



**Arbitration CAS 2018/A/5977 FC Rubin Kazan v. Union des Associations Européennes de Football (UEFA), award of 29 May 2019**

Panel: Mr Manfred Nan (The Netherlands), President; The Hon. Michael Beloff QC (United Kingdom); Prof. Luigi Fumagalli (Italy)

*Football*

*Financial Fair-Play*

*Applicable versions of the regulations in case of a settlement agreement*

*Application of the lex mitior*

*Related party and significant influence*

*Media releases issued by a club*

*Powers of a CAS panel as regards a sanction imposed by an association*

*Proportionality of the sanction*

1. The reference in a settlement agreement between a club and UEFA to break-even requirements for future monitoring periods is understood to be a dynamic reference to future editions of the UEFA's Club Licensing and Financial Fair Play Regulations (UEFA CL&FFPR). It would be unacceptable if only the edition of the UEFA CL&FFPR applicable at the time of the conclusion of the settlement agreement would be applied to the club, whereas other clubs, not falling under any settlement regime, would have to comply with the subsequent editions of the UEFA CL&FFPR for the same monitoring periods.
2. The principle of *lex mitior* does not permit one to pick and choose between the most favourable individual provisions from different sets of rules; such would indeed offend against the principle of legality. Rather, the most favourable set of rules is to be applied as a whole.
3. According to the UEFA CL&FFPR, an entity is related to a reporting entity (the club) if, *inter alia*, both are controlled, jointly controlled or significantly influenced by the same government. "Significant influence" is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. It is not about being in a position to take decision, but about the power to participate in the decision-making process. In other words, to qualify an entity as related in accordance with the UEFA CL&FFPR, requires some sort of direct influence. The clearest example of such direct influence is the competence of taking decisions, be it in a personal capacity or in the framework of a committee. If it is by means of a committee, the individual member or members must have a certain influence on the decision-making process.
4. Media releases, published by a club itself on its website, allow a *prima facie*

**presumption that such information is correct. The burden of proof subsequently shifts to the club to prove that such media releases are incorrect.**

5. **Whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction.**
6. **The pronunciation of an exclusion from participation in future competitions is an appropriate sanction for violating the terms of a settlement agreement. Indeed, a settlement agreement is concluded as a consequence of the fact that the club has already violated the UEFA CL&FFPR before and is therefore afforded a second chance. If the club fails to comply with the terms of this second chance, a serious sanction is warranted and the exclusion from participation in a future edition of any of the UEFA club competitions is not disproportionate.**

## **I. PARTIES**

1. FC Rubin Kazan LLC (the "Club") is a professional football club with its registered office in Kazan, Russia. The Club is registered with the Football Union of Russia (the "FUR"), which in turn is affiliated to the *Union des Associations Européennes de Football*.
2. The *Union des Associations Européennes de Football* ("UEFA") is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

## **II. INTRODUCTION**

3. The present appeal arbitration procedure concerns a dispute between the Club and UEFA related to UEFA's Club Licensing and Financial Fair Play Regulations (the "UEFA CL&FFPR"). The Adjudicatory Chamber of the UEFA Club Financial Control Body (the "Adjudicatory Chamber") sanctioned the Club for an alleged violation of a settlement agreement concluded between UEFA and the Club in 2014. The Club is challenging the Adjudicatory Chamber's decision to ban the Club from participating in the next UEFA club competition for which it would otherwise qualify in the next two sporting seasons (i.e. 2019/2020 and 2020/2021).

## **III. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings.

This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion in the section on merits below.

5. On 8 May 2014, the Club entered into a settlement agreement (the “Settlement Agreement”) with UEFA, following the Club’s acknowledgement that it had failed to fulfil the break-even requirements set out in Articles 58 to 64 and 68 of the UEFA CL&FFPR (2012 edition), because it had an aggregate break-even deficit for the monitoring period 2013/2014 which exceeded the acceptable deviation by EUR 66,000,000. The Settlement Agreement provides, *inter alia*, the following:

*“1.1 This Agreement sets out the specific rules applicable to Rubin for the duration of the period covered by this Agreement (the “Settlement Regime”). The Settlement Regime shall cover the three sporting seasons 2014/15, 2015/16 and 2016/17 and the reporting periods ending in 2015 and 2016, respectively.*

*1.2 The objective of this Agreement is to achieve that Rubin is Break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2017/18; i.e. the aggregate Break-even result for the reporting periods 2015, 2016 and 2017 must be a surplus or a deficit within the acceptable deviation in accordance with Art. 63 UEFA CLFFPR.*

*3. Operational and Financial Measures*

*3.1 Break-even result 2015: Rubin undertakes to reach a maximum Break-even deficit of EUR 30 million for the reporting period ending in 2015.*

*3.2 Break-even result 2016: Rubin undertakes to reach a minimum Break-even result of EUR 0 million for the reporting period ending in 2016.*

*3.3 Aggregate cost of employee benefits expenses relevant for the Break-even calculation: For each of the reporting periods covered by this Agreement, the total amount of the aggregate cost of employee benefit expenses cannot exceed the total amount of the aggregate cost of employee benefit expenses reported in the reporting period ending in 2013, i.e. EUR 72 Mio.*

[...]

*4. Financial Contribution and Withholding of Prize Money*

[...]

*4.2 Rubin agrees that an additional amount of EUR 3 million shall be temporarily withheld. If the Operational and Financial Measures set out in 3.1 and 3.2 are fulfilled it shall be paid to Rubin; if they are not fulfilled the full amount shall become payable by Rubin to UEFA and the amount shall be retained.*

[...]

9. *Varia*

9.1 *All terms used in this Agreement shall have the same meaning as defined in the applicable UEFA rules, in particular the UEFA CLFFPR. All calculations and all reporting measures under this Agreement shall be made in accordance with the applicable UEFA rules, in particular the UEFA CLFFPR. For the avoidance of doubt, this includes for instance the calculation of the Break-even results.*

9.2 *This Agreement shall expire at the end of the Settlement Regime, unless Rubin has reached full compliance with the Break-even Requirements at an earlier stage (as per Art. 7.3) or UEFA had to initiate new measures because of a breach by Rubin of this Agreement (as per Art. 8).*

[...]

