



**Arbitration CAS 2014/A/3625 Sivasspor Kulübü v. Union of European Football Association (UEFA), award of 3 November 2014 (operative part of 7 July 2014)**

Panel: Mr José Juan Pintó (Spain), President; Mr Mark Hovell (United Kingdom); Prof. Lucio Colantuoni (Italy)

*Football*

*Match fixing*

*Legal nature of the ineligibility measure established under art. 2.08 UEL Regulations*

*Burden and Standard of proof regarding the ineligibility measure foreseen by art. 2.08 UEL Regulations*

*Evidence of the involvement of club officials in activities aimed at influencing the outcome of a match*

*Admissibility of evidence before the CAS deemed invalid before a state court*

*Compatibility of Art. 2.08 UEL Regulations with Swiss law and proportionality of the sanction*

- 1. Art. 2.08 of the UEFA Europa League (UEL) Regulations is aimed not to sanction a club but to protect the values and objectives of UEFA's competition, its reputation and integrity, and also to dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions i.e. to protect the reputation of the competition. For these reasons, the ineligibility measure under art. 2.08 of the UEL Regulations is clearly of a different nature compared to the measure under art. 2.09 and under the UEFA Disciplinary Regulations (DR). The ineligibility measure is merely an administrative measure resulting from an infringement of the admission criteria of the UEL competition, which deprives the club that has been directly or indirectly involved in match fixing of the right to participate in the competitions organized by UEFA competition during one year, without prejudice of the potential sanctions that UEFA may impose.**
- 2. Due to the private nature of the proceedings, to determine which party has the burden of proof, the rule established in article 8 of the Swiss Civil Code ("CC") shall apply. Therefore, the burden of proof lies on the party alleging the existence of the relevant facts leading to the ineligibility of a club. With regard to the applicable standard of proof, article 2.08 of the UEL Regulations expressly establishes that to determine whether a club fulfils the admission criterion, the "comfortable satisfaction" standard of proof shall be applied having in mind the seriousness of allegation made.**
- 3. The evidence produced by the party alleging match fixing i.e. wiretaps, evidences and findings from a criminal investigation performed at national level, different judgments passed at national level and other evidence are sufficient to establish according to the comfortable satisfaction standard that a club was involved in several activities aimed at arranging and influencing the outcome of a match.**

4. **As has been consistently established by the CAS jurisprudence, even if evidence may not be admissible in a civil or criminal State court, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account. In particular, although such evidence could potentially have been secured in an inappropriate manner such as for example wiretaps, so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy, it can be included in the case.**
5. **The consequence under art. 2.08 UEL Regulations for the breach of the admission criterion established by art. 2.j of the same regulations, i.e. the ineligibility to participate in the next UEFA Europa League season, is not unjustified, disproportionate or unconnected with the purpose underlying to its adoption, nor contrary to mandatory law or to the fundamental principles and values of Swiss Law. Ultimately, by signing the Admission Criteria Form, a club expressly accepted that if it was to be found to have been involved in activities aimed at arranging or influencing the outcome of a match at national or international level, it would be declared ineligible to participate in any UEFA competition for one year.**

## **I. THE PARTIES**

1. Sivasspor Kulübü (hereinafter “Sivasspor”, the “Appellant” or the “Club”) is a Turkish professional football club with seat in Sivas, Turkey. It is a member of the Turkish Football Federation (hereinafter the “TFF”), which is affiliated to the Union des Football Associations Européennes de Football (hereinafter “UEFA”) which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter “FIFA”).
2. UEFA (hereinafter also referred to as the “Respondent”) is an association under Swiss law and has its headquarters in Nyon, Switzerland. It is the governing body of European football and exercises regulatory, supervisory and disciplinary functions over national federations, club, officials and players in Europe. UEFA organizes each year the international football competition called the UEFA Europa League tournament, in which different professional football teams from all over the European continent participate.

## **II. THE FACTS**

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties’ written submissions, statements and the evidence produced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. The Panel refers in its Award only to the submissions and evidence it deems necessary to explain its reasoning. However, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

A. *Factual background*

- a) Sivasspor's qualification for the UEFA Europa League 2014/2015
4. During its 2013/2014 sporting season, Sivasspor achieved the sporting results needed to qualify for the participation in the UEFA Europa League 2014/2015 (hereinafter "UEL").
5. On 9 May 2014, Sivasspor submitted an admission criteria form for the UEFA Club Competitions 2014/2015 (hereinafter the "Admission Criteria Form"), in which it declared the following:

*"In order to inform UEFA on the match-fixing allegations against our Club members we hereby submit a detailed report respectfully.*

*On 3 July 2011, many people had been taken into custody by police and on 10 July 2011, 61 individuals had been arrested, including club officials and professional players on match fixing allegations.*

*Sivasspor's president A., former board member B. and player D. were among those arrested individuals.*

*Additionally, Sivasspor's former Player C. was in custody, but released by the court to stand without arrest after his testimony before the public prosecutor and the court on duty.*

*[...]*

*On 7 May 2012, Turkish Football Federation has cleared Sivasspor, and also the individuals related to our club as a result of disciplinary proceedings.*

*On 10 August 2012, Istanbul 16<sup>th</sup> High Criminal Court announced findings of its decision regarding the case and sentenced Sivasspor President A., former board member B., player D. and former player C.*

*[...]*

*On 17.1.2014, the 5<sup>th</sup> Chamber of the Supreme Court decided to send the case file back to first instance body to review the punishments of A. D. and C. for a consideration of the possibility of the postponement of the imprisonment decided for match-fixing accusations whereas the Chamber rejected all other appeal reasons.*

*Besides, the 5<sup>th</sup> Chamber of the Supreme Court upheld the verdict of the Istanbul 16<sup>th</sup> High Criminal Court against E. and B.*

*Sivasspor was not a defendant in the proceedings before the state court and the verdict was not given against our club but against the President, Vice President, a player, a prior player and a prior board member of the club [...]"*

6. On 19 May 2014, pursuant to article 2.07 g) of the Regulations of the UEFA Europa League 2014/15 (hereinafter the "UEL Regulations"), the UEFA General Secretary referred the Sivasspor Admission Criteria form to the UEFA Control and Disciplinary Body (hereinafter the

“UCDB”) to establish whether the Club met the admission criteria for the 2014/2015 UEL, at the same time instructing the UEFA Disciplinary Inspector (hereinafter the “DI”) to conduct an investigation about the Club’s admission form.

7. On 21 May 2014 the UEFA Administration informed Sivasspor of the instigation of proceedings with regard to its potential breach of the UEL admission criteria, and notified the Club of the DI’s report (hereinafter the “DI’s Report”).

b) Factual and Procedural Background of the Dispute

ba) Events of summer 2011

8. On 3 July 2011, the Turkish police arrested and detained 61 individuals as part of its investigation into match fixing within Turkish football. In the context of such investigation, criminal proceedings were also opened against A. (Sivasspor President), B. (Sivasspor board member), D. (Sivasspor goalkeeper) and C. (Sivasspor Player), amongst others.
9. On 20 July 2011, the Turkish Public Prosecutor provided the TFF Ethics Committee with information and material in relation to the criminal investigation.
10. On 25 July 2011, the TFF postponed the start of the season for over a month due to the ongoing investigation into match-fixing.

bb) Decision of the TFF Ethics Committee

11. The TFF Ethics Committee passed a decision with regard to the match played between Sivasspor and Fenerbahçe on 22 May 2011 (hereinafter “the Match”), concluding that there was “*no sufficient evidence to form an opinion about*” the individuals investigated.

bc) Decision of the TFF Professional Football Disciplinary Committee

12. On 6 May 2012, the Professional Football Disciplinary Committee of the TFF (hereinafter “PFDC”) rendered a decision with regard to the Match, deciding the following:

*“THERE ARE NO GROUNDS FOR THE IMPOSITION OF A SANCTION on F., G., H., J., A., B., D., K., C., L., M., O., E., N., P., R. and Q., brought before on charges of influencing the match result”.*

bd) Decision of the Istanbul 16<sup>th</sup> High Criminal Court

13. On 2 July 2012, the Istanbul 16<sup>th</sup> High Criminal Court rendered a judgment in connection with the facts of the present case (hereinafter the “Criminal Decision”), imposing the following sanctions to the individuals set hereunder:

B.: *“TO SENTENCE THE DEFENDANT WITH 1 YEAR 16 MONTHS AND 3 DAYS OF IMPRISONMENT and 187.480 TL PUNITIVE FINE [...]”*

D.: *“TO SENTENCE THE DEFENDANT WITH 1 YEAR AND 3 MONTHS OF IMPRISONMENT and 100.000 TL PUNITIVE FINE [...]”*

A.: *“TO SENTENCE THE DEFENDANT WITH 1 YEAR AND 6 MONTHS AND 22 DAYS OF IMPRISONMENT and 100.000 TL PUNITIVE FINE [...]”*

C.: *“the accused shall BE EVENTUALYY SENTENCED TO IMPRISONMENT OF ONE YEAR AND THREE MONTHS AND SUBJECT TO A JUDICIAL FINE OF SIXTY SIX THOUSAND SIX HUNDRED AND FORTY TURKISH LIRAS [...]”*

be) Decision of the 5<sup>th</sup> Criminal Chamber of the Supreme Court of Istanbul

14. On 17 January 2014, the 5<sup>th</sup> Criminal Chamber of the Supreme Court of Istanbul (hereinafter the “Supreme Court”) rendered a decision regarding the appeals filed against the Criminal Decision. With regard to the appeal filed by A. (Sivasspor’s President), D. and C. (both Sivasspor’s players), the Supreme Court decided to reject the appeal and confirm the Criminal Decision, but to refer the case back to the first instance for a possible postponement of the imprisonment under the newer criminal Law of the prison sentence that had been imposed. In relation to the appeal filed by B. (Sivasspor’s board member), the Supreme Court decided to reject the appeal and upheld the Criminal Decision against him.

bf) Decision of the 13<sup>th</sup> Court of Aggravated Felony of Istanbul

15. Pursuant to some applications made by individuals whose verdicts were already final and binding, proceedings were opened in front of the 13<sup>th</sup> Court of Aggravated Felony of Istanbul.
16. On 6 June 2014, the public prosecutor issued an opinion with regard to the potential rehearing of the criminal case.
17. On 25 June 2014, the 13<sup>th</sup> Court of Aggravated Felony passed a decision by which it decided to re-open the criminal case in connection with some of the convicted individuals, ruling in its relevant part:

*“[...]”*

*3- Requests for retrial due to the claims of fraudulence on hearing minutes are rejected by unanimous vote,*

