at a certain stage, the names need to be drawn and the qualifying rounds of the competition need to start. Pursuant to Article 13.02 of the UCLR the competition consists of the “*qualifying stage*”, the “*play offs*” and the “*UEFA Champions League*”. The competition phase starts with the qualifying stages and at this time the admission phase has concluded.
3. A club next best-placed in the top domestic championship of an association in which eligibility of the best-placed club for the UEFA Champions League is contested has no standing to sue under Article 4.08 of the UCLR which states that a club which is not admitted to the competition is replaced by the next best-placed club in the top domestic championship of the same association. Although nowhere in Article 4.08 of the UCLR does it state that the replacement rule ends once the competition has started, the interpretation of the UCLR leads to note that in various parts of Article 4, the sub-articles that are intended to continue after the admission phase are expressly stated to do so, which is not the case of Article 4.08.
4. Under Article 81.01 UCLR, standing to sue should be restricted to a club that could show that it would directly replace an excluded club and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take.

I. PARTIES

1. Panathinaikos FC (hereinafter referred to as “Panathinaikos” or “the Appellant”), is a football club with its registered office in Athens, Greece. Panathinaikos is currently competing in Super League Greece (hereinafter referred to as “Super League”). It is a member of the Hellenic Football Federation (hereinafter referred to as “the HFF”), which in turn is affiliated to Union des Associations Européennes de Football.
2. Union des Associations Européennes de Football (hereinafter referred to as “UEFA” or “the First Respondent”) is the governing body of European football and has its registered office in Nyon, Switzerland.
3. Olympiakos FC (hereinafter referred to as “Olympiakos”, “Olympiacos” or “the Second Respondent”) is a football club with its registered office in Piraeus, Greece. Olympiakos is currently competing in Super League and is a member of the HFF.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. In the summer of 2010, Mr. Evangelos Marinakis (hereinafter referred to as “Mr. Marinakis”) became the majority owner of Olympiakos.
6. On 3 December 2014, Greece’s Assistant Prosecutor Against Corruption, Mr. Aristides K. Koreas (hereinafter referred to as “Mr. Koreas”) filed a preliminary report (hereinafter referred to as the “Koreas Report”), alleging that Mr. Marinakis was involved in match-fixing.
7. On 17 December 2014, the Supervising Prosecutor of the First Instance Court of Athens found that there was sufficient evidence against Mr. Marinakis for the case to be advanced to the second stage of Greek criminal proceedings and the case was assigned to the Special Investigating Judge for Corruption, Mr. Giorgos Andreadis.
8. By virtue of winning the Super League in the 2014/15 season, Olympiakos achieved sporting qualification directly to the group stages of the 2015/16 UEFA Champions League.
9. On 15 May 2015, Olympiakos duly sent to UEFA its Admission Criteria Form for the UEFA Club Competitions 2015/16 (hereinafter referred to as the “Admission Form”). Olympiakos

attached a “Statement of Accusations against President of Olympiakos FC Mr. Marinakis”, noting the ongoing match-fixing investigation taking place in Greece.

Proceedings before UEFA

10. On 8 June 2015, the UEFA General Secretary (hereinafter referred to as “the General Secretary”) referred the Admission Form and Olympiakos’ case to the UEFA Control, Ethics and Disciplinary Body (hereinafter referred to as “the CEDB”), pursuant to Article 4.07 of the 2015/16 Regulations of the UEFA Champions League (hereinafter referred to as the “UCLR”) (hereinafter referred to as “the First Referral”). At the same time, the General Secretary also made a request to the UEFA Ethics and Disciplinary Inspector (hereinafter referred to as the “EDI”) to conduct an investigation over the admission of Olympiakos into the 2015/16 UEFA Champions League.
11. On 8 June 2015, the EDI initiated an investigation and submitted his report, requesting to provisionally admit Olympiakos into the 2015/16 UEFA Champions League, pursuant to Article 4.02 of the UCLR. In view of the urgency of the matter, pursuant to Article 50.3 of the UEFA Statutes and Article 23.3 of the 2014 UEFA Disciplinary Regulations (hereinafter referred to as “UEFA DR”), the Chairman of the CEDB directly referred the case to the UEFA Appeals Body for a decision.
12. On 9 June 2015, Olympiakos requested that a hearing take place before the UEFA Appeals Body, and a hearing was scheduled for 17 June 2015.
13. On 12 June 2015, Panathinaikos submitted the Koreas Report and a summary of the ongoing investigation into allegations of match-fixing by Mr. Marinakis to UEFA. However, Panathinaikos did not submit a formal complaint under Article 48 of the UEFA DR at this stage.
14. On 16 June 2015, Olympiakos filed a statement to UEFA on the matter. Briefly, Olympiakos stated that it had provided UEFA with all the necessary information in their possession to assess the situation and were of the belief that the allegations of match fixing would not lead to anything more than a full acquittal of Mr. Marinakis.
15. On 17 June 2015, the UEFA Appeals Body held a hearing involving Olympiakos and UEFA’s EDI. The UEFA Appeals Body decided (hereinafter referred to as the “Appealed Decision”) as follows:
 - “1. *To suspend the present proceedings against Olympiakos FC in relation to the admissions criteria for the 2015/16 UEFA competitions and, consequently, provisionally admit the club into the UEFA Champions League 15/16.*
 2. *To order Olympiakos to provide UEFA with all relevant information in relation to the proceedings opened against its President Mr. Marinakis in Greece, including any decision that may be taken by the Greek Courts.*