6. The Club did not qualify for entry into the 2014/2015 UEFA club competitions.
7. In June 2015, the Club was admitted to the 2015/2016 UEFA Europa League as it met all admission criteria listed in the Regulations of the UEFA Europa League 2015/2016 Season.
8. On 15 March 2016, the Club submitted to the UEFA Administration the break-even information for the reporting period ending in 2015, in accordance with Article 54(2)(d) UEFA CL&FFPR. According to the declared break-even information, the Club indicated a break-even deficit of EUR 4,000,000 for the reporting period ending in 2015.
9. On 14 June 2016, following an assessment of the operational measures set for the reporting period ending in 2015, the Investigatory Chamber of UEFA's Club Financial Control Body (the "Investigatory Chamber") determined that the donations from the main donator, i.e. Non-commercial Organization "Fund for Promotion of Physical Culture and Sport" ("NKO Fund"), for a total of EUR 28,000,000 had to be reported as donations from related parties, and thus had to be fully excluded from the break-even calculation. Consequently, the Club's break-even information for the reporting period ending in 2015 was adjusted accordingly (i.e. the break-even deficit for the reporting period ending in 2015 amounted to EUR 32,000,000).
10. The Investigatory Chamber considered that the Club was in line with the break-even target of a maximum deficit of EUR 30,000,000 for the reporting period ending in 2015 as set out in the Settlement Agreement. When assessing the Club's break-even position, the Investigatory Chamber considered the applicable mitigating factors defined in Annex XI UEFA CL&FFPR, more specifically the factor "Operating in a structurally inefficient market".
11. The Club did not qualify for entry into the 2016/17 UEFA club competitions.
12. On 15 March 2017, the Club submitted to the UEFA Administration the break-even information for the reporting period ending in 2016, in accordance with Article 54(2)(d) UEFA CL&FFPR. Contrary to the decision of the Investigatory Chamber taken on 14 June 2016 with regard to the related party involvement, the Club did not disclose, on the basis

of changes in the Club's structure in late 2015, any more donations from NKO Fund as donations from a related party for the reporting period ending in 2016.

13. On 21 May 2017, the Club played its last official match in the 2016/2017 sporting season. The Club submits that, in accordance with Clause 1.1 of the Settlement Agreement, the Settlement Regime therefore ended on this date.
14. On 23 May 2017, following the assessment of the operational measures set for the reporting period ending in 2016, the UEFA Administration informed the Club that the Investigatory Chamber concluded that the assessment could be finalised only upon the submission of an independent third party assessor report on the fair (market) value of sponsorship income from three entities within TAIF Group considered as related parties, i.e. TAIF, Kazanorgsintez and Nizhnekamskneftekhim ("TAIF Group"). The total revenue from these entities amounted to EUR 44,000,000 in the reporting period ending in 2016.
15. Furthermore, the Investigatory Chamber was of the opinion that a comprehensive assessment procedure with regard to donations received from NKO Fund and the joint stock company Tatenergo ("Tatenergo") for the reporting period ending in 2016 (amounting to EUR 14,000,000) would be continued during the 2017/2018 season in order to verify whether the Club and these donators should be considered as "related parties".
16. The Club did not qualify for entry into the 2017/2018 UEFA club competitions.
17. On 22 August 2017, the Club submitted an August progress report and its preliminary figures for the reporting period ending in 2017.
18. On 29 August 2017, the Club provided a Sponsorship Evaluation report issued by Nielsen Sports for the reporting period ending in 2016 (the "Nielsen Report 2016"). According to the Nielsen Report 2016, the maximum fair value for TAIF Group sponsorship was equivalent to EUR 26,000,000. Based on the Nielsen Report 2016, the Club was requested to amend its break-even calculation for the reporting period ending in 2016 and reflect the sponsorship revenue at fair value in its next submission of the break-even information.
19. On 31 August 2017, the Investigatory Chamber decided, taking into account the December statutory closing date of the Club, to assess the reporting periods ending in 2016 and 2017 in detail once the final break-even information for the reporting period ending in 2017 would be submitted in March 2018 on the basis of audited annual financial statements.
20. On 2 February 2018, the Club submitted a February progress report. This report, *inter alia*, highlighted that the Club had engaged Nielsen Sports to provide a second valuation of its related party sponsorship agreements for the reporting period ending in 2017.
21. On 1 March 2018, the football activities were transferred from the legal entity "Municipal Autonomous Institution FC Rubin Kazan" ("MAI Rubin") to the new legal entity "Football Club Rubin Kazan Limited Liability Company" ("FC Rubin Kazan LLC"). The new legal

entity took over all rights and obligations of the old legal entity, including the obligations under the Settlement Agreement, and received a license from the FUR.

22. On 7 March 2018, the Club provided the second Sponsorship Evaluation report issued by Nielsen Sports for the reporting period ending in 2017 (the “Nielsen Report 2017”). According to the Nielsen Report 2017, the maximum fair value for TAIF Group sponsorship was equivalent to EUR 33,000,000.
23. On 28 March 2018, the UEFA Administration forwarded to the Club a separate report issued by Nielsen Sports (the “Nielsen Report 2018”). This report included a standardized discounting of “maximum fair value” to reflect the return on sponsorship investment as per standard market practices. According to Nielsen Sports, the discounted amount would represent the fair value. Following this analysis, maximum fair values are to be discounted between 40% (on the basis on non-top 5 league clubs) and 66% (average on the basis of all European clubs).
24. On 11 April 2018, the Club submitted to the UEFA Administration the break-even information for the reporting periods ending in 2016 and 2017, in accordance with Article 54(2)(d) UEFA CL&FFPR. On the basis of the Nielsen Reports 2016 and 2017, the Club reflected the sponsorship income from TAIF Group at its fair value. According to this submission, the Club declared break-even deficits of EUR 19,000,000 for the reporting period ending in 2016 and EUR 20,000,000 for the reporting period ending in 2017.
25. On 19 April 2018, the Investigatory Chamber decided to engage independent auditors to confirm the completeness, validity and accuracy of the Club’s submission.
26. On 26 April 2018, the FUR informed the UEFA Administration that the football activities of the Club were transferred from the legal entity MAI Rubin to a new legal entity, i.e. FC Rubin Kazan LLC. The change of membership with the FUR was approved by the FUR Executive Committee on 16 March 2018. The new legal entity took over all rights and obligations from the former entity, including the obligations under the Settlement Agreement.
27. On 27 April 2018, the Club was notified that the Investigatory Chamber requested a compliance audit to be performed at the Club’s premises. Deloitte LLP (“Deloitte”) was asked to perform the compliance assessment of the Club. The audit focussed on the following key items:
  - i) Review of the annual financial statements and reporting perimeter for the reporting period ending in 2017; and
  - ii) Validation of the Club’s disclosed donations received from NKO Fund and Tatenergo in the reporting periods ending in 2016 and 2017 and assessment of the relationship with the Club in line with the UEFA CL&FFPR.