*4- Since the amendments in the Code of Criminal Procedure with Law 6526 are included in the scope of article 311/1-e of the Code of Criminal Procedure, accordingly the requests for retrial regarding convicted F., S., G., T., B. and U. are considered acceptable by unanimous vote further to article 318/1 of the Code of Criminal Procedure for the convictions finalized after being approved by the 5<sup>th</sup> Criminal Chamber of the Supreme Court,*

*[...]*

*6- In order to avoid unrecoverable damages in the future, the execution of the convictions for the defendants F., G., S., T., B. and U. is postponed with the majority of votes further to article 312 of the Code of Criminal Procedure”.*

c) The proceedings before the UCDB and the UEFA Appeals Body

18. On 21 May 2014, the Chairman of the UCDB informed Sivasspor that, upon petition of the DI, he had decided to submit the case directly to the UEFA Appeals Body (hereinafter “UAB”), in accordance with article 34.3 of the UEFA Statutes and article 24.4 of the UEFA Disciplinary Regulations (hereinafter “UEFA DR”).
19. In the DI’s Report the DI requested the UCDB (i) to refer the case to the UAB in accordance with Article 34 (3) of the UEFA Statutes and Article 24 (4) UEFA DR, (ii) based on Article 2.08 of the UEL Regulations, declare Sivasspor ineligible to participate in the UEL and (iii) based on Article 2.09 of the UEL Regulations, impose an additional sanction against Sivasspor of one additional season of exclusion from any future UEFA Competitions as well as a EUR 300,000 fine (three hundred thousand euros).
20. On 3 June 2014 a hearing took place before the UAB. On the same day, the UAB rendered a decision (hereinafter referred to as the “Appealed Decision”), ruling that “1. Sivasspor is not eligible to participate in the next (1) 2014/15 UEFA Europa League season”.
21. On 6 June 2014, UEFA notified Sivasspor the Appealed Decision.

B. *The proceedings before the Court of Arbitration for Sport (CAS)*

22. On 13 June 2013, Sivasspor filed a Statement of Appeal with the CAS Court Office, requesting:
  - a. *“Setting aside the decision of the UEFA Appeals Body dated 3 June 2014.*
  - b. *Declaring Sivasspor eligible to participate in the UEFA 2014/15 Europa League.*
  - c. *Condemning the Respondent to pay the arbitration costs.*
  - d. *Ordering the Respondent to pay a substantial contribution towards the Appellant’s arbitration related costs”.*

23. On 18 June 2014, Sivasspor sent a letter to the CAS requesting, in order to prepare the Appeal Brief and challenge the appealed decision properly, to issue an order for the disclosure of the Arbitral Award CAS 2010/A/2267, pursuant to article R44.3. of the Code of Sports-Related Arbitration.
24. On the same day, the CAS Court Office sent to the parties a copy of the Arbitral Award rendered in the case CAS 2010/A/2267, 2278, 2279, 2280, 2281 – Football Club “Metalist” et al. v FFU.
25. On 19 June 2014, the Appellant filed its Appeal Brief, reiterating the prayers for relief previously submitted with its Statement of Appeal.
26. On 26 June 2014, pursuant to Article R54 of the Code for Sports-related Arbitration (hereinafter 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 to hear the appeal had been constituted as follows: (i) Mr. José Juan Pintó, attorney-at-Law in Barcelona (Spain), as President of the Panel; (ii) Mr. Mark Andrew Hovell, solicitor in Manchester (United Kingdom) as arbitrator nominated by the Appellant; (iii) Mr. Lucio Colantuoni, professor and attorney-at-law in Savona (Italy) as arbitrator nominated by the Respondent.
27. On 1 July 2014, the Respondent filed its Answer whereby it requested CAS to grant an award:
  - *“Rejecting the reliefs sought by Sivasspor.*
  - *Confirming the decision under appeal.*
  - *Ordering Sivasspor to pay all of the costs of this arbitration and a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings”.*
28. On 4 July 2014, a hearing was held in Lausanne, Switzerland. The following persons attended the hearing:
  - a) For the Appellant:
    - 1) Mr. Kemal Kapulluoğlu, attorney of Sivasspor;
    - 2) Ms. Didem Sunna, attorney of Sivasspor;
    - 3) Mr. Koray Akalp, attorney of Sivasspor;
    - 4) Mr. Serhat Çetin, attorney of Sivasspor;
    - 5) A., President of Sivasspor; and
    - 6) Mr. Kudret Suzer, interpreter.

b) For the Respondent:

- 1) Dr. Emilio García Silvero, UEFA's Head of Disciplinary and Integrity;
  - 2) Mr. Carlos Schneider, UEFA's Disciplinary Lawyer;
  - 3) Mr. Miguel Liétard, UEFA's Disciplinary Inspector; and
  - 4) Mr. James Mungavin, UEFA's Disciplinary Researcher.
29. Mr. William Sternheimer, Managing Counsel and Head of Arbitration for CAS, and Mr. Yago Vázquez Moraga, *ad hoc* clerk, assisted the Panel at the hearing.
30. At the outset of the hearing, both parties confirmed not to have any objections as to the constitution and composition of the Panel, and not to object to the jurisdiction of CAS. At the beginning, the Panel invited the parties to file their position with regard the nature of the present dispute (i.e., whether this dispute was of a disciplinary or ordinary nature) for the sole purpose of determining the procedural costs involved.
31. With its opening statements, the Appellant proposed as new evidence the judgment of the 13<sup>th</sup> Court of Aggravated Felony of Istanbul dated 25 June 2014, together with its translation into English. The Respondent did not oppose to the admission of this new document, and the Panel decided to admit it as evidence within the present proceedings.
32. During the hearing, the Parties had the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel. During the hearing the Panel heard and examined the witness D., football player of Sivasspor.
33. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected.
34. On 7 July 2014, the operative part of this Arbitral Award was communicated to the parties.

C. *Summary of the parties' submissions*

35. 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) The Appellant
- aa) As to the facts
- Material mistakes made by UEFA in the assessment of the facts
36. The UAB made the following material mistakes when assessing the facts of the case:
- In the Appealed Decision, the decision of the PFDC was explained as if it decided that an attempt of match-fixing by Sivasspor officials existed. However, according to this decision, it was Fenerbahçe and Trabzonspor officials who were found to have attempted to fix the match.
  - The UAB understood that the Supreme Court rejected the appeal lodged by the Appellant's officials and players and that it returned the case to the lower instance only regarding the issue of the specific sanction imposed. However, this is not the exact case as the decision of the first instance criminal court has been reversed as a whole by the Supreme Court. Therefore, a final verdict has yet not been reached in regard of the individuals concerned.
- Overview of the match-fixing allegations
37. Sivasspor officials and a former player were accused of being involved in activities aimed at arranging or influencing the outcome of the Match. The accusations against the above-mentioned individuals were evaluated by the Istanbul 16<sup>th</sup> High Criminal Court, the 5<sup>th</sup> Criminal Chamber of the Supreme Court and by UEFA and the CAS ([CAS 2013/A/3256](#)), analyzing the alleged match-fixing activities through three different ways (or "fronts", as referred to by the parties of this procedure).
38. From these three fronts, only the second front (hereinafter the "Second Front") should be considered, because (i) the first front (hereinafter the "First Front") has already been decided by CAS ([CAS 2013/A/3256](#)) and, (ii) regarding the third front (hereinafter the "Third Front"), none of the various national and sportive bodies or the UAB in the Appealed Decision had established any link with Sivasspor.
39. With regard to these fronts:
- The First Front involved A. (Sivasspor President), B. (Sivasspor board member) and C. (Sivasspor player). As regards to this front, the UAB remarked that the officials A. and B. and the Sivasspor's goalkeeper D. were implicated in match-fixing activities in order to arrange and/or influence the outcome of the Match.
- With regard to this First Front, following the appeal filed by Fenerbahçe against the UAB decision dated 15 July 2013, the CAS reached the following findings: *"The Panel, on the basis of the submissions of the parties, the testimonies given at the hearing, and in*

*light of the considerations of the TFF Ethic Committee, is not satisfied to its comfortable satisfaction that this theory provides evidence for Fenerbahçe's attempt to fix the present match. As such, the panel finds that UEFA's allegation in respect of the first front of match-fixing could not be proven to the comfortable satisfaction of the Panel" (CAS 2013/A/3256).*

- However, this fact was not included in the DI's Report despite the fact it was brought forward by the Appellant in its written submissions and at the hearing. UEFA cannot simply disregard this CAS Award, where UEFA was a party and was able to present its case carefully, in which it was declared that Sivasspor's officials A., B. and C. were not involved in match-fixing activities regarding the Match.
- Therefore, it is the position of Sivasspor that the award issued by CAS regarding the First Front has become final and binding, and should be considered as *res iudicata*. Consequently, without the presence of new evidence, UEFA cannot reconsider the same facts and events which have already been duly assessed and decided upon by the CAS. Therefore, UEFA has clearly violated the principle of *res iudicata*.
- The Second Front involved Sivasspor goalkeeper D. and individuals who did not have direct or indirect links with the Club. During the previous proceedings before the UEFA and CAS in relation with Fenerbahçe, D. was not a party and thus could not defend himself against the allegations that involved him, and the Panel's findings were only based in the submissions made by Fenerbahçe.
- The Third Front involved V. making a deal through W. to allegedly fix the Match. However, with regard to this front, neither the First Instance Criminal Court, nor the Supreme Court, nor the TFF Bodies have established the existence of a match-fixing activity. There was no evidence that proved that the individuals concerned in this Third Front had reached or even tried to reach any official, player, etc. of Sivasspor. Even UEFA, in the Appealed Decision, did not make any findings on the third front. Consequently, this third front is already closed and should not be considered.

40. Therefore, the only front that can be discussed in these proceedings is the Second Front.

- Second Front

41. This Second Front involved the player of Sivasspor D. (hereinafter, the "Goalkeeper"). Pursuant to the award rendered by the CAS concerning the Fenerbahçe case, "*The Panel finds that the alleged bad performance of D. in itself is no proof of his involvement in the match-fixing scheme of Fenerbahçe. However, the Panel considers that the conversations between X. and Y. and between R. and X. strengthen the proposition that D. did not play to the best of his abilities in exchange for a certain sum of money that derived indirectly from Fenerbahçe's officials. The Panel finds that this is supported by the conversation between Y. and X. mentioned supra. On this basis, the Panel is comfortably satisfied that D. was involved in a match-fixing attempt of Fenerbahçe*".