3. *The decision is final (subject to Article 58.7 DR) and is communicated to:*
 - (a) *the parties;*
 - (b) *the UEFA Control Ethics and Disciplinary Body;*
 - (c) *the UEFA administration;*
 - (d) *the Hellenic Football Federation”.*
16. On 18 June 2015, Mr. Andreadis (the Special Investigating Judge for Corruption in Greece) issued a decision stating that there were “serious indications of guilt” as to the allegations against Marinakis and imposed restrictive measures against him including a ban from participating in football (hereinafter referred to as the “Andreadis Decision”).
17. On 19 June 2015, Panathinaikos filed a formal complaint with UEFA against Olympiakos, pursuant to Articles 48(c) and (g) of the UEFA DR (hereinafter referred to as “the Second Referral”). Briefly, Panathinaikos referred to and analysed evidence and findings in the Koreas Report and requested that Olympiakos be banned from the 2015/16 Champions League and additional UEFA competitions pursuant to applicable UEFA Regulations.
18. On 22 June 2015, the initial draws were held for the 2015/16 Champions League, to determine the match-ups for the first two qualifying rounds. Panathinaikos was not included in this draw as they were to be included in the draw from the third qualifying round.
19. On 23 June 2015, UEFA informed Olympiakos that disciplinary proceedings had been opened based on Article 48(g) of the UEFA DR and provided Olympiakos with a deadline of 30 June 2015 to submit its defence.
20. On 26 June 2015, Panathinaikos sent a letter to UEFA requesting that the disciplinary proceedings against Olympiakos pursuant to the First Referral and their own complaint pursuant to the Second Referral be consolidated. Panathinaikos also requested a hearing in person and requested UEFA to order Olympiakos to submit all documents related to the case.
21. On 30 June 2015, PAOK FC (hereinafter referred to as “PAOK”) filed a complaint with UEFA against Olympiakos, Asteras Tripolis and PAE Atromitos Athens, asserting that each of those clubs were guilty of match-fixing and thus should be removed from UEFA competitions. Further, PAOK requested provisional measures seeking a provisional suspension of these clubs if a decision was not taken before PAOK’s first qualifying match in the 2015/16 UEFA Europa League.
22. On 3 July 2015, in accordance with Article 34.6 of the UEFA DR, the Chairman of the UEFA Appeals Body decided to consolidate the Second Referral by Panathinaikos and the complaint of PAOK against Olympiakos into one proceeding.
23. On 10 July 2015, a Decree of the Appeals Council of Athens was issued, dropping a number of other historic charges against Mr. Marinakis on the basis that *“there was insufficient evidence of guilt for him for the offences”*.

24. On 11 July 2015, the Appealed Decision was communicated to Panathinaikos and Olympiakos.
25. On 16 July 2015, the UEFA Appeals Body rejected PAOK's request for provisional measures.
26. On 17 July 2015, the draw was held for the third qualifying round of the 2015/16 Champions League. Panathinaikos was drawn against Club Brugge KV (Belgium). The two legs of the tie were to be completed by 5 August 2015.
27. On 23 July 2015, the UEFA Appeals Body held a hearing. Olympiakos, Panathinaikos and PAOK had the opportunity to present their statements and views on the respective complaints. At the hearing, the Chairman of the UEFA Appeals Body was informed that Panathinaikos had filed an appeal before the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the Appealed Decision.
28. On 5 August 2015, Panathinaikos was eliminated from Champions League competition on sporting merit by Club Brugge KV after losing 4-2 on aggregate in the third qualifying round.
29. Also on 5 August 2015, in light of the pending CAS case, the UEFA Appeals Body ordered the following procedural measure:

"To provisionally suspend the present UEFA proceedings until the Court of Arbitration for Sport renders its final decision in the procedure CAS 2015/A/4151 Panathinaikos FC v. UEFA & Olympiakos FC".

Proceedings before the CAS

30. As detailed above, on 20 July 2015, Panathinaikos filed a Statement of Appeal with the CAS in accordance with Articles R47 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code") challenging the Appealed Decision.
31. On 23 July 2015, the CAS Court Office informed Panathinaikos, Olympiakos, and UEFA that, in accordance with Article 4.01 of the UCLR and Article R52 of the CAS Code, the proceedings would be expedited.
32. On 23 July 2015, the CAS Court Office informed Olympiakos and UEFA to provide their positions on Panathinaikos' request to suspend the CAS proceedings pending decisions from the UEFA Appeals Body on the consolidated complaints from Panathinaikos and PAOK and on the proceeding initiated by UEFA against Olympiakos.
33. On 27 July 2015, both Olympiakos and UEFA informed the CAS Court Office that they opposed Panathinaikos' request to suspend the CAS proceedings.
34. On 30 July 2015, UEFA nominated Dr. Jan Räker, Attorney-at-law, Stuttgart, Germany, as an arbitrator.

35. On 31 July 2015, Olympiakos agreed to the nomination of Dr. Råker.
36. On 3 August 2015, Panathinaikos nominated Mr. Manfred P. Nan, Attorney-at-law, Arnhem, The Netherlands, as an arbitrator.
37. As detailed above, on 5 August 2015, the UEFA Appeals Body provisionally suspended its proceedings relating to the Second Referral and the PAOK complaint until the CAS rendered its final decision in this matter.
38. On 7 August 2015, the CAS Court Office applied an expedited procedural calendar, agreed to by the Parties.
39. On 10 August, Panathinaikos filed its Appeal Brief with the CAS. The Appeal Brief, contained the following prayers for relief, requesting that the CAS:
 - “1. *Annuls the decision of the UEFA Appeals Body dated 17 June 2015;*
 2. *Declares the Second Respondent ineligible to participate in 2015/16 UEFA competitions (including, without limitation, the 2015/16 Champions League); and*
 3. *Imposes disciplinary sanctions against the Second Respondent as it deems appropriate in accordance with the UCLR, 2011 UEFA DR, 2012 UEFA DR, and 2014 UEFA DR or any other applicable statute/regulation, including without limitation Article 4.02 and 4.03 UCLR as well as any other provisions under the relevant UEFA DR;*
OR
 4. *Alternatively, defer the decision on disciplinary sanctions against the Second Respondent in accordance with the UCLR, 2011 UEFA DR, 2012 UEFA DR, and 2014 UEFA DR or any other applicable statute/regulation, including without limitation Article 4.02 and 4.03 UCLR as well as any other provisions under the relevant UEFA DR, to a later point in time, to be decided either by the UEFA Appeals Body or the CAS itself; and*
 5. *Orders Olympiakos FC and UEFA, jointly and severally, to bear the costs of these arbitration proceedings; and*
 6. *Orders Olympiakos FC and UEFA, jointly and severally, to pay Panathinaikos FC a contribution of EUR 50,000 towards its legal fees and other expenses incurred in connection with these arbitration proceedings as well as the proceedings before the UEFA Appeals Body”.*
40. On 13 August 2015, in accordance with Article R54 of the CAS Code, and on behalf of the deputy president of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr. Mark A. Hovell, Solicitor, Manchester, England

Arbitrators: Dr. Jan Råker, Attorney-at-law, Stuttgart, Germany
Mr. Manfred P. Nan, Attorney-at-law, Arnhem, The Netherlands