28. On 31 May 2018, Deloitte issued its draft compliance report which was forwarded to the Club for comments and observations.
29. On 6 June 2018, further to the submission of observations by the Club, Deloitte issued its final compliance report (the “Deloitte Report”), which included the following key conclusions:
  - i) Finding 1: It was identified that the Club had incorrectly accounted for its player registration disposals with its financial statements for 2017, and hence the Club’s break-even submission was incorrect. The net impact of the identified variances is an overstatement of the break-even result by EUR 15,000,000.
  - ii) Finding 2: It was further identified that the income of EUR 3,000,000 related to the disposal of property received by the Club from the Kazan City Municipality cannot be considered as relevant income for break-even purposes.
  - iii) Finding 3-5: It was further concluded that NKO Fund and Tatenergo were related to the Club based on the related parties definition included in the UEFA CL&FFPR (i.e. Annex X(F)(3)(b) UEFA CL&RRPR edition 2015). As a result, the transactions (in particular, donations) with NKO Fund and Tatenergo should be adjusted in order to reflect their fair value. Thus, according to Deloitte, the break-even result should be decreased in the reporting periods ending in 2016 and 2017 by EUR 18,000,000 and EUR 23,000,000 accordingly.
30. Also on 6 June 2018, the Club acknowledged Findings 1 and 2 of the Deloitte Report and amended its break-even calculation accordingly. Thus, the restated break-even deficit for the reporting period ending in 2017 amounted to EUR 37,000,000. The break-even deficit for the reporting period ending in 2016 remained unchanged compared to previous submissions of the Club (EUR 19,000,000). With regard to Findings 3-5 as to the fair value of transactions with the entities NKO Fund and Tatenergo, the Club did not amend its break-even calculation and submitted arguments to support its conclusion that this should not be the case. The Club in particular (i) argued that the funds donated by NKO Fund and Tatenergo were not from “related parties” and were used by the Club for its operational activities; and (ii) as a mitigating factor, stated that it was not receiving the donations from the second quarter of the reporting period ending in 2017 and, thus, revenues of the Club were deriving mainly from sponsorship deals. The Club declared an aggregate break-even deficit of EUR 87,563,000 for the reporting periods ending in 2015, 2016 and 2017 as follows:

	T (Financial Year 2017)	T-1 (Financial Year 2016)	T-2 (Financial Year 2015)
Declared Relevant Income	EUR 70,301,000	EUR 72,482,000	EUR 32,054,000
Declared Relevant Expenses	EUR 107,473,000	EUR 91,360,000	EUR 63,567,000
Declared break-even result	-/- EUR 37,172,000	-/- EUR 18,878,000	-/- EUR 31,513,000
<b>Aggregated break-even result in 2017/2018</b>	<b>-/- EUR 87,563,000</b>		

31. On 7 June 2018, the UEFA CFCB Chief Investigator decided (the “Referral Decision”), after having consulted with the other members of the UEFA CFCB Investigatory Chamber, that the Club had not complied with the terms of the Settlement Agreement, and decided to refer the case to the UEFA CFCB Adjudicatory Chamber in accordance with Article 8.1 of the Settlement Agreement and Article 15(5) UEFA CL&FFP Procedural Rules. By means of the Referral Decision, the UEFA CFCB Chief Investigator suggested to the Adjudicatory Chamber to impose the following disciplinary measure on the Club:

*“Exclusion from one UEFA club competition for which FC Rubin Kazan LLC will qualify in the future, starting from season 2018/2019”.*

32. In particular, the break-even result as calculated by the UEFA CFCB Chief Investigator is as follows:

	T (Financial Year 2017)	T-1 (Financial Year 2016)	T-2 (Financial Year 2015)
Declared break-even result submitted by the Club	-/- EUR 37,172,000	-/- EUR 18,878,000	-/- EUR 31,513,000
Investigatory Chamber adjustments based on Deloitte Report	-/- EUR 23,057,000	-/- EUR 17,526,000	-
Break-even result	-/- EUR 60,229,000	-/- EUR 36,404,000	-/- EUR 31,513,000
<b>Aggregated break-even result in 2017/2018</b>	<b>-/- EUR 128,146,000</b>		

33. In reaching his final conclusions, the UEFA CFCB Chief Investigator also took into account the mitigating factor “operating in a structurally inefficient market” as defined in Annex XI(g) UEFA CL&FFPR, which amounted to approximately EUR 52,000,000 in total, resulting in an aggregate break-even result of EUR 75,953,000. Furthermore, according to the UEFA CFCB Chief Investigator, after deducting the total acceptable deviation of EUR

30,000,000 the Club had a break-even deficit of EUR 45,953,000. This can be reflected as follows:

	T (Financial Year 2017)	T-1 (Financial Year 2016)	T-2 (Financial Year 2015)
Break-even result	-/- EUR 60,229,000	-/- EUR 36,404,000	-/- EUR 31,513,000
Mitigating factor (inefficient market)	EUR 20,257,000	EUR 17,291,000	EUR 14,645,000
Aggregated break-even result considered by the Investigatory Chamber	-/- EUR 39,972,000	-/- EUR 19,113,000	-/- EUR 16,868,000
Aggregated break-even result in 2017/2018	-/- EUR 75,953,000		
Acceptable deviation	EUR 30,000,000		
<b>Break-even breach</b>	<b>-/- EUR 45,953,000</b>		

34. On 6 August 2018, the Club filed its observations to the Adjudicatory Chamber, *inter alia*, denying the existence of a Board of Trustees within the structure of its administration and asserting that its influence over the operating performance of the Club cannot therefore be assessed as significant, with the consequence that the donations of NKO Fund and Tatenergo should not be considered as donations from related parties.
35. On 19 September 2018, the Adjudicatory Chamber issued its decision (the “Appealed Decision”), containing the following operative part:
- “1. FC Rubin has failed to comply with the terms of the Settlement Agreement.
  2. To impose on FC Rubin an exclusion from participation in the next UEFA club competition for which it would otherwise qualify in the next 2 (two) seasons (i.e. the 2019/2020 and 2020/2021 seasons).
  3. The Settlement Agreement shall cease to have effect after this Decision becomes final and binding.
  4. FC Rubin is to pay three thousand Euros (€3,000) towards the costs of these proceedings.
  5. The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to FC Rubin.
  6. This Decision is final and shall be notified to:
    - a) FC Rubin;
    - b) the FUR;

- c) *the CFCB Investigatory Chamber; and*
- d) *the UEFA administration”.*

36. In the grounds of the Appealed Decision, the Adjudicatory Chamber essentially concluded that it agreed with the position of the Investigatory Chamber that NKO Fund and Tatenergo had to be considered as related parties and that the break-even result submitted by the Club had to be adjusted accordingly. In short, the Adjudicatory Chamber determined that the Club had failed to comply with the terms of the Settlement Agreement since it had an aggregate break-even deficit which exceeded the relevant acceptable deviation by an amount of EUR 45,953,000 for the reporting periods ending in 2015, 2016 and 2017. For the disciplinary measures to be imposed, the Adjudicatory Chamber considered that an exclusion from one UEFA club competition for which the Club would otherwise qualify in the next two seasons (i.e. the 2019/2020 and 2020/2021 seasons) to be the appropriate measure.