42. With regard to the individuals involved in this front, X. (hereinafter the “Agent” or “X”.) was the person who at the time of the facts represented the Goalkeeper as his agent. Moreover, G. was a Fenerbahçe board member, and T. (hereinafter the “Intermediary” or “T”.) was allegedly acting as an intermediary. It is important to note that the Intermediary and the Agent were convicted of being involved in match-fixing activities in three other matches besides the Match (which were played one on 1 May 2011 and two on 15 May 2011).
43. UEFA has not considered the full phone conversations of the wiretaps, and has only analyzed it partially, as presented by its DI. Notably, by completing the missing parts of the conversations and correcting some “simple mistakes”, it could be understood that the real intentions of the individuals participating in these conversations were not linked with match-fixing activities.
44. The UAB interpreted the conversation between the Goalkeeper and the Agent on 15 May 2011 as an inquiry and also a concern of the Agent to make sure that the Goalkeeper would play in the Match. However, as evidenced by its wording, the conversation does not make any reference to any alleged match-fixing. Taking into account that X. was the agent of the Goalkeeper, this conversation is normal.
45. The UAB interpreted the conversation between the Intermediary and the Agent of 16 May 2011 as a call made to press on the arranging of the Match and as a discussion of the amount of the bribe. However, this conversation was related to the transfers of two players, AA. and BB., from Kayserispor to Fenerbahçe. These transfers were finally concluded on 25 and 29 August, respectively. Moreover, taking into account that the Agent and the Intermediary had been found guilty of match-fixing in three other matches played close to the date of this conversation, in any case and even without having made any reference to the Goalkeeper, this conversation could be tied to the other three matches in connection to which these individuals were found guilty.
46. The conversation between the Goalkeeper and the Agent on 17 May 2011 has been misinterpreted by UEFA. In this conversation, the Agent contacted the Goalkeeper (who was finishing his half year employment contract with Sivasspor at the end of the 2011/2012 season) to talk about his future. The Agent was trying to transfer him back to Beşiktaş. This is in line with the fact that the Goalkeeper stated that he wanted a raise in his salary (which is reasonable taking into account that Sivasspor did not pay him well), because the Goalkeeper’s performance during the half of the 2010/2011 season had a positive impact in the Club’s sporting results. Finally, the translation provided by UEFA is mistaken, as they had translated the Turkish word “ameliyati” (which means “surgery”) as “operation”. Due to this bad translation, the UAB concluded that they were referring to a match-fixing operation, when in reality they were referring to a surgical operation that the Goalkeeper was going to have right after the last match of the season (and that took place on 23 May 2011). This is why the Agent told the Goalkeeper that he should not worry about the future and concentrate on the upcoming surgery.
47. The conversation held on 21 May 2011 between the Intermediary and G., a board member of Fenerbahçe (hereinafter the “Fenerbahçe Official” or “G”.), does not make any reference to an alleged match-fixing deal made with the Goalkeeper.

48. The conversation between Z. (an Official of Fenerbahçe and brother of the president of that club) and the Fenerbahçe Official is interpreted by the UAB in connection with the previous conversation to conclude that, when the latter knew that the Goalkeeper was going to play the match, he informed F. about this fact by stating *“Let me not disturb the order but shots as many as possible ok?”*. If they were involved in any activity aimed to fix the match, it has no sense that the Fenerbahçe Official waited 30 hours to pass this information to F. just one hour and five minutes before the match. If the Fenerbahçe Official recommended F. (who was with the team at the dressing room) to shoot as much as possible, was because at that time it had started to rain and when playing with rain the field and the ball are slippery and is easier to score goals shooting. In addition, as per the TFF Competition Regulations, Fenerbahçe would had known Sivasspor lineup 1 hour before the Match, and thus giving this information (that the Goalkeeper was going to play) 5 minutes before was pointless.
49. The conversation in which a person named EE. called I. (a Besiktas member) on 22 May 2011, where the first stated to the latter *“Ask this D. how much money he got”* is irrelevant. Moreover, as the CAS has already established, *“bad performance of D. in itself can be no proof of his involvement in the match-fixing scheme”*.
50. The conversation between the Agent and the Intermediary on 22 May 2011, which was made during the half time of the Match, refers to the regrets made by both individuals with regard to the second goal scored by Fenerbahçe, where the Goalkeeper was unable to grab the ball. Indeed, this proves that there was not a match-fixing activity (because, if this was the case, they would have celebrated the goal).
51. In the conversation between R. (brother of the Goalkeeper) and the Agent on 22 May 2011, the latter contacted the Goalkeeper’s brother because he was worried about the Goalkeeper and was trying to comfort him.
52. The UAB also supported its decision in the fact that the Fenerbahçe Official allegedly gave a car to the Intermediary in exchange for his services. However, in its award [CAS 2013/A/3256](#), the CAS already declared that this theory was insufficiently proven, and thus should be also rejected in the present case.
53. With regard to the alleged exchange of money between the Goalkeeper and the Agent, notwithstanding the fact that there is no evidence of an exchange of money (which was reportedly in a white envelope that the Agent got from the Fenerbahçe Official, who carried it in his left jacket pocket), the assumptions made by the UAB (namely, that the Goalkeeper and the Agent met in the outer garden of a restaurant to exchange the money) are illogical, as corruption is, by nature, concealed and it makes no sense to meet in a public crowded place to secretly exchange money.
54. Indeed, on 26 May 2011 the Goalkeeper paid a deposit of 1,500 Turkish liras to buy a car (BMW) but eventually had to cancel his order on 17 June 2011 because the bank did not give him a loan for this purpose. This clearly shows that the Goalkeeper did not receive any amount

because, otherwise, he would not have needed to apply for a line of credit to buy a car in the amount of 40,000 EUR.

ab) As to the merits

- Sivasspor's Liability

55. Contrary to the findings of the UAB, only the Goalkeeper is accused of match-fixing activities with regard to the Match. Concerning the rest of the individuals that UEFA deems were involved in match-fixing activities, in CAS 2013/A/3256 CAS already declared that UEFA's allegation could not be proven to the comfortable satisfaction of the panel.
56. All the jurisprudence invoked by UEFA refers to cases where the individuals involved were presidents of clubs, board members or sporting directors. Whilst all of the previous awards referred to by UEFA involve individuals who have power and influence over the clubs concerned, this case only involves one football player who has no influence on Sivasspor. In the present case, the Club did not have any monetary or sportive benefit from the alleged match-fixing.
57. UEFA's interpretation of Article 6.1 of the UEFA DR (2008 Edition) is incorrect. Taking into account that only one Sivasspor player is accused of match-fixing, this article cannot be applied, as players are within the scope of the UEFA DR in accordance with Article 3 of the same Regulations and thus could be sanctioned. In addition, regarding the misconduct of the players concerned, the club will have the right to establish that it bears no fault or negligence in the alleged players' conduct, and should therefore not be sanctioned.
58. With regard to the strict liability, the CAS case law is focused only in cases where such liability has been applied towards incidents perpetrated by supporters and/or officials. This is because, contrary to what happens in this case, UEFA has no direct disciplinary authority over a club's supporters but only over European football associations and clubs.
59. Article 6.1 should only apply in cases wherein a gain or any financial or sportive benefit is implied. In the case at stake, Sivasspor had no monetary and/or sportive benefit. Clubs have no strict liability for the conduct of its players, who have no influence over the club, and said conduct is engaged in for their own personal benefit rather than for the benefit of their club.
60. In regards to the Club's involvement as the term is used in Article 2.08 of the UEL Regulations, the article itself does not provide a clear definition of "involvement", which needs to be established by UEFA in order to sanction a club. According to UEFA, the involvement of a club can be established when: (i) the alleged match-fixing activities are conducted by individuals whose actions are attributable to the clubs and (ii) through those actions of the individuals concerned, the club benefits from an advantage, such as taking part in the 2014/2015 UEL. However, when examining the facts of the present case and the conditions laid down by UEFA in the Appealed Decision, it is very clear that none of the above-mentioned conditions are met.

- The analogy between match-fixing and doping cases

61. This analogy was first established when determining the standard of proof to be applied in match-fixing cases, which at the end was decided to be a comfortable satisfaction standard, similar to the one established for doping cases. The Appellant did not challenge this general principle before UEFA, but objections were raised since, particularly in the present case, UEFA had full access to the whole case file, including all the testimonies of individuals and all the evidence collected by the Turkish police. Moreover, in the three years from the start of these investigations, UEFA was provided with not only every decision and verdict of the TFF Bodies, but also with the decisions regarding the Turkish Criminal and Supreme Court; therefore, the Appellant remarks that UEFA had enough time to review and study such documentation.
  62. A new interaction between doping and match-fixing cases arose in CAS 2013/A/3256 with regard to the range of duration of the period of ineligibility in match-fixing cases, which was determined to be from zero to eight years in accordance with doping cases. This analogy was also brought forward by the DI, although the UAB finally rejected it (*"The Appeals Body doesn't share the analogy between doping and match-fixing offences"*).
  63. The strict liability principle adopted in the doping regulations should also be examined to play a guiding role in the matter at hand. In the aforesaid doping regulations, it is the athlete who carries the direct liability for any anti-doping rule violation. Besides, in case of establishing an anti-doping rule violation the club would be responsible only in case it had a direct involvement in the anti-doping rule violation committed by the athlete, or in case more than two members of its team are found to have committed an anti-doping rule violation.
  64. In the present case, the Club is facing severe sanctions whilst the player, who is alleged to have been involved in such activities and who has a direct liability, faces no charges even though he is also within the disciplinary jurisdiction of the football governing bodies.
- b) The Respondent
- ba) As to the facts
65. The Appealed Decision has recognized that the match-fixing activities of Sivasspor, its officials and players have violated the UEFA rules. In application of the relevant competition rules, explicitly accepted by the Appellant, the UAB imposed on Sivasspor the administrative measure foreseen in the applicable rule and has declared the Club ineligible to participate for one season.

- With regard to the facts

66. On 30 April 2012, about one week before its disciplinary bodies rendered their decision concerning the Appellant, with the purpose to not relegate some important Turkish clubs to a lower division, the TFF decided to amend art. 58 of the Turkish Disciplinary Regulations. Under the previous regulation, influencing or attempting to influence the outcome of a match would have resulted in the relegation of the club concerned. However, under the new version, there is

a distinction between “*effectively influencing*” the result of a match and “*attempting to influence*” it, with only a milder potential sanction being imposed on the club.