41. On 17 August 2015, the Panel, following a request by Panathinaikos, decided to order from UEFA the production of its complete case file relating to Olympiakos, while allowing both UEFA and Olympiakos to notify the Panel of anything either party felt should be redacted to maintain confidential.
42. On 18 August 2015, Olympiakos filed its Answer to Panathinaikos' Appeal. In its Answer, Olympiakos made the following requests for relief:
- “1. *Dismiss the appeal and uphold the UEFA AB's provisional decision of the 17th of June, 2015 suspending the proceedings and stipulating that the Second Respondent is currently eligible to compete in the 2015/16 UEFA Champions League.*
 2. *Adopt an award stating that:*
 - a. *The Appellant does not have the required standing to appeal the UEFA AB's decision of the 17th of June, 2015;*
 - b. *The UEFA AB's decision of the 17th of June 2015 is correct;*
 - c. *There is insufficient evidence to be comfortably satisfied that the Second Respondent Olympiakos should be declared ineligible to compete in the 2015/16 UEFA Champions League;*
 - d. *The Second Respondent has fulfilled its licensing obligations pursuant to the UEFA Champions League Regulations applicable to the 2015/16 competition; and as a result*
 - e. *The Second Respondent is eligible to compete in the 2015/16 UEFA Champions League.*
 3. *Independently of the type of the decision to be issued, the Second Respondent requests the Panel:*
 - a. *To fix a sum of 50,000 CHF to be paid by the Appellant to the Second Respondent, to defray the payment of his legal fees and costs; and*
 - b. *To condemn the Appellant to the payment of the whole CAS administration costs and Arbitrators fees”.*
43. On 18 August 2015, UEFA filed its Answer to Panathinaikos' Appeal and made the following requests for relief:
- “1. *Declaring the Appeal of Panathinaikos FC inadmissible.*
 2. *In the alternative, rejecting the Appeal of Panathinaikos FC.*
 3. *In any event, dismissing all other prayers for relief of Panathinaikos FC.*
 4. *In any event, ordering Panathinaikos FC to bear all the costs of these arbitration proceedings and to award UEFA with a contribution to the legal fees incurred at an amount of EUR 50'000”.*

III. THE HEARING

44. On 7 August 2015, the CAS Court office informed the parties that, pursuant to the mutually agreed expedited procedure calendar, the Panel had determined to convene a hearing on 21 August 2015.

45. A hearing was held on 21 August 2015 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the composition of the Panel. The Panel were all present and was assisted by Mr. William Sternheimer, Managing Counsel & Head of Arbitration at the CAS. The following persons attended the hearing:
- i. Panathinaikos: Messrs. Christian Keidel, Andreas Zagklis, and Lucas Ferrer, all external counsel, Ms. Athina Balomenou, club Director and Head of Legal, and Dr. Ilias Anagnostopoulos, expert witness;
 - ii. UEFA: Dr. Emilio García Silvero, Head of Disciplinary and Integrity, Mr. Andrew Mercer, UEFA Legal counsel, and Dr. Jan Kleiner, external counsel; and
 - iii. Olympiakos: Mr. Juan de Dios Crespo Pérez and Mr. Paolo Torchetti, both external counsel, and Mr. Theodore Giannikos, club Vice-President.
46. The Panel heard evidence from Dr. Ilias Anagnostopoulos, expert witness called by Panathinaikos.
47. Dr. Ilias Anagnostopoulos was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The parties and the Panel had the opportunity to examine and cross-examine the witness. The parties then were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to this written award.
48. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present award.

IV. THE PARTIES' SUBMISSIONS

49. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

A. Panathinaikos' Submissions

In summary, Panathinaikos submitted the following in support of its Appeal:

50. Citing CAS jurisprudence, UEFA Statutes, and the Swiss Civil Code (hereinafter referred to as “SCC”), Panathinaikos asserted that it had standing to appeal against the Appealed Decision.
51. Based on Panathinaikos’ submissions to UEFA regarding the ongoing match-fixing investigation in Greece as relates to Mr. Marinakis, UEFA should have been “comfortably satisfied,” under Article 4.02 of the UCLR, that Mr. Marinakis was engaged in match-fixing.
52. Under Article 4.03 of the UCLR, Panathinaikos submitted that UEFA should not only have expelled Olympiakos from the 2015/16 Champions League as an administrative measure, but should also have taken disciplinary measures against Olympiakos.
53. The submissions Panathinaikos submitted to UEFA, both of which UEFA and the Panel can rely upon, demonstrated that Mr. Marinakis influenced or attempted to influence the outcome of football matches. Even though the Greek investigation is still ongoing, the Panel can be comfortably satisfied that the match-fixing allegations against Olympiakos have been sufficiently proven, and therefore the UEFA Appeals Body erred when it decided to provisionally admit Olympiakos into the 2015/16 Champions League.
- a) Standing to appeal
54. Article 58 of the UEFA Statutes holds that:
“Decisions of the UEFA Appeals Body and Club Financial Control Body shall be final, subject to Art. 62 and 63 of these Statutes”.
55. Article 62 of the UEFA Statutes holds that:
*“1. Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration.
2. Only parties directly affected by a decision may appeal to the CAS ...”.*
56. The Appealed Decision considered whether Olympiakos was eligible to participate in the 2015/16 UEFA Champions League. Panathinaikos finished second in the Super League during the 2014/15 season, and is “directly affected” by the Appealed Decision. If the correct decision had been taken by the UEFA Appeals Body, then Olympiakos would have been declared ineligible and Panathinaikos would have automatically replaced Olympiakos in the Group Stage of the 2015/16 UEFA Champions League pursuant to Article 4.08 of the UCLR, which states as follows:
“A club which is not admitted to the competition is replaced by the next best-placed club in the top domestic championship of the same association, provided that the new club fulfils the admission criteria. In this case, the access list for the UEFA club competitions is adjusted accordingly”.
57. At the hearing, Panathinaikos submitted that it could not have been a party to the UEFA procedure and cited CAS 2005/A/895, CAS 2006/A/1046, and CAS 2012/A/2839 to show

that CAS jurisprudence has considered the criteria of “legitimate interest” as being the measure of a party’s standing. A party has a legitimate interest in a challenged decision if it:

- a) is sufficiently affected by the decision; and
- b) has a tangible interest of financial and sporting nature at stake.

58. In CAS 2008/A/1583 & 1584, the Panel held that:

“... the UEFA statutes does not exclude the possibility that a third party can also be a party, i.e. a person against whom the measure taken by the Association is not directly aimed”.

59. This position is supported by Article 75 of the SCC, which allows third parties that are directly affected by an Association’s resolution to appeal against it. This is mandatory in nature and its scope cannot be narrowed.

60. Panathinaikos argued that it had an active role in the UEFA Appeals Body proceedings, as its submissions and annexes were considered by the UEFA Appeals Body. Further, the UEFA Appeals Body had confirmed that the matter at hand and in the formal complaint issued by Panathinaikos and PAOK were “exactly the same”.