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

37. On 29 October 2018, the Club filed a Statement of Appeal with CAS against the Appealed Decision, in accordance with Articles R47 and R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). The Club named UEFA as the sole respondent. The Club nominated The Hon. Michael J. Beloff M.A. Q.C., Barrister in London, United Kingdom, as arbitrator.
38. On 7 November 2018, the Club filed an application for a stay, with the following requests for relief:
- “1. *To immediately stay the execution of item no. 2 of the operative part of the decision issued on 19 September 2018 by the UEFA Club Financial Control Body Adjudicatory Chamber in the case AC-08/2018, by means of which FC Rubin was excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next 2 (two) seasons.*
  - 2. *To order the Respondent to bear any costs incurred with the present procedure”.*
39. On 10 November 2018, UEFA nominated Mr Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy, as arbitrator.
40. On 19 November 2018, upon being invited to do so by the CAS Court Office, the Club filed its position in respect of the Club’s application for a stay, requesting it to be dismissed.
41. On 27 November 2018, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;

- The Hon. Michael J. Beloff M.A. Q.C., Barrister in London, United Kingdom; and
  - Mr Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy, as arbitrators
42. On 30 November 2018, further to enquiries from the parties in this regard, the CAS Court Office advised the parties that the Panel intended to fix a hearing date in February or March 2019 and guaranteed that, in any event, the operative part of the award would be rendered on or before 30 May 2019. The parties were also informed that Mr Dennis Koolgaard, Attorney-at-Law in Arnhem, the Netherlands, would act as *Ad hoc* Clerk.
43. On 30 November 2018, the Club filed further comments in support of its application for a stay.
44. Also on 30 November 2018, in accordance with Article R51 CAS Code, the Club filed its Appeal Brief.
45. On 4 December 2018, UEFA filed its position in respect of the further comments filed by the Club on 30 November 2018, reiterating its request to dismiss the Club's application for a stay.
46. On 10 and 12 December 2018 respectively, the Club indicated its preference for a hearing to be held, whereas UEFA indicated that it did not consider a hearing to be necessary.
47. On 14 December 2018, the Panel's Order on Request for a Stay was communicated to the parties, with the following operative part:
- “1. The application for a stay of the decision rendered on 19 September 2018 by the UEFA CFCB Adjudicatory Chamber filed by FC Rubin Kazan on 7 November 2018 in the matter CAS 2018/A/5977 FC Rubin Kazan v. UEFA is dismissed.*
- 2. The costs of the present order shall be determined in the final award”.*
48. On 28 January 2019, in accordance with Article R55 CAS Code, UEFA filed its Answer.
49. On 12 and 13 February 2019 respectively, the Club and UEFA returned duly signed copies of the Order of Procedure to the CAS Court Office.
50. On 19 February 2019, an original copy of the Panel's Order on Request for a Stay was communicated to the parties.
51. On 28 March 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.
52. In addition to the Panel, Mr Antonio De Quesada, CAS Head of Arbitration, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Club:

- 1) Mr Rustem Saymanov, CEO of the Club;
- 2) Mr Mikhail Prokopets, Counsel;
- 3) Mr Georgi Gradev, Counsel;
- 4) Mr Artur Zastavnichenko, Interpreter.

For UEFA:

- 1) Ms Anzhela Ghazaryan, UEFA Legal Counsel;
- 2) Dr Jan Kleiner, Counsel

53. The Panel heard evidence from the following persons, in order of appearance:
- 1) Prof Olivier Hari, Professor of Law at the University of Neuchatel, Switzerland, expert called by the Club;
  - 2) Mr Rustem Saymanov, CEO of the Club.
54. The expert and the witness were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both parties and the Panel had the opportunity to examine and cross-examine the expert and the witness. The parties then had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
55. During the hearing, the Club informed the Panel that it withdrew its request for relief to be reimbursed by UEFA with an amount of EUR 3,000,000. The Club argued that this issue was not addressed by the Adjudicatory Chamber in the Appealed Decision and that the Panel was therefore not competent in this respect. The Club remarked that it left open the possibility of claiming this money back from UEFA at a later stage. The Panel therefore ignored the parties' submissions in this respect.
56. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted and that their right to be heard had been respected.
57. The Panel confirms that it has carefully taken into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

**V. SUBMISSIONS OF THE PARTIES**

**A. The Appellant**

58. The Club's requests for relief are as follows:

**"Primarily – ruling de novo"**

1. *Set aside and annul the entire decision passed on 19 September 2018 by the UEFA Club Financial Control Body Adjudicatory Chamber in the case AC-08/2018.*
2. *Determine that the Appellant has not breached Clause 1.2 and/or Clause 3.2 of the Settlement Agreement.*
3. *Determine that the Appellant shall not be sanctioned for breach of the Settlement Agreement.*

**Alternatively, only if the above under item no. 3 is rejected**

4. *To revise item no. 2 of the decision passed on 19 September 2018 by the UEFA Club Financial Control Body Adjudicatory Chamber in the case AC-08/2018 so that the Appellant be sanctioned with any of the other more lenient sanctions foreseen in Article 29.1 lit. a) to g) of the Procedural Rules.*

**More alternatively, only if the above under item no. 4 is rejected**

5. *To revise item no. 2 of the decision passed on 19 September 2018 by the UEFA Club Financial Control Body Adjudicatory Chamber in the case AC-08/2018 so that the Appellant's exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next 2 (two) seasons (i.e. the 2019/20 and 2020/21 seasons) shall be suspended for a probationary period of one (1) to five (5) years or until the occurrence of a specified event (e.g. that the Appellant is break-even compliant in the meaning of the UEFA Club Licensing and Financial Fair Play Regulations until the end of a specified future monitoring period).*