67. On 6 May 2012 the PFDC rendered its decision in proceedings n° 2011/2012-1356 in which, even though it found no grounds for the imposition of a sanction, it concluded that “*The activities with regard to influencing the result of the match between Sivasspor and Fenerbahçe dated 22.05.2011 has been examined by our Committee Trabzonspor A.S. and Fenerbahçe A.S. club executives and members had some attempts to influence the result of the match, that however the intended result was not achieved and that the said activities do not constitute the depth necessary as to be deemed as an attempt at influencing the result of a match. In addition to this; it is understood that the ‘Influencing Match Result’ offense was not detected according to the referee, delegate and referee observer reports and the Ethics Committee report*”. In this regard, under UEFA Regulations it suffices if an attempt has been made to influence the result of a match to apply article 2.08 of the UEL Regulations.
68. On 2 July 2012 the Istanbul 16<sup>th</sup> High Criminal Court rendered its decision, where it determined that a criminal organisation was formed under the leadership of Fenerbahçe’s President, and that it was proved that match-fixing and incentive bonuses were made during 13 matches of the season 2010/2011. In particular, with regard to the Match, the Criminal Court considered (pages 460-535 of the Criminal Decision) all the evidence related to that match. In particular, the following evidences were examined by the Court: “*communication specification decisions and protocols; physical tacking protocols; search, distraint, arrest; custody decisions and protocols; detailed telephone reviews and sim card solution protocols; bank accounts bills; suspect/witness/complainant statements; Court interrogations, arrests; expertise reports; safe custody receipts; judicial record and identity registries; report by the Tax Audit Committee; Capital Market Committee Audit Report; Account expense details of Fenerbahçe; defendant defences; witness, complainant and intervenant [Sic] statements; [...]*”. Further, the police digest includes a detailed report of the investigations carried out by the Turkish police.
69. The Criminal Court convicted A. (Sivasspor President), B. (Sivasspor board member), C. (Sivasspor player), and D. (Sivasspor goalkeeper) of involvement in match-fixing under Law 6222. Furthermore, the Supreme Court of Turkey upheld all convictions of the officials and players with respect to the Match.
70. The Criminal Decision analyzed the three match-fixing fronts opened by Fenerbahçe’s officials in order to influence the outcome of the Match. The Match (the last of the season) was not even relevant for Sivasspor, because it had already secured its position within the Turkish top league. In particular:
  - With regard to the First Front, it is clear from all the wiretapped conversations that the President of Fenerbahçe himself met with the President of Sivasspor and entered into a match-fixing deal on the basis of which the latter attempted through B. (Sivasspor board member) and CC. (an intermediary) to convince the Sivasspor player C. not to play to the best of his abilities. The wiretaps reflect that they had several conversations, where they used secret code words, to fix the price of the match-fixing and the payment of the bribe. The wiretaps also prove that the player

C. was finally approached. In particular, the following conversation held between this player and an anonymous person, confirms that the match-fixing took place:

*‘Player: What can I do? We made Fenerbahçe champion. I’m going.*

*X Person: Why didn’t you hit the ball with your head and score? Why did you hit with your foot? You cannot hit the ball with your foot.*

*Player: Why should I score? I didn’t go there to score. I went there just to move around. Look at the coincidence... [...]’s movement was in vain, I told the president that I’m leaving. Be informed”.*

- With regard to the Second Front, which involved the Goalkeeper, the match-fixing activities were carried through the Intermediary and the Agent. It is clear from all the wiretapped conversations that the Goalkeeper was approached through the Agent and that he accepted the match-fixing deal. This is why in the conversation held on 22 May 2011 one hour and 5 minutes before the Match started the Fenerbahçe Official told Z. (another official from Fenerbahçe) *“I don’t want to disturb the game plan; but shots as many as possible”*. This tactic worked, as the Goalkeeper allowed at least two goals on shots from outside the penalty area. As payment to his services, the Intermediary was rewarded with a car from G. (the Fenerbahçe board member). The Goalkeeper was also paid on 31 May 2011 through the Agent, who delivered him an envelope with money that received from G. (the Fenerbahçe board member).
- With regard to the Third Front, it was an attempt to fix the Match through W. (intermediary on behalf of Sivasspor), which was performed by V. (an intermediary) and G. (the Fenerbahçe board member). G. arranged for money (300,000 USD) to be provided to V. for this purpose. On 29 May 2011 V. delivered the money to W. (handed over a bag), who tried to change USD 100,000 of this amount in banks the following Monday (Criminal Decision, pages 530-534). He finally delivered the money to *“the person it was destined for”*.

71. On 17 January 2014, the 5th Criminal Chamber of the Supreme Court of Istanbul rendered a judgement regarding the appeals filed against the Criminal Decision, in which, confirming the findings of the Criminal Decision, it declared that *“It was understood that a match-fixing agreement was made with Sivasspor football team players C. and D. by the crime organization led by F. for playing badly in the competition in exchange for money so the Sivasspor - Fenerbahçe A.Ş. football match would result in favor of Fenerbahçe A.Ş. football team; that a match-fixing agreement was also made with Sivasspor Club’s president A. [...]”*. Notably:

In relation to the Sivasspor President’s appeal, the Supreme Court decided to reject it and to confirm the Criminal Court verdict, but referred the case back to the first instance for a possible postponement under the newer criminal Law of the start of the effective prison sentence that had been imposed.

In relation to B. (Sivasspor board member) the Supreme Court decided to reject the appeal and to confirm the verdict of the Criminal Court.

In relation to the appeals of the Goalkeeper and C. (Sivasspor player), the Supreme Court decided to reject the appeal and to confirm the Criminal Court verdict, but to refer the cases back to the first instance again for a possible postponement under the newer criminal Law of the start of the effective prison sentence that had been imposed.

72. With regard to the proceedings held before UEFA in 2013 against Fenerbahçe, involving the Match, on 15 July 2013 the UAB confirmed that *“it considers that it is established that the President of Fenerbahçe SK, F., and a Fenerbahçe SK Executive Committee member, G., conducted the match-fixing in the match between Sivasspor and Fenerbahçe played on 22 May 2013”*. While the UAB Decision was focused on Fenerbahçe, the evidence produced within these proceedings clearly indicated the involvement of Sivasspor officials and players in the attempt to influence the result of the Match.
73. Fenerbahçe filed an appeal against the referred UAB decision that CAS rejected in its award CAS 2013/A/3256, where it had the opportunity to analyze the Match. Notably, the CAS Panel concluded that:

*“The Panel finds that the alleged bad performance of D. in itself is no proof of his involvement in the match-fixing scheme of Fenerbahçe. However, the Panel considers that the conversations between X. and Y. and between R. and X. strengthen the proposition that D. did not play to the best of his abilities in exchange for a certain sum of money that derived indirectly from Fenerbahçe officials. The Panel finds that this is supported by the conversation between Y. and X. mentioned supra. On this basis, the Panel is comfortably satisfied that D.’s was involved in a match-fixing attempt of Fenerbahçe”*.

In relation to the First match-fixing front, the Panel concluded that *“Although the 16th High Criminal Court in Istanbul considered the “black bag theory” to be proven and convicted A. (due to the fact that it is established that he aided the crime organization founded by F. in order to affect the results of the sports competitions by committing the crimes of match-fixing and incentive bonus in Turkish Professional Super League), the Panel, on the basis of the submissions of the parties, testimonies given at the hearing, and in light of the considerations of the TFF Ethics Committee, is not satisfied to its comfortable satisfaction that this theory provides evidence for Fenerbahçe’s attempt to fix the present match. As such, the Panel finds that UEFA’s allegation in respect for the first front of match-fixing could not be proven to the comfortable satisfaction of the Panel”*.

- About the facts described by the Appellant

74. The Appellant alleges that, in view of the CAS’ findings in the Fenerbahçe SK case (CAS 2013/A/3256), the conclusion reached therein regarding the First Front is to be considered *res indicata* and is therefore binding. However, at the same time the Appellant pretends that the findings of this award must be reviewed in relation to the Second Front, involving its goalkeeper D.
75. The Appellant’s position is completely contradictory and unacceptable as the Club cannot, on the one hand, claim that the parts of the above-mentioned CAS award which may benefit its claims, are to be considered *res indicata*, while those parts of the award which establish that

Sivasspor was directly or indirectly involved in match-fixing activities are not binding and therefore must be reviewed.

76. UEFA submits that the considerations of the panel in CAS 2013/A/3256 cannot be considered as *res indicata*. Basically, the so-called “triple-identity” test (same subject matter, same legal grounds and same parties) is not met in the current proceedings. In any case, in accordance with Article 2.08 UEL Regulations, the UAB was entitled to rely on but was not bound by the content of aforesaid award.
77. The Panel should evaluate all of the factual and legal evidence in relation to all match-fixing fronts operating regarding the Match. In this regard, taking into account that the Appellant has not provided any evidence in relation to the First Front and the Third Front, these facts have not been challenged and thus it must be considered accurate.
78. The statements filed by the Appellant with regard to the decision of the 5<sup>th</sup> Criminal Chamber of the Supreme Court of Istanbul are wrong because: (i) only few verdicts relating to the several Turkish clubs involved in the match-fixing activities have been sent back to the previous criminal instance to evaluate whether the start of the effective imprisonment of few individual shall be postponed or not, and (ii) whether or not an individual has committed a criminal act under the applicable criminal law of his country, is irrelevant for the determination of the match-fixing activities.
79. The opinion of the Public Prosecutor confirms that the 5<sup>th</sup> Criminal Chamber of the Supreme Court of Istanbul has upheld the Criminal Decision in relation to the individuals’ conviction for influencing the result of the Match. In particular it should be taken into account that: (i) a re-hearing in first instance regarding the sanctions to apply to the convicted individuals does not affect the conclusions reached by the Criminal Court in relation to the Match, and (ii) neither the Sivasspor President, nor the Goalkeeper, nor the player C., nor the Agent, are referred to in the Prosecutor’s opinion.
80. Therefore, the Prosecutor’s opinion reaffirms that the First Instance Criminal Courts will only review the Criminal Decision in relation to the sanctions imposed, but will not review the conclusions reached with regard to the Match. Moreover, such review will be limited to the legal qualifications of the facts, but the facts confirming the match-fixing activities will not be at stake.
81. The Appellant’s interpretation of the wiretaps is wrong.
  - Evaluation of the facts of this case
82. The findings of the UAB have been confirmed and shared by the Turkish police, the Turkish Prosecutors, the Turkish Criminal Courts and by another CAS panel.
83. The Appellant has not provided any new or old evidence in relation to the First Front or the Third Front opened by Fenerbahçe in relation to the Match. Thus, the the UAB’s finding that

Sivasspor was directly and/or involved in activities in order to arrange or influence the outcome the Match through its President A., board member B., and player C. remains undisputed and must be confirmed.

84. Notwithstanding the above, UEFA considers that there is sufficient evidence for the present CAS Panel to follow the line of reasoning of the CAS panel in the Fenerbahçe case and conclude to its comfortable satisfaction that such activities did indeed take place.

85. In relation to the Second Front, the explanations put forth by Sivasspor are insufficient to reach a different conclusion from those of the UCDB, the UAB and the CAS, and thus the evidence provided is sufficient to conclude that the Goalkeeper was bribed to not perform to the best of his abilities in the Match.

bb) As to the merits

- The standard of proof in the current proceedings

86. In accordance with the art. 2.08 of the UEL Regulations, the standard of proof to be applied in the present case (i.e. in a case related to the admission of clubs to the UEL) is the standard of comfortable satisfaction.