61. At the hearing, Panathinaikos submitted that nowhere in Article 4.08 of the UCLR does it state that once the competition has started, this replacement rule comes to an end and Article 81.01 of the UCLR comes into force. Rather, the title of Article 81 of the UCLR refers to “Unforeseen circumstances”, but Article 4.08 of the UCLR deals with a circumstance that is foreseen, i.e. where a club is found ineligible its place in the competition is taken automatically by the next best-placed club in the domestic competition from which it originally qualified for the UEFA Champions League.

62. Panathinaikos argued that its position was different from the Metalist (CAS 2013/A/3297) and Besiktas (CAS 2013/A/3258) examples put forth by UEFA to support its position. In both of those cases, the ineligible club had already participated in the competition. Here, Olympiakos had not yet participated in the 2015/16 UEFA Champions League. In the other two examples, the clubs that had been eliminated on the pitch by Metalist and Besiktas in the qualifying rounds were also “interested” or “affected” parties. As that had not been “foreseen” by the UCLR, Article 81.01 of the UCLR was applicable.

63. Panathinaikos acknowledged that a club could lose its standing “along the way”, but that this could only happen once Olympiakos had competed in the 2015/16 Champions League. With Porto (CAS 2008/A/1583 & 1584), the competition had started, likewise with Metalist, but in both cases, UEFA applied Article 4.02 of the UCLR.

64. It was noted that Panathinaikos was currently qualifying for the 2015/16 UEFA Europa League. If it was successful in this appeal, then the Emergency Panel would be required to determine what should happen to the place Panathinaikos would give up to take the place in the 2015/16 UEFA Champions League group stages. That would be an “unforeseen event”.

65. Even if the Panel were not persuaded and determined that Article 81.01 of the UCLR was applicable, why shouldn't the Emergency Panel put Panathinaikos into the 2015/16 UEFA Champions League group stages or include Panathinaikos in any draw? Panathinaikos noted that with the case of Fenerbahce, this is exactly what happened to Trabzonspor. The Emergency Panel ordered that the Turkish Football Federation enter Trabzonspor (the next best-placed team in the Turkish Süper Lig at the time) into the UEFA Champions League once it had removed Fenerbahce.
66. As for the allegations of "bad faith" and that it should have participated in the proceedings before the UEFA Appeals Body, Panathinaikos argued that it had acted pursuant to Article 25 of the UEFA DR. Panathinaikos had an obligation to provide UEFA with information regarding the match-fixing allegations and criminal proceedings in Greece. However, it did not have an obligation to be a party, whether as a complainant, an intervener, an amicus curiae, or howsoever.
67. Once the Andreadis Decision was to hand, after the Appealed Decision had been rendered, this was sent to UEFA along with a formal complaint. The Appealed Decision was to "provisionally" admit Olympiakos. Panathinaikos had anticipated that UEFA would join the two procedures. It was not "bad faith" to assume this. Once it was aware of the Appealed Decision, it decided to appeal this to the CAS. In any event, Panathinaikos played an active role before the UEFA Appeals Body.
- b) Article 4.02 of the UCLR as an administrative measure
68. Article 4.02 of the UCLR holds:
- "If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at a national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a decision taken in connection with the same factual circumstances by a national or international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition".*
69. Additionally, Article 4.03 of the UCLR holds:
- "In addition to the administrative measure of declaring a club ineligible as provided for in Paragraph 4.02, the UEFA Organs for the Administration of Justice can, if the circumstances so justify, also take disciplinary measures in accordance with the UEFA Disciplinary Regulations".*

70. Article 4.03 of the UCLR distinguishes Article 4.02 of the UCLR as merely an “administrative measure,” designed to enforce the eligibility requirements of Article 50(3) of the UEFA Statutes and Article 4.01(g) of the UCLR.
 71. The administrative measure is an important part of protecting the integrity of UEFA competitions because any doubts as to the integrity of the competition would undermine the sport of football as a whole. Panathinaikos cited CAS 2013/A/3256, CAS 2014 A/3625, and CAS 2014/A/3628 to support that UEFA’s “zero tolerance” policy on match-fixing has been embraced by the CAS, and furthermore, that this zero tolerance policy has been translated legally into a role that provides the administrative measure with a particularly broad scope.
 72. Having established that Article 4.02 of the UCLR is merely an administrative measure designed to help UEFA enforce eligibility requirements and its zero tolerance policy against match-fixing, Panathinaikos submitted that this measure should be, and indeed is, automatic, given UEFA’s need to immediately remove clubs from competition in order to protect the integrity of said competitions, even while lengthy criminal investigations are ongoing.
 73. Panathinaikos noted that the various editions of the UEFA DR that spanned the period of Mr. Marinakis’ involvement with Olympiakos all made the club strictly liable for the conduct of their officials.
 74. Accordingly, once UEFA were “comfortably satisfied” that Olympiakos were directly or indirectly involved in any match fixing activity, the club had to be immediately removed from the UEFA Champions League based on the administrative measure found in Article 4.02 of the UCLR. Therefore, the UEFA Appeals Body erred when it did not automatically remove Olympiakos from the 2015/16 UEFA Champions League.
- c) “Comfortable satisfaction” – standard of proof
75. Under Article 4.02 of the UCLR, UEFA will declare a club ineligible to compete in its competitions if it concludes to its “comfortable satisfaction” that a club has been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at a national or international level.
 76. CAS has held in disciplinary cases involving match-fixing offences that the standard of proof for “comfortable satisfaction” is greater than the “balance of probabilities” standard of proof, but less than the “beyond a reasonable doubt” standard of proof.
 77. The administrative nature of Article 4.02 of the UCLR as compared to a disciplinary measure implies that UEFA needs a lower level of proof to apply it. Article 4.02 of the UCLR, therefore, allows and obliges UEFA and the CAS to apply a lower standard of proof within the range of comfortable satisfaction.

d) Reliance on Greek investigations

78. Article 4.02 of the UCLR allows UEFA to rely entirely on the decisions of sporting and state bodies.
79. Panathinaikos submitted extensive documentation gathered by the Greek officials investigating allegations that Olympiakos was engaged in match-fixing, including the Koreas Report, witness testimony, and wiretap evidence. Panathinaikos argued that this documentation provides more than enough evidence for UEFA to be comfortably satisfied that Olympiakos attempted to influence the outcome of a match.
80. The standard of proof for imposing restrictive measures under Greek criminal law has to be considered higher than the standard of proof applied under Article 4.02 of the UCLR, as set out above. As such, the UEFA Appeals Body should have relied on the allegations made by the Deputy Public Prosecutor in the Koreas Report, and should have been comfortably satisfied that Mr. Marinakis was involved in attempting to influence a match. At the hearing, Panathinaikos relied upon Dr. Ilias Anagnostopoulos as an expert witness to confirm the standard of proof and procedures followed by the Greek criminal courts. Further, Panathinaikos assessed at length the direct evidence that was not only available to the UEFA Appeals Body, but that the Panel should consider pursuant to its power under Article R57 of the CAS Code to deal with the matter at hand de novo. It concluded that Olympiakos should be removed from the 2015/16 UEFA Champions League.