**More alternatively, only if the above under item no. 5 is rejected**

6. *To revise item no. 2 of the decision passed on 19 September 2018 by the UEFA Club Financial Control Body Adjudicatory Chamber in the case AC-08/2018 so that the Appellant's exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next 2 (two) seasons (i.e. the 2019/20 and 2020/21 seasons) shall be replaced with an exclusion from participating in the UEFA club competitions only in the 2019/20 season.*

**In any event**

7. *Determine that the penalty contained in Clause 4.2 of the Settlement Agreement, i.e. the withheld revenue from a UEFA competition of EUR 3 million, shall be paid by UEFA to the Appellant; or, alternatively, should be reduced at the discretion of the Panel and the difference up to EUR 3 million shall be paid by UEFA to the Appellant.*

8. *To order the Respondent to bear any costs incurred with the present procedure as well as the full or part of the costs incurred with the procedure before the UEFA Club Financial Control Body Adjudicatory Chamber (EUR 3,000).*
  9. *To order the Respondent to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the Panel”.*
59. The submissions of the Club, in essence, may be summarised as follows:

#### **As to the alleged violation of Clause 1.2 of the Settlement Agreement**

- Clause 1.2 of the Settlement Agreement sets the “objective” of the Settlement Agreement, it does not provide for any particular obligation. This clause, as opposed to Clause 3.2, does not contain words such as “shall”, “must”, “commit”, “oblige”, “undertake” or the likes, that might be interpreted in a way that the said clause provides for a particular duty of the Club. In the absence of a duty imposed on the Club, UEFA cannot claim that the Club was at fault and thus could not sanction the Club for a breach of this clause.
- Furthermore, the reporting period ending in 2017 clearly falls outside the Settlement Regime (which understanding is further corroborated by the lack of any break-even target for the reporting period ending in 2017 in Clause 3) and thus, is not and could not be part of the “objective” set in Clause 1.2.
- In any event, the Club was in line with the break-even target of EUR 30,000,000 for the reporting periods ending in 2015 and 2016 as set forth in Clause 3.1 in conjunction with Clause 3.2 of the Settlement Agreement. Therefore, the Club cannot be held liable for a breach of Clause 1.2 of the Settlement Agreement either.
- Finally, in the case of Clause 1.2, UEFA alleged that the Club had an aggregate break-even deficit that exceeded the relevant acceptable deviation for the reporting periods ending in 2015, 2016 and 2017, whilst, in the case of Clause 3.2, UEFA alleged that the Club had a break-even deficit for the reporting period ending in 2016 that exceeded the defined break-even target for the reporting period ending in 2016. If so, *quod non*, the application of Clause 1.2 consumes the application of Clause 3.2.

#### **As to the alleged violation of Clause 3.2 of the Settlement Agreement**

- Interpreting Clauses 3.1 and 3.2 of the Settlement Agreement together and objectively, pursuant to Article 18(1) of the Swiss Code of Obligations (the “SCO”), UEFA’s apparent aim was for the Club to have a break-even deficit that would not exceed EUR 30,000,000 during the Settlement Regime (i.e. the reporting periods ending in 2015 and 2016, excluding the reporting period ending in 2017). No breaches would be committed if the Club’s break-even deficit for the reporting period ending in 2015 was EUR 16,868,000 and in 2016 was EUR 5,333,000, as long

as the total break-even deficit (EUR 22,201,000) did not exceed the acceptable deviation (EUR 30,000,000).

- The decisive question to be addressed by the Panel is whether the donations from NKO Fund and Tatenergo should be excluded from the break-even calculation. For the reporting period ending in 2016, this results in an amount of EUR 13,780,000 being included or excluded from the break-even result.
- Since the Appealed Decision relies on Annex X(F)(3(b) 2015 UEFA CL&FFPR, whereas the applicable version is the one from 2012 that does not contain a similar provision, the Appealed Decision is wrong from the outset.
- The Adjudicatory Chamber claimed that Mr Rustam Minnikhanov, President of the Republic of Tatarstan and Chairman of both the Board of Trustees of the Club and the Board of Directors of SIN-X (which controls NKO Fund and Tatenergo), is the *“link between the Club and its donors, which required the amendment of the calculation of the break-even result”*. Such very distinct and blurred *“link”* does however not amount to *“control, joint control, or significant influence”* over the Club.
- UEFA’s consideration that *“the presence of public officials, especially of the highest status within a territory, are presumed to maintain a significant level of influence, which is sufficient to establish the relatedness of the companies”* does not derive from the applicable rules and thus, lacks legal basis. It is also contrary to Annex X(E)(5)(a) 2012 UEFA CL&FFPR.
- The Appealed Decision is grounded solely on the Deloitte Report, which is based on an inapplicable set of rules and *“publicly available information, including the Club’s official website”* to conclude that *“important strategic operational and financial decisions of the Club were made by the Board of Trustees”*. With reference to an arbitral award issued in CAS 2010/A/2145, 2146 & 2147, the Club submits that the website printouts relied upon by Deloitte cannot be accepted as conclusive evidence. Furthermore, the untranslated article and a headline of article contained in Appendix 4 to the Deloitte Report were incorrectly reproduced, taken out of their context, and misused by both Deloitte and UEFA.
- The Board of Trustees is not included in the list of governing bodies of MAI Rubin, performing more status-representative functions and having no control or significant influence whatsoever on the decision-making process in the Club under its past legal structure.
- There is no tangible evidence whatsoever invoked by Deloitte proving the assertion that *“Rustam Minnikhanov, in his capacity of Chairman of the Board of Trustees, has significant influence over the Club”*, which is hereby refuted as unsubstantiated and groundless. This also applies to the assertion that *“the Republic of Tatarstan, through the Board of Trustees [sic], has significant influence over the Club through Mr Minnikhanov serving as its*

*President*". Deloitte and UEFA both failed in their obligation to discharge their burden of proof with respect to the aforementioned assertions.

- Prof. Olivier Hari of the University of Neuchatel in Switzerland, concludes in his Expert Report that “[i]n sum, I am of the opinion that in view of the evidence and information received, it cannot be held that the Club from one side, and NKO and Tatenergo from another side, were in 2016 and 2017 related parties according to the [UEFA CL&FFPR], editions 2012, 2015 and 2018”.
- Furthermore, the “Consolidated financial statements” drafted in accordance with International Financial Reporting Standards (“IFRS”) for the year that ended on 31 December 2016 of Tatenergo and the lists of related parties for 2015, 2016 and 2017 disclosed by Tatenergo, did not identify Mr Minnikhanov or MAI Rubin as related parties under Russian law and the international auditing standard for related parties.
- Consequently, the donations from NKO Fund and Tatenergo should not be excluded from the break-even calculation.