87. CAS already confirmed in several decisions (CAS 2009/A/1920, CAS 2010/A/2172, CAS 2010/A/2266, CAS 2011/A/2528, etc.) that the applicable standard of proof concerning cases of admission of clubs to UEFA competitions is the comfortable satisfaction standard.

88. The facts analyzed in the current proceedings have already been examined by both the Istanbul 16th High Criminal Court and the 5th Criminal Chamber of the Supreme Court of Turkey (which apply a higher standard of proof than the one applied by the CAS in this proceedings), who found Sivasspor's officials and players guilty.

- Article 6 of the UEFA DR: the concept of strict liability

89. The strict liability principle is explicitly foreseen in the applicable rules, accepted by the Appellant. Specifically, Article 6.1 of the UEFA DR, Edition 2008, provides that "*Members associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match on behalf of the member, association or club*".

90. Therefore, clubs participating at UEFA's competitions are responsible, even if they are not at fault, for any breach of the UEFA regulations committed by their players, officials, members, supporters, and any other person exercising a function on behalf of the association or the club.

91. CAS standing practice towards the principle of strict liability has been consistent over the past decades and has been recently confirmed as far as its compatibility with Swiss Law and the European Convention of Human Rights is concerned (CAS 2013/A/3297).

92. Articles 5, 6 (1) and 11 (1) of the UEFA DR, Edition 2008, plainly establish that clubs shoulder responsibility for those infringements perpetrated by, amongst others, players and officials. Thus, when dealing with match-fixing activities, these constitute a more than sufficient legal basis in order to sanction clubs for either active or passive bribery of their players, officials and/or members implicated in such offences. It follows from the above that strict liability applies in accordance with Article 6 UEFA DR, Edition 2008, in combination with Article 5 and 11 (1) UEFA DR, in cases regarding infringements under the scope of Article 2.08 UEL Regulations.
93. UEFA has a margin of autonomy to regulate its own affairs and power to (i) adopt rules of conduct to be followed by their direct and indirect members, and (ii) apply disciplinary measures and sanctions to member who violate those rules, which authorizes UEFA to choose the best way to deal with match fixing activities.
94. In cases of match-fixing the principle of strict liability is even more solid by means of Article 11 (1) UEFA DR which explicitly provides that disciplinary measures may be taken against member associations or clubs if a team, player, official or member is in breach of Article 5 of the UEFA DR, as refers to violations concerning the integrity of the competition.
95. In regards to the applicability of Article 2.08 of the UEL Regulations, the Appellant is wrong when concluding that this case differs from previous ones examined by CAS, relying on the fact that, allegedly, in the case at hand only the Goalkeeper of the Club, who would have no influence over the Club, may be eventually accused of match-fixing activities. On the contrary, the case at hand involves A. (Sivasspor's President), B. (Sivasspor's board member), C. (Sivasspor's player) and the aforesaid D. (Sivasspor's goalkeeper). The aforementioned individuals were found guilty both by the 16th High Criminal Court of Istanbul and the Turkish Supreme Court for match-fixing offences related to the Match.
96. It should be taken into account that, after the 16<sup>th</sup> High Criminal Court of Istanbul and the Turkish Supreme Court have found the Goalkeeper guilty for match-fixing offences regarding the Match, the Appellant voluntarily decided to keep him in the squad. Despite the criminal court decisions of the two above-mentioned tribunals in Turkey and despite the fact that the Goalkeeper spent some time in prison, Sivasspor did not take any disciplinary measures against him.
97. Article 2.08 of the UEL Regulations does not require a gain of any financial or sportive benefit by the club in order to establish the infringement, but to establish the club's involvement in activities aimed at influencing and/or arranging the outcome of a match, which is established once it has been proved that at least one individual is implicated in such activities.
  - The alleged analogy between match-fixing and doping cases
98. The Appellant's argument likening match-fixing cases to doping cases should be dismissed because the Appealed Decision expressly denied such analogy: "[...] *The Appeals Body doesn't share the analogy between doping and match-fixing offences*". Contrary to what the Appellant asserts, as

far as the UEFA is aware, there is no CAS award which might have established such analogy in order to impose sanctions on a club.

99. In particular, the alleged analogy was done by the CAS in the context of article 2.06 of the UEFA Champions League Regulations (which corresponds to article. 2.09 of the UEL Regulations). Therefore, the alleged analogy was examined regarding the additional disciplinary measures concerning a club involved in match-fixing activities but not related to the one year ineligibility provided for in Article 2.05 of the UEFA Champions League Regulations or 2.08 of the UEL Regulations (the “administrative measures”).
100. Consequently, the alleged analogy should be rejected.
  - Proportionality of the decision rendered by the UAB
101. On the basis of all factual circumstances and information available concerning the case, UEFA considers the sanction imposed to be reasonable and proportional, as there can be no doubt that once a club has been found to have been directly or indirectly involved in influencing or attempting to influence the outcome of a match, the consequence is its automatic ineligibility from participating in UEFA’s club competitions for one season.
102. The status of ineligibility under art. 2.08 of the UEL Regulations is without prejudice to any disciplinary measures that may be adopted by the competent disciplinary bodies in accordance with art. 2.09 of the aforesaid regulations.
103. As confirmed by the Panel in CAS 2013/A/3258, the ineligibility of a club under art. 2.08 of the UEL Regulations is a question of admissibility to UEFA’s club competitions:

*“The Panel considers that Art. 2.08 UELR above is a regulatory provision whose main purpose is to establish the ineligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. In the Panel’s view even if the application of Art. 2.08 UELR may have the effect to exclude a club from a UEFA competition, the relevant provision is not of a sanctionatory nature. This is also confirmed by the wording of Art. 50 (3) UEFA-Statutes which reads as follows: ‘3 The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures’, implicitly excluding its sanctionatory nature”.*
104. Consequently, there is no doubt as to the automatic effects produced by a club’s direct or indirect involvement in activities aimed at arranging or influencing the outcome of a match since April 2007: a club will be declared ineligible to participate in the relevant UEFA competition.

### III. LEGAL CONSIDERATIONS

#### A. CAS jurisdiction

105. The jurisdiction of the CAS, which has not been disputed by any party, arises out of article 62 of the UEFA Statutes, art. 2.07 lit. f and article 30 of the UEL Regulations, in connection with article R47 of the CAS Code. Furthermore, by signing the Admission Criteria Form, the Appellant expressly agreed to recognize the jurisdiction of the CAS.

106. Therefore, the Panel considers that the CAS is competent to rule on this case.

#### B. Applicable law

107. Article R58 of the CAS Code envisages 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”.*

108. Article 64 of the UEFA Statutes states the following:

a. *“These Statutes shall be governed in all respects by Swiss law.*

b. *The legal forum shall be the headquarters of UEFA. Lausanne (Switzerland) shall be the legal forum for all cases which, in accordance with these Statutes, come under the jurisdiction of CAS”.*

109. Taking the aforementioned provisions into account, rules and regulations of UEFA shall apply primarily to the present arbitration and, subsidiarily, the Swiss law.

#### C. Considerations as to the merits

a) General regulatory framework applicable to the present Appeal. Object of the dispute.

110. Art 50 of the UEFA Statutes (2014 Edition) provides:

*“1 The Executive Committee shall draw up regulations governing the conditions of participation in and the staging of UEFA competitions.*

*1bis The Executive Committee shall define a club licensing system and in particular:*

a) *the minimum criteria to be fulfilled by clubs in order to be admitted to UEFA competitions;*

- b) *the licensing process (including the minimum requirements for the licensing bodies);*
- c) *the minimum requirements to be observed by the licensors.*

*2 It shall be a condition of entry into competition that each Member Association and/or club affiliated to a Member Association agrees to comply with the Statutes, and regulations and decisions of competent Organs made under them.*

*3 The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures”.*

111. Under article 1.01 (“Scope of Application”) of the UEL Regulations, *“The present regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2014/15 UEFA Europa League including its qualifying phase and the play-offs”.*
112. Notably, when regulating the admission criteria of the UEL competition, article 2.07.g) of the UEL Regulations establishes:

*“To be eligible to participate in the competition, a club must fulfil the following criteria:*

*[...]*

- g) *it must not have 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 national or international level and must confirm this to the UEFA administration in writing”.*

113. Furthermore, articles 2.08 and 2.09 of the UEL Regulations foresee:

*“2.08 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 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.*

*2.09 In addition to the administrative measure of declaring a club ineligible, as provided for in paragraph 2.08, 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”.*

114. Finally, in regards to the admission procedure, article 2.13 of the UEL Regulations establishes that:

*“If there is any doubt as to whether a club fulfils other admission criteria than those defined in paragraphs 2.07c) and 2.07d), the UEFA General Secretary refers the case to the UEFA Control and Disciplinary Body, which decides without delay upon the admission in accordance with the UEFA Disciplinary Regulations. UEFA may carry out investigations at any time (even after the end of the competition) to ensure that these other criteria are or have been met until the end of the competition; if such an investigation reveals that one of these other criteria is or was no longer met in the course of the competition, the club concerned is liable to disciplinary measures in accordance with the UEFA Disciplinary Regulations”.*

115. In light of and taking into account the aforementioned legal framework, the scope of the present proceedings is to determine whether the Appellant was directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match and, in that case, what the consequences should be.

b) Legal nature of the “administrative measure of declaring a club ineligible” under article 2.08 of the UEL Regulations

116. While studying the submissions made in these proceedings the Panel noticed that the treatment given by the parties and by the Appealed Decision to the “administrative measure” under art. 2.08 of the UEL Regulations is quite imprecise and ambiguous. Notably, even though the UEL Regulations expressly qualify the ineligibility period as an “administrative measure”, the Panel finds that the UAB describes and treats it as a disciplinary sanction in the Appealed Decision. In addition, most of the CAS Jurisprudence in this regard has settled cases in which UEFA not only imposed this administrative measure, but also disciplinary sanctions in accordance with article 2.09 of the UEL Regulations and the UEFA DR, and thus, with certain exceptions, there was no opportunity to specifically analyze the nature and the scope of the measure under article 2.08 of these Regulations.

117. Even though it might seem otherwise, this is not a trivial semantic question but a very relevant one that has significant implications to the case at stake. For this reason, before assessing the facts in dispute the Panel deems it necessary to define which is the legal nature of the ineligibility measure established under article 2.08 of the UEL Regulations, as this will determine how this measure shall be applied, under which legal principles, and several other legal effects.