e) Equal treatment

81. Under the principle of equal treatment, UEFA and the CAS are obligated to apply the administrative measure under Article 4.02 of the UCLR as it has in previous match-fixing cases. Panathinaikos drew parallels between the matter at hand and CAS 2014/A/3628, CAS 2014/A/3625, CAS 2013/A/3258, CAS 2013/A/3256 and TAS 2011/A/2528 in support of its argument that Olympiakos must be removed from the 2015/16 UEFA Champions League, and further, that Panathinaikos, as the next best-placed club, must be admitted into the competition.

f) Disciplinary sanctions under Article 4.03 UCLR

82. Additionally, Panathinaikos submitted that disciplinary measures should have been imposed against Olympiakos under Article 4.03 of the UCLR, based on the evidence produced from the ongoing Greek investigation and under the UEFA DR.

B. *UEFA's Submissions*

In summary, UEFA submitted the following:

83. Panathinaikos lacks standing to appeal against the Appealed Decision, which does not harm the club, nor does it have any effect, positive or negative, on the club.
84. If sufficient evidence had been available, Olympiakos would not have been admitted to the 2015/16 UEFA Champions League. However, sufficient evidence was not available. The UEFA Appeals Body, after a review of all the evidence, did not feel comfortably satisfied that Olympiakos had been involved in match-fixing. This decision, and the use of UEFA's discretion, must be accepted.
 - a) The lack of standing
85. Panathinaikos lacks standing to appeal before the CAS for the following reasons:
 - a) Panathinaikos, by its own decision, was not a party to the proceedings before the UEFA Appeals Body;
 - b) Even if Olympiakos had been found ineligible, Panathinaikos would not replace the club in the 2015/16 UEFA Champions League; and
 - c) Therefore, Panathinaikos is not harmed by the Appealed Decision and is not "directly affected", pursuant to Article 62.2 of the UEFA Statutes.
86. Not only had Panathinaikos failed to include a request to replace Olympiakos in its prayers for relief, but it had also already participated in the 2015/16 UEFA Champions League, having been knocked out on sporting merit by Club Brugge KV during the third qualifying round.
87. As the 2015/16 UEFA Champions League has already started, there would be no automatic replacement pursuant to Article 4.08 of the UCLR. Once the UEFA Champions League is underway, then any replacement would be a matter for the Emergency Panel to determine, pursuant to Article 81.01 of the UCLR.
88. At the hearing, UEFA examined the UCLR and noted the title of Article 4 of the UCLR is "Admission Criteria and Procedure". Further, Articles 4.06 and 4.07 of the UCLR expressly referred to their continuing nature after the competition had started and continues even after the competition has finished. Such wording is absent from Article 4.08 of the UCLR.
89. In practice, UEFA has never applied Article 4.08 of the UCLR after a competition had started. Even in the Fenerbahce case that Panathinaikos referred to (CAS 2013/A/3256), it was a decision of the Emergency Panel that saw Trabzonspor gain entry to the Champions League, not an automatic application of Article 4.08 of the UCLR. Further, the way the competition is organised is that before the competition starts, clubs that are qualified are put forward by their

respective national associations or federations. At that stage, if a club is ineligible or if it is refused a license, then the next team in line takes its place. This is where Article 4.08 of the UCLR applies.

90. However, after that stage, the Access List is prepared, the co-efficients are applied, the draw takes place and the competition starts. Everything that happens after this disrupts the competition. Article 81.01 of the UCLR exists to enable the Emergency Panel to take the least disruptive course of action. These disruptions are “unforeseen”, and Article 81.01 of the UCLR would then apply.
91. Looking at the current situation practically, should Panathinaikos, which had already been eliminated from the competition on sporting merit, be able to bypass the team that eliminated it? As Club Brugge KV were eliminated by Manchester United in the play-off round, would the Emergency Panel look to put Panathinaikos back into the competition ahead of Club Brugge KV? To date, the Emergency Panel has taken steps to protect the integrity of the competition.
92. UEFA submitted that the Emergency Panel, having done this in the past (citing Besiktas’ and Metalist’s ineligibilities in the 2013/14 Champions League), would more than likely replace the ineligible club by a draw amongst the participants in the Champions League play-off round. These would be the clubs that got closest to the group stage on sporting merit, and would not include clubs who lost in the first three qualifying rounds. As Panathinaikos had already been eliminated in the third qualifying round, it would not feature in any draw.
93. UEFA also rebutted the claims of Panathinaikos that 2 clubs had been replaced pursuant to Article 4.08 of the UCLR after the competition had started. UEFA confirmed that in the cases of Porto, the competition had not started and in the case of Metalist, the competition had started, but UEFA did not apply Article 4.08 of the UCLR as Metalist (from Ukraine) were replaced in the 2013/14 UEFA Champions League by PAOK (from Greece).
94. UEFA referred to the “bad faith” shown by Panathinaikos by not participating in the proceedings before the UEFA Appeals Body, despite being able to. This could be perceived as a violation of the general principle *venire contra factum proprium*.
95. At the hearing, UEFA sought to demonstrate this bad faith by taking the Panel through a chronology of events.
 - a) On 8 June 2005, UEFA announced it was investigating Olympiakos.
 - b) On 12 June 2015, Panathinaikos sent information to UEFA regarding Olympiakos and Mr. Marinakis, but did not formally participate before the UEFA Appeals Body.
 - c) On 17 June 2015, the Appealed Decision was made.
 - d) On 19 June 2015, Panathinaikos filed its formal complaint to UEFA.
 - e) On 30 June 2015, UEFA announced the Appealed Decision at a press conference, which was widely reported in the media.