#### **As to the proportionality of the sanctions**

- The sanctions imposed on the Club by UEFA are violating the principle of *nulla poena sine culpa* and, in any case, are grossly disproportionate to the alleged offence.
- The exclusion from future competitions is grossly disproportionate compared with the sanction imposed on Galatasaray in CAS 2016/A/4492 as well as given the correct break-even deficit of only EUR 5,333,000 for the reporting period ending in 2016. Hence, the breach of Clause 3.2 of the Settlement Agreement was much lighter than considered by the Adjudicatory Body, which entails leniency in sanctioning the Club.
- The Adjudicatory Chamber failed to identify any fault on the part of the Club for which it was liable, justifying the imposition of an exclusion from UEFA competitions. The final break-even result for the reporting period ending in 2015 (EUR 16,868,000) and in 2016 (EUR 5,333,000) are not in excess of the acceptable deviation of EUR 30,000,000.
- If the Panel would decide that the Club was in breach of Clause 3.2 of the Settlement Agreement, it should reduce the sanction for being excessively high.

#### **B. The Respondent**

60. UEFA’s requests for relief are as follows:

*Prayer 1: The Appeal shall be rejected, insofar as it is admissible.*

*Prayer 2: Rubin Kazan shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by Appellant at an amount of at least CHF 25,000”.*

61. The submissions of UEFA, in essence, may be summarised as follows:

- The Settlement Agreement contains, on the one hand, a long-term obligation (the Club had to become break-even compliant at the latest in the monitoring period 2017/2018), which is contained in Clause 1.2, while, on the other hand, and in order to achieve this overall obligation, it contains additional, specific obligations, contained in Clause 3.
- The Club’s contention that it “*exited the Settlement Regime with the last match played in the season 2016/2017*” is objectively wrong. Because the Club breached the Settlement Agreement, UEFA had to initiate new disciplinary proceedings against the Club. As provided in the Settlement Agreement, the Settlement Regime only ends with a final and binding decision on the measures taken by UEFA against the Club.

#### **As to the alleged violation of Clause 1.2 of the Settlement Agreement**

- Clause 1.2 of the Settlement Agreement very obviously contains a binding obligation: the Club must be break-even compliant at the latest in the monitoring period ending in 2017. The wording of the clause make it clear that the reporting periods ending in 2015, 2016 and 2017 are all relevant to establish whether the Club complied with Clause 1.2 of the Settlement Agreement. Also according to the applicable regulatory framework, a monitoring period always consists of three reporting periods.
- The Investigatory Chamber initially concluded that the aggregate break-even result for the monitoring period of the season 2017/2018 showed a deficit of EUR 128,146,000. The Investigatory Chamber however applied a mitigating factor. Accepting that the Club was operating in a structurally inefficient market, an amount of EUR 52,000,000 was credited against the above-mentioned aggregate break-even result. Even applying such mitigating factor, the Club was still in excess of the acceptable deviation (i.e. EUR 30,000,000) by an amount of no less than EUR 45,953,000.
- As the Club failed to be break-even compliant as per the season 2017/2018, it breached Clause 1.2 of the Settlement Agreement.

#### **As to the alleged violation of Clause 3.2 of the Settlement Agreement**

- The Club seeks to persuade the Panel incorrectly that the obligations in Clauses 3.1 and 3.2 of the Settlement Agreement have to be read together, i.e. that it would be enough for the Club to reach a maximum break-even deficit in these two reporting

periods combined. It is however evident that, for the reporting period ending in 2016, no break-even deficit may exist any longer.

- The Club admits, at least, that its break-even deficit for the reporting period ending in 2016 was of EUR 5,333,000. This confirms that, in any event, Clause 3.2 of the Settlement Agreement was breached because the Club admittedly failed to reach a balanced break-even result.
- Furthermore, UEFA undertook an extremely diligent assessment as to whether NKO Fund and Tatenergo had to be considered as related parties in the meaning of the UEFA CL&FFPR, and indeed concluded that this was the case. The rationale of the related party rule set out in Annex X(F)(3)(b) UEFA CL&FFPR is straightforward: clubs shall be prevented from receiving disguised payments or capital injections from related parties, in particular through state-controlled entities. More generally, the concept of “related party” serves to prevent circumventions. This concept has existed since the very beginning of the Financial Fair Play system. Its meaning and essence have remained entirely unchanged. The only amendments to wording between the different editions of the UEFA CL&FFPR were designed to clarify and codify existing practice.
- Contrary to what is suggested by the Club, it is established case law of CAS that the relevant terms of the UEFA CL&FFPR must be interpreted relying “*solely on the CL&FFPR*”. The Club’s suggestion that the term “related party” would have to be interpreted by UEFA under Swiss law disregards that case law. The Expert Report presented by the Club, although drafted by an excellent and experienced scholar, proceeds from the outset on a mistaken basis as to the applicable law.
- It was concluded in the Deloitte Report that, for the purposes of the UEFA CL&FFPR and the relevant definition of related parties, Mr Rustam Minnikhanov, in his capacity of Chairman of the Board of Trustees, has significant influence over the Club. By extension, the Republic of Tatarstan, through the Board of Trustees, had significant influence over the Club through Mr Minnikhanov serving as its President. At the same time, SIN-X is fully controlled by the Republic of Tatarstan through the Republic’s sole ownership. Concurrently, SIN-X is the parent company of NKO Fund and Tatenergo. Deloitte therefore concluded that SIN-X and the Club had to be qualified as related parties. Likewise, through SIN-X’s control of both entities, NKO Fund and Tatenergo also had to be qualified as related parties of the Club.
- This conclusion would be the same in case the 2012 edition of the UEFA CL&FFPR would be applied, since there has been no substantial change whatsoever between the 2012 and the 2015 edition.
- As a result, the donations received from NKO Fund and Tatenergo had to be excluded from the break-even calculation of the Club. For the reporting period ending in 2017, this resulted in an amount of EUR 19,655,000 being excluded from

the break-even result. For the reporting period ending in 2016, this resulted in an amount of EUR 13,780,000 being excluded from the break-even result. Since the break-even result in the monitoring period ending in 2016 displayed a negative break-even of no less than EUR 19,113,000, the Club breached Clause 3.2 of the Settlement Agreement.