118. As the Appealed Decision declares, *“Preserving the uncertainty of the outcome of football matches is UEFA’s prime concern. Indeed, it is the raison d’être of organized football. If supporters would know the result of a match in advance or the goals to be scored there would be no sporting interest in watching and/or attending football games. It would spell the end of football. Therefore, UEFA has a zero tolerance policy towards anyone, including club’s and association’s officials, players or members, who jeopardize the uncertainty of the outcome of football matches”.* The Panel agrees that match-fixing activities constitute one of the most serious breaches of sport principles and, in particular, those of loyalty, integrity, sportsmanship and fair play, and thus clearly jeopardizes the most essential objectives of UEFA. Consequently, to

protect the essence of football competitions, it is necessary to be extremely inflexible with match-fixing.

119. As declared by CAS jurisprudence, measures taken by an association with respect to its affiliates can be mainly divided into acts of administration and disciplinary measures (i.e. CAS 2007/A/1381 and CAS 2008/A/1583). To prevent and prosecute match-fixing activities, UEFA has implemented within its regulations a double regulatory regime, establishing two different kind of measures:

- On the one hand, as an administrative measure (articles 50.3 of the UEFA Statutes and 2.07.g and 2.08 of the UEL Regulations), it has introduced in its Statutes and competition regulations a new admission criterion according to which a club that 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 national or international level*” become automatically ineligible to participate in the corresponding UEFA competition for which it next qualifies and seeks admission.

This is the first and preventive level of UEFA’s fight against match-fixing, aimed to protect the integrity, image and reputation of its competitions.

- On the other hand, UEFA has adapted its disciplinary regulations to this new threat to football, expressly including match-fixing offences therein, in order to be able to prosecute and sanction match-fixing activities. In particular, in the UEFA DR (art. 5.2.j of the UEFA DR of 2008, which are applicable to the present case) it has defined as a breach of UEFA’s principles of conduct to “*act in a way that is likely to exert an influence on the progress and/or the result of a match by means of behavior in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party*”. Therefore, any offence of this kind is subject to the disciplinary regime established in the UEFA DR.

This is the second and sanctioning level of UEFA’s fight against match-fixing, aimed to punish match-fixing activities.

120. In order to coordinate these two separate measures, UEFA has established that the administrative measure under art. 2.08 of the UEL Regulations will be applicable “*without prejudice to any possible disciplinary measures*” (article 50.3 of its Statutes), that may be adopted by the competent disciplinary bodies (art. 2.09 of the UEL Regulations). Finally, from a procedural perspective, taking into account that the potential breach of this admission criterion needs to be proven, UEFA has established (art. 2.13 of the UEL Regulations) that when there is any doubt as to whether a club fulfils it or not, the UEFA General Secretary will refer the case to the UCDB to decide upon the admission in accordance with the UEFA DR (i.e. through the Disciplinary Proceedings and its procedural rules).

121. Taking into account this regulatory framework the Panel is of the opinion that, as it has been declared by CAS in previous occasions (i.e. TAS 2011/A/2528 or CAS 2013/A/3258), the measure of ineligibility under article 2.08 is of an administrative nature, linked to the organization of UEFA’s competitions. Notably, the Panel shares the approach given to this matter in CAS 2013/A/3258, and thus “*considers that Art. 2.08 UELR above is a regulatory provision*

*whose main purpose is to establish the eligibility criteria and the conditions of participation in UEFA competitions and not to punish a club. In the Panel's view even if the application of Art. 2.08 UELR may have the effect to exclude a club from a UEFA competition, the relevant provision is not of a sanctionatory nature. This is also confirmed by the wording of Art. 50 (3) UEFA-Statutes which reads as follows: "The admission to a UEFA competition of a Member Association or a club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures", implicitly excluding its sanctionatory nature".*

122. In this respect, contrary to what was declared by the panel in the case [CAS 2013/A/3256](#), the Panel does not deem that this "administrative measure" is to be considered as a sanction. Even though ineligibility for a competition is surely harmful for the affected club, this does not automatically transform the regulatory provision into a sanction. Indeed, this detrimental effect of the measure would also occur in case the club does not meet any of the other relevant admissibility criteria of the competition (for example, in case one of its players does not agree to respect the statutes, regulations, directives and decisions of UEFA, as per art. 2.07.e) of the UEL Regulations), without turning the correlative ineligibility into a sanction.
123. In the Panel's view, art. 2.08 of the UEL Regulations is aimed not to sanction the club but to protect the values and objectives of UEFA's competition, its reputation and integrity, not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (i.e. to protect the integrity of the competition), but to also dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions (i.e. to protect the reputation of the competition).
124. The Panel finds that the administrative nature of the measure is clearly confirmed by the fact that:
  - The wording of article 2.09 of the UEL Rules ("In addition to the administrative measure of declaring a club ineligible [...] 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") creates a clear distinction between the two types of measures. The first one, which is of an administrative nature, should be automatically applicable, while the second one, which is of a disciplinary nature, would be only applicable "if the circumstances so justify".
  - The conduct that leads to the application of the administrative measure (to "have 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 national or international level") is different to the offence leading to the disciplinary sanction ("who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of a behavior in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party"). For the sake of completeness it should be noted that this distinction in the conduct described as match-fixing, is also maintained in the UEFA DR of 2013.

As it can be seen, the conduct that entails to the application of the administrative measure is broader and more generic than the one established for the disciplinary offence which, in line with its sanctioning character, is more restrictive and accurate. Indeed, to commit the match-fixing offence established by the UEFA DR the offender must meet several requirements that the conduct banned by the admission criterion does not require, mainly that:

- the offender (not necessary the club but its players, officials, etc.) must have had an active role in the match-fixing activity (“*who acts in a way*” in order to “*exert an influence*”), contrary to the potential passive and indirect role envisaged in the administrative measure (to “*have been directly and/or indirectly involved*”). From a semantic perspective, it is clear that to act (take action, do something) is different than to be involved (to be implicated in or associated with something);
- the offender must perform this activity “*with a view to gaining an undue advantage for himself or a third party*”, which is not required in order to merely “*be directly or indirectly involved*” in a match-fixing activity.

This is precisely why article 2.09 of the UEL Regulations envisages that disciplinary sanctions will be applied only “*if the circumstances so justify*”, and not automatically, as in the case of the administrative measure.

- While the administrative measure is only applicable to clubs (because it refers to an admissibility criterion to participate in the UEFA competitions), the disciplinary sanctions could be imposed to all persons who are bound by UEFA’s rules and regulations (i.e. member associations and their officials, clubs and their officials, match officials, players, etc.).
- The time limits applicable to each measure are totally different. While under article 2.08 the administrative measure would be applied to any club found to have been directly or indirectly involved in match fixing since 27 April 2007, the disciplinary sanctions under article 2.09 are subject to the statute of limitations established by article 7 of the UEFA DR (2008) - currently article 10 of its 2013 Edition -. This means that article 2.08 of the UEL Regulations “*brought an aggravation to the prescription regulations contained in the UEFA Disciplinary Regulations. It is in other words a lex specialis to the time-barring regulations found in the UEFA DR 2006 and UEFA DR 2013 because it contains itself a time-barring rule. Hence, Art. 2.05 of the RCL declares all violations committed after 27 April 2007 as imprescriptible*” (CAS 2013/A/3297).

125. For these reasons, in the Panel’s view, the ineligibility measure under art. 2.08 of the UEL Regulations is clearly of a different nature compared to the measure under art. 2.09 and the UEFA DR. The ineligibility measure is merely an administrative measure resulting from an infringement of the admission criteria of the UEL competition, which deprives the club that has been directly or indirectly involved in match fixing of the right to participate in the UEL competition during one year, without prejudice of the potential sanctions that UEFA may impose.

126. The Panel notes that UEFA's capacity to implement this kind of admissibility criteria and ineligibility measure derives from the autonomy that sports associations have under Swiss Law, to adopt and implement their own regulations. Moreover, in the Panel's view, this administrative measure adopted by UEFA under its legal autonomy does not infringe any mandatory law and/or legal principle. On the contrary, UEFA has a clear and lawful interest in adopting this regulation, in order to fulfil its association purposes and principles. As has been already declared by the CAS (CAS 2011/A/2528), *"It is firmly in the interest of UEFA, as the organizer of sports competitions, that the integrity of its competitions is upheld and perceived by the public. The panel considers it undeniably in UEFA's interest to show the public that it takes all measures necessary to safeguard the integrity of its competitions. The panel recognizes that the UEFA Control and Disciplinary Body's decision helps to protect that interests, given the serious damage that Olympiakos Volou FC's participation in the 2011/2012 UEFA Europa League could cause to UEFA's image and that of its competitions"*
127. In any case, the Panel further notes that by signing the Admission Criteria Form the Appellant expressly accepted that the infringement of this admission criterion would lead to its ineligibility to participate in the UEL for one year (see CAS 2013/A/3297 in this respect).
128. The foregoing entails the following three relevant consequences for the present case:
- i. In connection with the ineligibility measure under art. 2.08 of the UEL Regulations, the UEFA DR are only applicable with regard to procedural matters, but not to substantive ones;
  - ii. Since the ineligibility measure is not of a disciplinary nature, the fundamental legal principles that could potentially be applicable to disciplinary matters are not relevant to the present case; and
  - iii. With regard to the costs of the present appeal, since this procedure is not *"exclusively of a disciplinary nature"*, article R65 of the CAS Code is not applicable.
129. As a consequence, the Panel shall deal with the present case under the fundamental premise that the one year ineligibility period established by art. 2.08 of the UEL Regulations is an administrative measure that does not have a disciplinary or sanctioning nature.
- c) Burden and standard of proof
130. Due to the private nature of the present proceedings, to determine which party has the burden of proof, the Panel should follow the rule established in article 8 of the Swiss Civil Code (hereinafter the "CC"), according to which *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Therefore, as recognized by the DI, in the present case the burden of proof lies on the Respondent.
131. With regard to the applicable standard of proof, the Panel observes that article 2.08 of the UEL Regulations expressly establishes that to determine whether a club fulfils the admission criterion under this article or not, the "comfortable satisfaction" standard of proof shall be applied.

Moreover it is also important to note that, when signing and submitting its Admission Criteria Form, the Appellant expressly agreed to the application of this specific standard of proof to its admission procedure.