- f) On 20 July 2015, Panathinaikos appealed to the CAS.
96. UEFA submitted that if Panathinaikos had standing, then it should have lodged its appeal to the CAS and participated earlier. Instead, Panathinaikos pretended that it was not aware of the Appealed Decision and filed its complaint instead. Panathinaikos had the means and ability to intervene properly, but it chose not to.
97. UEFA acknowledged the mandatory effect of Article 75 of the SCC, but whilst it must be interpreted “broadly”, it does not mean that it is without limits. If the board of an association take a decision that affects all members, then all members have the right to appeal. However, it is not so simple with sporting bodies that all decisions are appealable by members of members. Article 62.2 of the UEFA Statutes complies with the SCC, but requires a member to be “legally affected”.
98. Finally, as Panathinaikos had already qualified for, and participated in, the 2015/16 UEFA Champions League, it was not harmed by the Appealed Decision.
- b) UEFA was not comfortably satisfied that Olympiakos was involved in match-fixing
99. What Panathinaikos alleges to be “facts” of the ongoing investigation in Greece consist mostly of mere accusations contained in an indictment of a Public Prosecutor. These charges are subjective and cannot serve to argue that the circumstances of this matter warrant the application of an administrative measure under Article 4.02 of the UCLR.
100. Additionally, on 10 July 2015, a number of historic charges similarly made by a Public Prosecutor were dropped. This acquittal had been broadly reported by the international media prior to Panathinaikos filing its appeal brief, but Panathinaikos makes no mention of the acquittal. This shows why, under these circumstances, UEFA cannot rely on unilateral allegations of this Public Prosecutor.
101. Furthermore, UEFA questioned the relevance of some of the submissions made by Panathinaikos of Olympiakos’ match-fixing, finding it unconvincing and/or wholly unrelated to Olympiakos.
102. The UEFA Appeals Body is either comfortably satisfied that the pre-requisites under Article 4.02 of the UCLR are fulfilled or it is not. UEFA rejects that argument advanced by Panathinaikos that the administrative nature of Article 4.02 of the UCLR allows and obliges UEFA and the CAS to apply a lower standard of proof within the range of comfortable satisfaction. Citing CAS 2013/A/3258, UEFA argued that the standard of proof is simply “comfortable satisfaction”.
103. Further, UEFA reiterated that it does, without exception, adopt a zero tolerance policy towards match fixing. However, just as much as it applies such a zero tolerance policy, it has the

responsibility to not apply such harsh measures in cases where it is not justified. In this case, UEFA were not comfortably satisfied that Olympiakos was involved in match-fixing. If additional evidence were to be produced in the future to change this position, administrative and/or disciplinary measures would be applied.

c) Equal treatment

104. UEFA distinguishes the cases cited by Panathinaikos with regards to its argument in equal treatment and submitted that UEFA has never applied the administrative measure against a club under similar circumstances to the matter at hand. UEFA submitted that in previous procedures, such as Fenerbahce, Metalist, Eskişehirspor etc. the UEFA Appeals Body had not been convinced on the evidence first before it and only at a later stage, when it was comfortably satisfied, was the club refused admission. Suspending a decision, was not new or strange and actually demonstrated that clubs were treated equally if the evidence was not strong enough.

d) Disciplinary Measures

105. Panathinaikos' request for disciplinary measures is inadmissible, as Panathinaikos is requesting that the CAS should impose a measure which was not even considered by the UEFA Appeals Body. Additionally, Article 4.02 of the UCLR shows that if the prerequisites for an administrative measure are not fulfilled (and they were not in this case), there is even less justification for the imposition of a disciplinary measure based on the very same facts.

C. *Olympiakos' Submissions*

Olympiakos submitted the following in its Answer:

106. Olympiakos was happy to support UEFA's arguments, but additionally noted that Panathinaikos had failed to request that it would replace Olympiakos in its prayers for relief before the CAS. For the Panel to make such a determination or award would be *ultra petita* and would likely result in a successful appeal to the Swiss Federal Tribunal.
107. Olympiakos also questioned whether Panathinaikos could be affected by the Appealed Decision, as it had already qualified for the 2015/16 Champions League. However, Panathinaikos had been eliminated on the pitch by Club Brugge KV in the third qualifying round and only filed its appeal brief before the CAS after it had been eliminated.
108. Olympiakos also reviewed the UCLR and noted that Article 4.05 of the UCLR demonstrates when admissions are completed.

109. Olympiakos also alleged “bad faith” by Panathinaikos. Initially, Panathinaikos provided unsolicited information to UEFA, but declined to formally participate before the UEFA Appeals Body. When the Appealed Decision did not reflect what it hoped for, Panathinaikos filed a formal complaint before UEFA and also appealed the Appealed Decision before the CAS.
110. Panathinaikos included a disclaimer purporting that its statements reflect the position of the juridical authorities in Greece and not Panathinaikos itself in order to indemnify itself against a future action when its allegations are proven false. Olympiakos questioned how Panathinaikos could expect UEFA and the Panel to accept its arguments as true and accurate, if they themselves could not.
111. Contrary to what Panathinaikos claims, findings in the Koreas Report and the Andreadis Decision imposed by the investigating judge in Greece do not constitute an enforceable court decision. As evidenced by the expert legal opinion they submitted, Olympiakos claimed that the investigations are at a very early stage and under no condition could they be perceived as a final and binding court decision. One was an “accusation” and the other an “opinion”.
112. Whilst CAS 2008/A/1583 & 1584 enable appeals to be made by persons that are not the direct aim of the association’s measure, para. 31 of the award states that “... *where the third party is affected because he is a competitor of the addressee of the measure/decision taken by the association – unless otherwise provided by the rules and regulations of the association – the third party does not have a right to appeal*”.
113. Olympiakos submitted that there has to be a limit to the level of interest. Otherwise, in theory, all clubs that had participated thus far in the 2015/16 competition could claim that they would be affected.
114. Like UEFA, Olympiakos rejected the submissions from Panathinaikos that there was some reduced burden of proof here – the appropriate standard of proof was “comfortable satisfaction”. Whilst Panathinaikos had attempted to flood the Panel with “*a plethora of evidence that is inconclusive*”, there were no findings of fact by any independent court as the proceedings against Mr. Marinakis are still on going, and so the Appealed Decision was entirely correct.

V. JURISDICTION OF THE CAS

115. Article R47 of the CAS Code provides as follows:

“An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body”.

116. The jurisdiction of the CAS, which is not disputed, derives from all of the following:

- a) Article 62.1 of the UEFA Statutes which states:
“Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”.
- b) Article 47 of the UEFA DR, which states:
“The UEFA Statutes stipulate which decisions taken by the disciplinary bodies may be brought before the Court of Arbitration for Sport, and under what conditions”.
- c) Article 58.7 of the UEFA DR, which states:
“Decisions by the Appeals Body are final, subject to Articles 62 and 63 of the UEFA Statutes”.

117. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

118. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

119. 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”.

120. The Panel notes that Article 63.3 of the UEFA Statutes stipulates the following:

“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.