### **As to the proportionality of the sanctions**

- The Appealed Decision referred to the importance of the objective of the UEFA Financial Fair Play System, to the fact that the Club had already been given a “second chance” but failed to take it, to the principle of equal treatment with other clubs sanctioned for similar breaches, to the necessary deterrent effect of a sanction to very specific past case law and to considerations of proportionality and consistency. Carefully weighing all these factors, and having regard to the large scale of the Club’s break-even deficit, the Adjudicatory Chamber considered that an exclusion from one UEFA club competition for which the Club would otherwise qualify in the next two seasons was clearly an appropriate disciplinary measure.
- Given that CAS, based on a long line of precedents, exercises strict self restraint when it is invited to interfere in decisions of sports federations, and respects the fundamental principle of the autonomy of UEFA as an association under Swiss law, there is no room and no justification for CAS to review the sanction imposed on the Club.
- In the case of Galatasaray as well as in the present case, both clubs failed to take its “second chance” and breached two separate clauses of a settlement agreement. In both cases, the clubs had a very significant break-even deficit and in both cases they additionally breached a specific operational and financial measure. Therefore, the almost identical sanction imposed in this case is equally justified and proportionate.

## **VI. JURISDICTION**

62. The jurisdiction of CAS, which is not disputed, derives from Article 34 UEFA CFCB Procedural Rules, which provides as follows:

- “1. A party directly affected has the right to appeal a final decision of the CFCB.*
- 2. Final decisions of the CFCB may only be appealed before the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the UEFA Statutes”.*

63. Article 62(1) UEFA Statutes (2017 edition) provides that “[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration”, which complies with the criteria set in Article R47 CAS Code.

64. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
65. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

#### **VII. ADMISSIBILITY**

66. The appeal was filed within the deadline of ten days set by Article 62(3) UEFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
67. It follows that the appeal is admissible.

#### **VIII. APPLICABLE LAW**

68. The Club submits that the Panel should apply the UEFA Statutes, rules and regulations, in particular the UEFA CL&FFPR and the UEFA CL&FFP Procedural Rules primarily, and Swiss law subsidiarily. As to the applicable version of the above-mentioned regulations, and in accordance with the general principle of *tempus regit actum*, the Club submits that the 2012 edition of the UEFA CL&FFPR is applicable as to the substance of the contractual dispute as this was the version in force when the parties signed the Settlement Agreement, whilst the 2015 edition of the UEFA CL&FFP Procedural Rules shall govern the procedural aspects of this case.
69. UEFA submits that this dispute shall be adjudicated, primarily, based on the applicable UEFA regulations, and subsidiarily, on the basis of Swiss law. The present case concerns the disciplinary consequences of the Club's breach of the Settlement Agreement and is therefore not a contractual dispute. Accordingly, the only applicable set of regulations can be those regulations, which were in force at the time of the relevant regulatory breach. Since the first breach (the Club's failure to reach a balanced break-even result in the reporting period ending in 2016) occurred on 31 December 2016, the 2015 edition of the UEFA CL&FFPR was in force. The dispute shall therefore be adjudicated on the basis of the 2015 edition, as the Adjudicatory Chamber rightfully did. UEFA also submits that the Club previously welcomed the application of the 2015 UEFA CL&FFPR. When asked to comment on a draft of the Deloitte Report, the Club did not raise any issue as to the relevant edition. The Club also greatly benefitted from the application of the mitigating factor "*Operating in a structurally inefficient market*" as provided for in Annex XI(g) UEFA CL&FFPR. This mitigating factor was however only introduced in the 2015 edition of the UEFA CL&FFPR and was not contained in the 2012 edition. UEFA also argues that all clubs must be bound by the same rules, while the Club's argument would lead to a situation where clubs would be subjected to different editions of the rules. Finally, the Club had to pay an advance of costs in the proceedings before CAS because the proceedings are not exclusively of a disciplinary nature, because in addition to any disciplinary aspects, the case deals with rather complex financial matters and with the consequences of the breach of the Settlement Agreement.

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

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

71. Article 64(1) UEFA Statutes provides the following:

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

72. The Panel agrees with the parties that the various regulations of UEFA are primarily applicable to the dispute, in particular the UEFA CL&FFPR and the UEFA CL&FFP Procedural Rules.

73. The Panel also accepts the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of UEFA.

74. As to the relevant editions of the UEFA CL&FFPR and the UEFA CL&FFP Procedural Rules, the Panel finds that the Settlement Agreement as such is governed by the 2012 edition of the UEFA CL&FFPR. However, the Panel finds that it is to be inferred from the reference in Clause 1.2 of the Settlement Agreement (*“[t]he objective of this Agreement is to achieve that Rubin is Break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2017/18 [...]”*) that the Club would have to comply with future versions of the UEFA CL&FFPR.

75. As argued by UEFA, it would be unacceptable if the 2012 edition of the UEFA CL&FFPR would be applied on the Club, whereas other clubs, not falling under any settlement regime would have to comply with the 2015 edition of the UEFA CL&FFPR. The reference in the Settlement Agreement to break-even requirements is understood to be a dynamic reference to future editions of the UEFA CL&FFPR. In this respect, the Panel considered compelling the argument raised by counsel for UEFA during the hearing by way of analogy that, when for instance an employment contract provides for termination in case of an anti-doping rule violation by the athlete there can be little doubt that this would include termination if the athlete is being found in the future guilty of using prohibited substances that were not yet prohibited at the time of conclusion of the employment contract, but that were only added to the prohibited list afterwards.

76. In any event, if the 2012 edition of the UEFA CL&FFPR would be deemed applicable as a whole, the Panel observes that the Club would certainly have violated the terms of the Settlement Agreement, for the mitigating factor *“Operating in a structurally inefficient market”* as provided for in Annex XI(g) UEFA CL&FFPR was only introduced in the 2015 edition of the UEFA CL&FFPR and was not contained in the 2012 edition. This mitigating factor improved the Club’s break-even result over the financial years 2015, 2016 and 2017 with approximately EUR 52,000,000 in total, as set out in para. 33 above.