132. Notwithstanding this, article 2.08 of the UEL Regulations does not define this standard of proof. However, the “comfortable satisfaction” standard of proof has been developed by the CAS jurisprudence (i.e. CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2010/A/2172) which has defined it by comparison, declaring that it is greater than a mere balance of probability but less than proof beyond a reasonable doubt. In particular, the CAS jurisprudence has clearly established that to reach this comfortable satisfaction, the Panel should have in mind “*the seriousness of allegation which is made*” (i.e. CAS 2005/A/908, CAS 2009/1920). It follows from the above that this standard of proof is then a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortable satisfied”.
133. In short, in the present dispute UEFA must establish the relevant facts leading to the ineligibility of the Appellant “*to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made*”.
- d) *In casu*: the potential direct or indirect involvement of the Appellant in the activity under art. 2.08 of the UEL Regulations
134. Taking into account the relevant legal framework, as well as the applicable standard of proof, the Panel shall now assess the facts of the present case, and determine whether they fall under art. 2.08 of the UEL Regulations or not. Taking into account that the scope of these proceedings is to determine if a club is eligible or not to participate in the UEL, the Panel considers that the rules on responsibility contained in the UEFA DR (art. 6 of the 2008 Edition) are not directly applicable. Therefore, the involvement of the club in the prohibited activities should result from and be proven in accordance with the UEL Regulations and the UEFA Statutes, as well as with the Swiss law.
135. It appears from the Appealed Decision that “*after having carefully examined the evidence provided by both parties, the Appeals Body is comfortably satisfied with the conclusion that the Sivasspor club officials A. and B. and the Sivasspor goalkeeper D. were implicated in activities aimed at arranging and/or influence the outcome of the above-mentioned matches*” [Sic].
136. Pursuant to art R57 of the CAS Code, “*The Panel has full power to review the facts and the law*”. Therefore, to determine to its comfortable satisfaction if the Appellant has been directly or indirectly involved in any activity that could fall under 2.08 of the UEL Regulations, the Panel can review all the evidence provided by the parties and determine which should be the applicable law *ad casum*. Furthermore, taking into account the nature of the facts of the case, the Panel should keep in mind that “*corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings (CAS 2010/A/2172)*” (CAS 2013/A/3258).

137. Notably, the Panel notes that *“In the case of phone conversations related to match-fixing, the Panel considers that this position is also applicable and people involved in match fixing will avoid using direct words in this regards, in case they might be heard, or wiretapped. As to meetings related to match fixing activities, the Panel has no doubt that they will occur in private, with as less as possible people involved”* (CAS 2013/A/3258).
138. After having carefully analyzed all the evidences produced by the parties in the present proceedings and, in particular, (i) all the wiretaps provided by the parties, (ii) the evidences and findings from the criminal investigation performed by the Turkish authorities (i.e. Police Digest), and (iii) the different judgments passed by the different Turkish Courts, (iv) the rest of the evidences produced by the parties, the Panel reaches the following conclusions with regard to the activities carried out by Sivasspor’s officials and players in connection with the Match:

da) With regards to the alleged First Front:

The Panel finds that there is evidence that prove that F. (Fenerbahçe President) approached A. (Sivasspor President) to fix the Match. In particular, F. instructed CC., an intermediary, to arrange a meeting with the Sivasspor President on 11 May 2011 for this purpose (page 467 of the Criminal Decision). After this meeting, this intermediary contacted B. (a Sivasspor board member) to *“meet privately”*.

On 13 May 2011 Fenerbahçe President gave instructions to the intermediary, CC., in order to ask B. *“to help us without showing colors”* (because he was not only a board member of Sivasspor but also a member of Fenerbahçe’s congress). After this meeting, CC. reported to Fenerbahçe President: *“I talked to that friend. They are set. He’ll go and talk about the price, he asked about what was required, he said that he would talk about it in person”*. He further confirmed that he had instructed B. to *“make it a concise conversation”*, and that *“everything should be known, but too much talking does not lead to any good, make it a concise conversation and everyone will know their duties”*.

On this same day (13 May 2011), after being approached by this intermediary, B. contacted C., a player of Sivasspor, requesting him to *“come to Istanbul after the match tomorrow... I have a business with you... It’s important you need to come”*. However, the player could not go to Istanbul on such short notice, because his wife was in the hospital. On 15 May 2011, B. contacted C. again, to insist on the need to meet. The player did not understand why it was so important to meet (*“Why do you want me to come on short notice? I don’t understand”*) and B. simply explained that *“you need to come”*, warning him *“don’t tell anyone that you talked to me people might get it wrong”*.

B. then reported to the intermediary, CC., that he was going to meet the player and that he had *“initiated the operation”*. Fenerbahçe’s President and Sivasspor’s President held a conversation a few days before the Match (on 17 May 2011) with regard to the payment of the bribe, referring to it as the *“VIP tickets”*. The money was delivered to B. by a person called DD., who carried it in a bag.

From the conversation held in the evening after the Match between the player C. with an unidentified person who asked him why he had such a poor performance, it appears that the match-fixing was accomplished (*the player said: "What can I do? We made Fenerbahçe champion" [...] "Why should I score? I didn't go there to score. I went there just to move around"*).

Consequently, taking into account the content of the above-referenced conversations, the secret code used by the individuals involved ("VIP tickets", "the operation", etc.), and the secrecy that surrounded the meetings held by those individuals, in light of all this the Panel finds that it has been established to its comfortable satisfaction that Sivasspor, through the actions of its President, one of its board members and one player fixed the Match.

At this point, the Panel should address the statements made by the Appellant in connection with the previous decisions passed by UEFA and the CAS in connection with the "Fenerbahçe case" (i.e. CAS 2013/A/3256), according to which the CAS would have declared that "UEFA's allegation in respect of the first front of match-fixing could not be proven to the comfortable satisfaction of the Panel" and thus, in the Appellant's view, this First Front should be disregarded on the basis of the *res indicata* principle. In this regard, besides highlighting that *res indicata* does not apply to the present case (because the triple identity required - same subject matter, same legal grounds and same parties - to allow its application to a subsequent proceeding is not met), the Panel reminds the Appellant that, in accordance with Article 2.08 UEL Regulations, the UAB (and this Panel) is entitled to rely on but is not bound by the content of this award. Therefore, the conclusions reached by the CAS at CAS 2013/A/3256 with regard to this First Front (which the Panel notes that were related to Fenerbahçe's officials, but not to Sivasspor's officials or players), even though have been taken into account by this Panel, they do not bound it to reach the same conclusions, being hence the Panel free to reach its own conclusions in accordance with the evidence submitted by the parties. Consequently, the Appellant's petition in this regard is rejected.

db) As regards to the alleged Second Front:

From the evidence submitted by the parties, the Panel finds that it can be established that Fenerbahçe approached D. (the Goalkeeper) through the intermediary T. and the Agent X. with the purpose to fix the Match.

In particular, on 13 May 2011, T. contacted the Agent twice to inform him that Fenerbahçe's President (referred to as "Number 1") wanted to meet him ("*Number 1 will meet with you, ... but none should know about this*"), confirming the latter that "*if the emperor is asking, of course I'll go... will he take me under his wings?*". In this conversation, the intermediary confirmed the Agent that he had told Fenerbahçe's President "*that we should make you the only authority on this*" to which he answered "*okay, he [the Agent] is our brother now*". In addition, the intermediary and the Agent further held a conversation on 16 May 2011 in which apparently they discussed the price of the bribe ("*he [G.] said that you should give 300 to that brother and take 200 to yourself... he wants to handle this without fail*").

After having been approached by Fenerbahçe’s intermediary, the Agent first contacted the Goalkeeper to confirm if he was going to play in the Match against Fenerbahçe (conversation on 15 May 2011, tape number 3454), and to arrange a meeting on the next day. On 17 May 2011 they held the following conversation: Goalkeeper: *“I didn’t notice that you wrote me last night”*, Agent: *“I asked coach what he was thinking about it. He said that they bring .... after this [...] business is more clear. .... just like I said (he laughs) be relaxed think about the operation...let’s finish the operation first without any loss, then you can have your vacation”*, Goalkeeper: *“Not so easy, I want raise”*, Agent: *“Raise? It is great there. you be relaxed. leave out the rest ... money...who should I talk to here? [referring to R., the brother of the Goalkeeper] your brother?”*, Goalkeeper: *“You don’t need to talk to anyone, why should you talk?...See you on the way back”*, Agent: *“Because I’ll receive the present on Sunday afternoon, okay”*, Goalkeeper: *“It doesn’t matter, It is not important whether it stays on you or on me. “; (tape: 3461).*

With regard to the word “operation”, the Appellant considers that it is a wrong translation of the Turkish word “ameliyati”, which indeed would mean “surgery” (referring to the surgery that the Goalkeeper was going to have the day after the Match). However, taking into account that the 16<sup>th</sup> High Criminal Court of Istanbul, who obviously heard this conversation in Turkish, interpreted this word as an “operation”, the Panel finds that precisely this should be the correct interpretation of the word.

On 21 May 2011, the day before the Match, the intermediary T. had a conversation with G. (Fenerbahçe board member), in which he confirmed that the Goalkeeper was going to play the Match, and stated that *“we’ll beat them.... I’m very relaxed, I don’t know why but I’m really relaxed, I’m thinking about whether I should buy Mini Cooper or Peugeot 508”* (which apparently was the way Fenerbahçe rewarded him for his match-fixing activities).

On 22 May 2011, just one hour and five minutes before the Match started, Z. (Fenerbahçe board member), who at that moment was with the Fenerbahçe players, had a conversation with G. (Fenerbahçe board member), in which the latter made him the following recommendation for the match: *“I don’t want to disturb game plan; but shots as many as possible”*. Notably, as the Criminal Decision highlights (page 508), *“In this competition, it can be seen that three of Fenerbahçe’s four goals were score with a shot from a distance (especially the first and the second goal), and this shows that G.’s advice was right on target”*.

During the Match, before the end of the first half and after two goals from Fenerbahçe, a person named EE. called I. (Beşiktaş member) – at that time the Goalkeeper was playing with Sivasspor under a temporary loan from Beşiktaş – and told him to *“ask D. how much money he took”* (*“Check it. he gave away two stupid goals...he didn’t even raise his hand to the ball in both positions”* – page 508 of the Criminal Decision). Furthermore, during half-time of the Match, the Agent contacted the intermediary, T., and told him *“did you see how that kid gave away the goal?”*, [...] *“What else is going to happen? Fener will win. There is nothing else about it. Fener does not go to the goal... But after all... we gave away the goal really badly, I’m sorry about that kid”* (tape 3473 of the wiretaps).

Once the Match finished, R. (the Goalkeeper's brother) called the Agent to analyze the goals scored by Fenerbahçe, apparently discussing if the goals could be seen as "normal", or if they could lead to any suspicion about match-fixing. In particular, the Panel notes that it could be concluded from the following conversation that both individuals were worried about the potential rumors of match-fixing. Notably, they stated (recording 8 provided by the Appellant):

*Agent: Ok ok, so don't look demoralized, or he'll [the Goalkeeper] be upset too.*

*Goalkeeper's brother (GB): Ok my brother.*

*Agent: Yes screw it.*

*GB: I am very relaxed but you know people talk.*

*Agent: Don't worry brother, they would talk anyway, everybody, whatever happens they'll talk about it.*

*GB: I mean all.*

*Agent: There is nothing on T.V. right now, is there?*

*GB: Yes, there is nothing on T.V.*

*Agent: It could be, screw it, it is normal they will talk anyway.*

*GB: Yes.*

*Agent: I mean goal is goal, they would say anyway, even for a normal, flawless given away goal".*

From the wiretapped telephone conversations and the in-person follow-up done by the police with regard to the individuals involved in the match-fixing activity, it also appears that (i) the intermediary T. was rewarded with a car from G. (Fenerbahçe board member), (ii) on 31 May 2011 the Agent and the intermediary T. had a meeting with G. (Fenerbahçe board member) at the office of the latter, and came out later with a white envelope – apparently with the money – that he carried in his left pocket jacket. After this meeting the Agent met the Goalkeeper and his brother in a restaurant called "Big Chefs" in which apparently he gave the Goalkeeper the bribe.