121. The Panel notes that the matter at hand is from an UEFA Appeals Body decision and is therefore satisfied to accept the various Statutes and Regulations of UEFA as the applicable law, but also the subsidiary application of Swiss law should the need arise to fill any lacuna in the various statutes and regulations of UEFA.

VII. ADMISSIBILITY

122. The Appeal was filed within the 10 days from receipt of the Appealed Decision, as set by Article 62.3 of the UEFA Statutes. The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee. The Appeal is admissible in form.

123. The Panel notes that UEFA took the stance that as Panathinaikos had chosen not to be a party (a complainant pursuant to Article 48 (g) of the UEFA DR) before the UEFA Appeals Body,

or to have intervened at the first instance pursuant to Article 31.2 of the UEFA DR, but later formally complained in a separate procedure and then also sought to appeal the original decision to CAS, it had acted in “bad faith” and in breach of the legal principle *venire contra factum proprium*. As such it has no right to appeal the Appealed Decision. The Panel notes that such claim affects the admissibility of the appeal, as opposed to the merits.

124. UEFA submitted that it was Panathinaikos’ choice or decision not to be a party before the UEFA Appeals Body. Rather than complain pursuant to Article 48 (g) of the UEFA DR it was content with providing evidence to UEFA, fully anticipating that the UEFA Appeals Body would exclude Olympiakos from the UEFA 2015/16 Champions League. When it didn’t, Panathinaikos sought to appeal the Appealed Decision to CAS. UEFA submitted that Panathinaikos could have been a party at first instance, but having chosen not to, it renders its appeal inadmissible. The fact that Panathinaikos also started a second procedure, along with PAOK, demonstrated its bad faith.
125. The Panel also notes that UEFA submitted that even if Olympiakos had been found ineligible, Panathinaikos would not replace the club in the 2015/16 UEFA Champions League and as such lacked the standing to sue. The Panel determines that the issues of not having been a party at first instance and bad faith are questions of admissibility to be assessed first, however, the issue of whether Panathinaikos could replace Olympiakos and is therefore “directly interested”, is for the merits and will be considered below.
126. The Panel, notes there was no absolute requirement for Panathinaikos to participate before the UEFA Appeals Body when it rendered the Appealed Decision. That body (and the CEDB before it) was considering allegations of direct/indirect match fixing by Olympiakos and its eligibility into the 2015/16 UEFA Champions League. The Panel notes that the title to Article 48 (g) of the UEFA DR is “Opening of Proceedings”. It is clear that the proceedings had already been opened by UEFA itself by the First Referral, so there was no need for Panathinaikos to formally complain. However, Panathinaikos submitted that there was a duty upon it to provide the information it was aware of pursuant to the UEFA DR.
127. UEFA claimed that Panathinaikos should also have intervened at first instance pursuant to Article 31.2 of the UEFA DR. This Article states:
“...clubs...that might be directly affected may be invited by the relevant disciplinary body or its chairman to participate in the proceedings as interveners”.
128. From looking at the correspondence between Panathinaikos and UEFA, the Panel is not convinced that Panathinaikos were encouraged, let alone invited, to intervene. The Panel is not convinced that Panathinaikos could have participated as an actual party in the first instance proceedings. The proceedings had been opened and they were not invited to intervene.
129. The Panel further notes that Panathinaikos did formally complain by the Second Referral, pursuant to Article 48 (g) of the UEFA DR immediately once it had received the Andreadis Decision. At that stage, the Appeals Body had come to the Appealed Decision, but the

grounded version had not been prepared, and there is no evidence that Panathinaikos knew what the Appealed Decision would say. The Panel notes that before the Appealed Decision was sent, Panathinaikos asked for the First Referral and the Second Referral that it had commenced to be consolidated. UEFA could not consolidate them, as the Appeals Body had already reached its decision, but did consolidate Panathinaikos' complaint with PAOK's.

130. When the Appealed Decision was communicated to the parties and other bodies, including Panathinaikos (even though it wasn't listed as a body to communicate the Appealed Decision to, nor was it a party) it appealed to CAS. The Panel sees no "bad faith" on the part of Panathinaikos, it has complied with the UEFA Regulations.
131. It still remains a fact that Panathinaikos was not a party to the Appealed Decision. That in itself should not form a bar to the admissibility of an appeal to CAS. The Panel notes the parties' respective positions on the Porto jurisprudence and accepts that pursuant to Swiss law and that jurisprudence third parties can be affected by an association's decision that is not directed at it, but also determines that this cannot be without limitation. The Panel must determine whether in the case at hand Panathinaikos has standing to sue, but that issue is part of the merits and is dealt with below.
132. It follows that the Appeal itself is formally admissible.

VIII. MERITS OF THE APPEAL

A. *The Main Issues*

133. The Panel observes that the main issues to be resolved are:
 - a) Does Panathinaikos have standing to sue?
 - b) If so, what is the appropriate standard of proof to be applied by the Panel; and then
 - c) Did the UEFA Appeals Body correctly apply Article 4.02 of the UCLR?
 - d) If not, is Article 4.08 or Article 81.01 of the UCLR triggered and should Panathinaikos be admitted to the 2015/16 UEFA Champions League group stages?
 - e) Should further disciplinary sanctions pursuant to Article 4.03 of the UCLR be issued?
- a) Does Panathinaikos have standing to sue?
134. It cannot be that every club that to date has been knocked out of the 2015/16 UEFA Champions League competition has a sufficient interest to appeal the Appealed Decision to CAS. The Panel noted the submission of Panathinaikos that it had an interest to ensure there is a fair competition and that its integrity is preserved. The fact is every football club could say that, but it is UEFA's role to safeguard the integrity of its competition. Further, the requirement

of Article 62.2 of the UEFA Statutes is for a club to be “directly affected”. The Panel noted the submissions of Olympiakos, when reviewing the Porto jurisprudence. It is not that every competitor is “affected” as they are in the competition, they need to be affected directly or legally. However, the Panel notes Panathinaikos is not like every club or competitor, it had a unique position compared to such other competitors, as it did indeed finish as the runner up behind Olympiakos in the Super League 2014/15.

135. In order to convince the Panel of its standing to sue in this matter, Panathinaikos has some further hurdles to overcome. Would it now automatically replace Olympiakos in the 2015/16 UEFA Champions League, pursuant to Article 4.08 of the UCLR? If not, can it prove that the Emergency Panel would consider it as the replacement?
136. The Panel can leave aside the lack of any direct prayer for relief from Panathinaikos to be reinstated into the 2015/16 UEFA Champions League, as ultimately it determines that Panathinaikos lacks the standing to sue in this matter.
137. The crux of the matter is if the Panel would determine that the UEFA Appeals Body were wrong in failing to declare Olympiakos ineligible pursuant to Article 4.02 of the UCLR, does it find that Panathinaikos has demonstrated that it would replace Olympiakos in the Group Stages of the 2015/16 UEFA Champions League?
138. As noted above, theoretically, this could come in one of two ways:
 - a) Pursuant to Article 4.08 of the UCLR; or
 - b) Pursuant to Article 81.01 of the UCLR.
139. Panathinaikos notes that nowhere in Article 4.08 of the UCLR does it state that the replacement rule ends once the competition has started. Indeed, the Panel notes that the drafting could be clearer (much in the way that the Procedural Rules for Financial Fair Play clearly establish the route for affected parties to go down and as has been drawn to UEFA’s attention in CAS 2013/A/3301). However, when considering the interpretation of the UCLR, the Panel notes that in various parts of Article 4, the sub-articles that are intended to continue after the admission phase are expressly stated to do so.
140. Also, when considering the practicalities of the Champions League tournament, there needs to be an admissions phase. During that phase eligibility is considered, whether on alleged match fixing grounds, such as the case before the Panel here, or licensing and financial grounds, as with other clubs. But, at a certain stage, the names need to “go into the hat” and be drawn and the qualifying rounds of the competition need to start. The Panel notes that pursuant to Article 13.02 of the UCLR the competition consists of the “*qualifying stage*”, the “*play offs*” and the “*UEFA Champions League*”. In the Panel’s determination, the competition phase starts with the qualifying stages and at this time the admission phase has concluded. The Panel also notes the previous application by UEFA utilising Article 4.08 of the UCLR (or its Europa League equivalent) in the cases concerning Sivasspor and Eskişehirspor. These were instances when the competition phase had not yet commenced.

141. As UEFA stated, after the competition starts any issues are “disruptive”. The Panel concurs with UEFA that such disruptions are the domain of the Emergency Panel to deal with and to deal with in a way to protect the smooth running and integrity of the competition.
142. The Panel notes the previous instances where the competition was underway and the Emergency Panel was called into action; it has never relied upon Article 4.08 of the UCLR.
143. The Panel notes the position taken before the 2013/14 UEFA Europa League, as mentioned in CAS 2013/A/3322:
- “2.1 On 28 August 2013, the Court of Arbitration for Sport (“CAS”) dismissed the appeal filed by Fenerbahçe Spor Kulübü (“Fenerbahçe”) against the UEFA Appeals Body decision of 15 July 2013, thereby confirming the exclusion of Fenerbahçe from the 2013/14 UEFA Europa League club competitions (“Fenerbahçe Decision”).*
- 2.2 The next day, on 29 August 2013, the UEFA Emergency Panel met to decide the consequences of the Fenerbahçe Decision, and determined that all the teams eliminated in the play-off round of the UEFA Europa League would enter a draw to randomly select the team to replace Fenerbahçe in the 2013/14 UEFA Europa League group stage draw.*
- 2.3 On 30 August 2013, UEFA held the draw in Monaco and APOEL FC was selected to join the group stages of the UEFA Europa League for the season 2013/14 (i.e. in place of Fenerbahçe).*
- 2.4 Meanwhile, on the same day as the draw, the CAS dismissed the appeal filed by Beşiktaş JK (“Beşiktaş”) against the UEFA Appeals Body decision of 11 July 2013, thereby also confirming the exclusion of Beşiktaş from the 2013/14 UEFA club competitions in the UEFA Europa League (“Beşiktaş Decision”).*
- 2.5 Immediately following the Beşiktaş Decision, the UEFA Emergency Panel decided to reinstate Tromsø Idrettslag (“Tromsø”) – who had lost to Beşiktaş in the play-off round – for the remainder of the 2013/14 UEFA Europa League. As a result, Tromsø was also included in the UEFA Europa League group stage draw (i.e. in place of Beşiktaş). More specifically, the emergency panel provided as follows:*
- CAS 2013/A/3322 Bursaspor Kulübü Derneği v. UEFA – Page 3 Beşiktaş JK is replaced in the 2013/14 UEFA Europa League group stage by its opponent in the 2013/14 UEFA Europa League play-offs, i.e. by Tromsø IL (NB: Tromsø IL will not take part in the draw to be carried out by the UEFA administration from among the losing clubs in the 2013/14 UEFA Europa League play-offs in order to determine the replacement of Fenerbahçe in the 2013/14 UEFA Europa League group stage)”.*
144. The Panel notes a further example of the Emergency Panel’s decision making was cited by UEFA. In the 2013/14 UEFA Champions League, Metalist were replaced by the team it had previously eliminated in the qualifying round, PAOK.
145. Panathinaikos did cite a final example of the Emergency Panel’s decision making, when Fenerbahçe were previously removed from the competition by the Turkish Football Federation

(hereinafter referred to as “the TFF”) and the Emergency Panel replaced it with Trabzonspor, the league runners up behind Fenerbahce. However, UEFA sought to distinguish this, as UEFA did not apply its admission criteria, here the TFF apparently removed its own club. Further the Emergency Panel did not rely upon Article 4.08 of the UCLR as the reason for such replacement decision. In any event, the Panel observes that the TFF issued its decision before the UEFA Champions League had started.

146. Ultimately the Panel notes the wide discretion that Article 81.01 of the UCLR gives to the Emergency Panel, however, standing to sue should be restricted to a club that could show to the Panel that it would directly replace an excluded club and not by the means of possibly being entered into a draw along with a number of other clubs or by a possible one-off decision that the Emergency Panel could take.
147. Panathinaikos has not established to the Panel that Article 4.08 of the UCLR should survive the commencement of the competition, nor that the outcome from the Emergency Panel would be that it would simply replace Olympiakos with Panathinaikos, as it had finished in second place in the Super League.
148. The Panel cannot second guess exactly what the Emergency Panel would do, and it does not have to, but there is some logic in UEFA’s position that the most likely outcome would be to order a draw from the various clubs eliminated from the play-off round (so this would not include Panathinaikos in any event) as these were the last to be eliminated, so the closest on sporting merit; and that it would not advance Panathinaikos ahead of the club (Club Brugge KV) that had already eliminated it on the pitch.
149. Accordingly, the Panel concludes that Panathinaikos has no standing to sue.

B. Conclusion

150. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel dismisses the Appeal by Panathinaikos.
151. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 July 2015 by Panathinaikos FC against the decision rendered by the UEFA Appeals Body on 17 June 2015 is dismissed.
 2. The decision rendered by the UEFA Appeals Body on 17 June 2015 is confirmed.
- (...)
6. All other motions or prayers for relief are dismissed.