Consequently, taking into account the content of the above-referenced conversations, the secret code used by the involved individuals ("Number 1", "the Emperor", "he is our brother now", "think about the operation", etc.), and the secrecy that surrounded the meetings held by those individuals ("Number 1 will meet with you... but none should know about this"), in light of all this the Panel finds that it has been established to its comfortable satisfaction that the Goalkeeper, the Agent, and the Intermediary, T., fixed the Match.

- dc) Finally, with regard to the Third Front, taking into account that the Panel has found to its comfortable satisfaction that the Match was fixed through the activities carried out within the First Front and Second Front, the Panel deems it unnecessary to analyze this Third Front, as the activities described above are sufficient to find art. 2.08 of the UEL Regulations is applicable *ad casum*.
139. Moreover, the Panel notes that these conclusions are also in line with the findings reached by the 16<sup>th</sup> High Criminal Court of Istanbul in its judgment passed on 2 July, and with the judgment passed by the 5<sup>th</sup> Criminal Chamber of the Supreme Court of Istanbul on 17 January 2014, which confirmed the Criminal Decision. In particular, as described in the Supreme Court's judgment:
- "It was understood that a match-fixing agreement was made with Sivasspor football team players C. and D. by the crime organization led by F. for playing badly in the competition in exchange for money so that the Sivasspor – Fenerbahçe AŞ football match would result in favor of Fenerbahçe AŞ football team; that a match-fixing agreement was also made with Sivasspor Club's president A., that suspects G., V., H., B., CC., T., X. and W. – who were acting in line with the instructions of F. – took active part in these match-fixing activities; that they coordinated the whole process together; that D. – brother of the suspect R. – was talked to with the purpose of match-fixing; that he facilitated the execution of the crime by aiding the agreement process and that he participated in the action as an accessory [...]"*
140. In this respect, the Appellant argues that, due to the appeals filed by A. (Sivasspor President), the Goalkeeper, and C. (Sivasspor player), the 5<sup>th</sup> Criminal Chamber of the Supreme Court has decided to send the case file back to the first instance body, in order to consider the possibility of the postponement of the imprisonment decided for match-fixing accusations with respect to those individuals (but not with respect to B., whose appeal was rejected). Under the Appellant's opinion, this means that *"the decision of the first instance criminal court has been reversed as a whole by the Supreme Court. Therefore, a final verdict has yet not been reached about the individuals concerned"*.
141. In addition, the Judgment passed on 25 June 2014 by the 13<sup>th</sup> Court of Aggravated Felony of Istanbul has accepted *"the requests for retrial regarding convicted F., S., G., T., B. and U"*. Therefore, as per the Appellant's opinion, the Panel cannot rely on the Criminal Decision to decide the present case.
142. In that regard, the Panel wants to point out that:
- The judgment passed by the 13<sup>th</sup> Court of Aggravated Felony of Istanbul is based on a procedural evidentiary issue (the amendment of the Turkish Penal Code by the Turkish Law 6526) but not on the incorrect assessment of the facts. In particular, that *"certain actions approved by the Supreme Court are related with the crimes listed in article 220 of the Code of Criminal Procedure [the crime of setting an organization to commit crime], which were removed from the catalogue crimes for which communication is identified, listened and recorded and monitored by means of technical instruments"* (first paragraph of page 5 of the aforementioned judgment).

Therefore, since the amendment to the Turkish Penal Code, wiretaps apparently cannot be used to prosecute the crime listed under art. 220 of the Code of Criminal Procedure<sup>1</sup>.

For this reason, taking into account that (i) some of the cases related to the match-fixing investigation were already judged and (ii) some other cases were still being judged, the 13th Court of Aggravated Felony considered that it was possible “*reaching different judicial results among the accused persons for whom the verdicts are approved and for whom the prosecution is ongoing for the same event*”, and thus decided to re-hear, among others, the cases of Sivasspor board member, B., the President of Fenerbahçe, F., the Fenerbahçe board member G., the intermediary T.

- Nevertheless, the Panel deems it necessary to remind the Appellant that, pursuant to art. 2.08 of the UEL Regulations, “*UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court*”. Accordingly, UEFA is entitled to rely, or not, on the findings of a state Court, especially in cases of match-fixing where it does not have the same resources and cannot undertake the same type of investigation that the public authorities do. However, UEFA must make its decision autonomously and independently on the basis of all of the factual circumstances and evidence available to it. “*Thus, a criminal conviction from a state court can corroborate, confirm, and/or supplement the impressions acquired and conclusions reached by the federation itself. It is in this way that the decision of the High Court can be used in the present case as an evidentiary indicator of the correctness of the challenged decision of the UEFA Appeals Body*” (CAS 2013/A/3258).
- For the sake of clarity, with regard to the use of these wiretaps as an evidence in the present proceedings, besides remarking that in its judgment the 13<sup>th</sup> Court of Aggravated Felony has expressly rejected that the wiretap records were fraudulent (“*Regarding the claim stating that fraudulence was made on the hearing minutes [...] it may not be considered as fraudulence, therefore the request in this regard has been decided to be rejected by unanimous vote*”), the Panel notes that, as has been consistently established by CAS jurisprudence (CAS 2013/A/3297 and CAS 2009/A/1879), even if evidence may not be admissible in a civil or criminal state court, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account.

In particular “*the Panel concurs that steps must be taken, in regard to the public interest in finding the truth in match-fixing cases and also in regard to the sport federations’ and arbitration tribunals’ limited means to secure evidence, to open up the possibility of including evidence in the case although such evidence*

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<sup>1</sup> The grounds of this decision state: “*The crime of setting and organization to commit a crime as provided in article 220 of Turkish Penal Code was removed from the catalogue crimes that are monitored by means of the technical instruments provided in article 140 of the Code of Criminal Procedure and for which communication is identified, listened and recorded as regulated in article 135 of the Code of Criminal Procedure as a result of the amendment with Law 6526.*

*In the file presented to our court, certain actions approved by the Supreme Court are related with the crimes listed in article 220 of the Code of Criminal Procedure, which were removed from the catalogue crimes for which communication is defined, listened and recorded and monitored by means of technical instruments.*

*It is possible that reaching different judicial results among the accused persons for whom the verdicts are approved and for whom the prosecution is ongoing for the same event would damage the trust in justice”.*

*could potentially have been secured in an inappropriate manner so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy*". (CAS 2013/A/3297).

- Therefore, the Panel considers that the wiretaps produced to the present file are deemed valid and admissible evidence for the purposes of the present proceedings.
  - The Panel hence deems that it is of no importance that the criminal cases concerning A. (Sivasspor President), the Goalkeeper, and C. (Sivasspor player) have been sent back to the first instance body, nor is it important that the 13<sup>th</sup> Court of Felony of Istanbul has granted a decision to re-hear some of the cases previously adjudicated.
143. Finally, the Panel shall determine if the activities executed by the Sivasspor's players and officials made the Club not meet the admission criterion established in art. 2.07.g) of the UEL Regulations.
144. In this regard, the Panel shall firstly reject the Appellant's statement according to which only the Goalkeeper is accused of match-fixing activities with regard to the Match. As it has been reasoned above, the Panel is of the opinion that not only the Goalkeeper, but also Sivasspor's President, one of its board members, and another player were involved in activities aimed to fix the Match. Therefore, when assessing the consequences of those activities, the Panel shall take into account that all these individuals linked with Sivasspor were involved in those activities.
145. According to UEFA's Statutes, an Official is *"every board member, committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical or administrative matters at UEFA, a Member Association, League or club as well as all other persons obliged to comply with the UEFA Statutes"*. Therefore, the Panel is of the opinion that, for the purposes of article 2.08 of the UEL Regulations, both A. (Sivasspor President) and B. (Sivasspor board member) have to be considered as club officials.
146. Taking the wording of article 2.08 of the UEL Regulation into account, the Panel concludes that the Appellant was indeed involved in several activities aimed at influencing the outcome of the Match. In the case at stake, there is enough evidence to reach the conclusion to the comfortable satisfaction of the Panel that the Appellant was (through its President, a board member and two players) involved in several activities aimed at arranging and influencing the outcome of the Match (see paragraph 138 for details).
147. With regard to the Appellant's opinion according to which the Club had no sporting or economic benefit from these match-fixing activities, the Panel reminds the Appellant that, in order to declare a club ineligible under art. 2.08 of the UEL Regulations, it is irrelevant whether the Club itself, as a sporting institution, had any economic or sporting benefit or not.
148. In addition, the Panel does not find that the consequence under art. 2.08 of the UEL Regulations for the breach of the admission criterion established by art. 2.j) of the same regulations, is unjustified, disproportionate or unconnected with the purpose underlying to its adoption, nor contrary to mandatory law or to the fundamental principles and values of Swiss

Law (indeed, as an analogy, a similar responsibility could be found in civil Swiss Law with regard to the quasi-objective responsibility of the employer for the damages caused by his employees that establishes art. 55 of the Swiss Code of Obligations). Therefore, in the Panel's view, the interpretation given to art. 2.08 of the UEL Regulations is in line with and does not infringe Swiss Law.

149. Ultimately, the Panel further notes that by signing the Admission Criteria Form, the Appellant expressly accepted that if it was to be found to have been involved in activities aimed at arranging or influencing the outcome of a match at national or international level, it would be declared ineligible to participate in any UEFA competition for one year. Therefore, the Appellant shall accept the consequences for not meeting these criteria and for having infringed the regulations of the federation or association (UEFA).
150. As a consequence of the foregoing, the Panel considers that it has been proved to its comfortable satisfaction in the terms of art. 2.08 of the UEL Regulations that the Appellant has been involved in an activity aimed at influencing the outcome of the Match, and thus it deems appropriate to declare the Club ineligible for participating in the 2014/2015 UEL organized by UEFA.

## ON THESE GROUNDS

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

1. The appeal filed on 13 June 2014 by Sivasspor Kulübü against the decision adopted by the UEFA Appeals Body on 3 June 2014 is dismissed.
2. The decision adopted by the UEFA Appeals Body on 3 June 2014 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.