77. In contrast, if Annex X(F)(3)(b) of the 2015 UEFA CL&FFPR were to be dissaplied, the Club's break-even deficit would, at best, be improved with approximately EUR 40,000,000 (i.e. EUR 23,057,000 and EUR 17,526,000 over the financial years 2016 and 2017, as set out in para. 32 above.
78. The Panel therefore finds that, on the basis of the application of the principle of *lex mitior*, the most favourable set of rules is to be applied to the Club. The principle of *lex mitior* does not permit one to pick and choose between the most favourable individual provisions from different sets of rules; such would indeed offend against the principle of legality; the Club accordingly cannot blow hot and cold. Rather, the most favourable set of rules is to be applied as a whole. In the matter at hand, the Panel finds the application of the 2015 edition of the UEFA CL&FFPR more favourable to the Club than the application of the 2012 edition of the UEFA CL&FFPR, for the reason set out in the two paragraphs above.
79. This has as concrete consequences that i) the Club can benefit from the application of the mitigating factor "*Operating in a structurally inefficient market*" as provided for in Annex XI(g) of the 2015 edition of the UEFA CL&FFPR; and ii) Annex X(F)(3)(b) of the 2015 UEFA CL&FFPR is also applicable to the Club.
80. Consequently, the Panel finds that the 2015 edition of the UEFA CL&FFPR is applicable to the substance of the present dispute and that the procedural aspects are governed by the 2015 edition of UEFA CL&FFP Procedural Rules.

## **IX. MERITS**

### **A. The Main Issues**

81. The main issues to be resolved by the Panel are:
- i. Does Clause 1.2 of the Settlement Agreement impose obligations on the Club?
  - ii. Does the reporting period ending in 2017 fall outside the scope of the Settlement Agreement?
  - iii. Does the application of Clause 1.2 of the Settlement Agreement consume the application of Clause 3.2?
  - iv. Are NKO Fund and Tatenergo to be considered as related parties to the Club in the context of Annex X(F)(3)(b) of the 2015 UEFA CL&FFPR?
  - v. Did the Club violate Clause 3.2 of the Settlement Agreement?
  - vi. Did the Club violate Clause 1.2 of the Settlement Agreement?
  - vii. Is the sanction imposed on the Club by the Adjudicatory Chamber disproportionate?

#### ***i. Does Clause 1.2 of the Settlement Agreement impose obligations on the Club?***

82. The Club submits that Clause 1.2 of the Settlement Agreement does not provide for an obligation of the Club, but that the Club's duties under the Settlement Agreement are stipulated in Clause 3 only.

83. UEFA argues that the Club's position is objectively incorrect, as Clause 1.2 of the Settlement Agreement uses the word "must" and thereby creates a binding obligation on the Club.

84. Clause 1.2 of the Settlement Agreement provides as follows:

*"The objective of this Agreement is to achieve that Rubin is Break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2017/18; i.e. the aggregate Break-even result for the reporting periods 2015, 2016 and 2017 **must** be a surplus or a deficit within the acceptable deviation in accordance with Art. 63 UEFA CLFFPR"* (emphasis added by the Panel).

85. The Panel disagrees with the interpretation suggested by the Club. The Panel does not deem it necessary to enter into any interpretation of Clause 1.2 of the Settlement Agreement on the basis of Article 18 SCO as requested by the Club, because the Panel finds the wording of the clause clear and unequivocal. It is well established that the word "must" is a word of obligation.

86. Indeed, the clarification at the end of the clause under scrutiny leaves little doubt about the nature of the obligation imposed on the Club. The aggregate break-even result for the reporting periods 2015, 2016 and 2017 i) **must** be a surplus; or ii) **must** be a deficit within the acceptable deviation. Accordingly, the Panel finds that a failure of the Club to comply with either of these obligations would lead to a violation of the terms of the Settlement Agreement.

87. As set out in Clauses 8.1 and 8.2 of the Settlement Agreement, "[i]n case Rubin fails to comply with any of the terms of this Agreement, the UEFA CFCB Chief Investigator shall refer the case to the Adjudicatory Chamber [...]" and that "[t]he Adjudicatory Chamber may take any of the decisions and measures indicated in Art. 27 of the Procedural Rules, including imposing a disciplinary measure as foreseen in Art. 29 of the Procedural Rules".

88. Consequently, the Panel finds that Clause 1.2 of the Settlement Agreement imposes obligations on the Club and that the failure to comply therewith may subject the Club to the imposition of disciplinary sanctions.

**ii. Does the reporting period ending in 2017 fall outside the scope of the Settlement Agreement?**

89. The Club submits that, based on the wording of Clause 1.1 of the Settlement Agreement, the reporting period ending in 2017 clearly falls outside the scope of the Settlement Regime, because the Settlement Regime ended in May 2017 after the end of the 2016/2017 sporting season. The Club maintains that this is supported by the fact that no milestone is set for the reporting period ending in 2017.

90. UEFA argues, with reference to Clauses 7.3 and 9.2 of the Settlement Agreement, that the Club could leave the Settlement Regime if it would have complied with Clause 1.2 thereof. The Club, however, exited the Settlement Regime, because it breached the Settlement Agreement, requiring UEFA to initiate disciplinary proceedings. In that latter case, the term of the Settlement Regime is extended until the disciplinary proceedings have terminated.

91. Clauses 1.1 and 1.2 of the Settlement Agreement provides as follows:

*“This Agreement sets out the specific rules applicable to Rubin for the duration of the period covered by this Agreement (the “Settlement Regime”). The Settlement Regime shall cover the three sporting seasons 2014/15, 2015/16 and 2016/17 and the reporting periods ending in 2015 and 2016, respectively”.*

*The objective of this Agreement is to achieve that Rubin is Break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2017/18; i.e. the aggregate Break-even result for the reporting periods 2015, 2016 and 2017 must be a surplus or a deficit within the acceptable deviation in accordance with Art. 63 UEFA CLFFPR”.*

92. The Panel notes that Clauses 1.1 and 1.2 of the Settlement Agreement are not entirely consistent. Whereas the former appears to indicate that the reporting period ending in 2017 does not form part of the Settlement Regime, the latter appears rather to indicate that it forms part of the obligations under the Settlement Agreement.

93. The Panel finds, however, that, regardless of whether the Settlement Regime had ended or not, the reporting period ending in 2017 forms part of the Settlement Agreement on the basis of the wording of Clause 1.2 of the Settlement Agreement. The latter clause clearly refers to the “aggregate Break-even result for the reporting periods 2015, 2016 and 2017”. As a consequence of which the reporting period ending in 2017 is relevant for determining whether the Club acted in compliance with the objective of the Settlement Agreement, as set out in Clause 1.2.

94. Furthermore, the Panel notes that Clauses 7.3 and 9.2 of the Settlement Agreement clarify when the Club exits the Settlement Regime and when the Settlement Agreement expires. They provide:

*“[...] [I]f Rubin fulfils the objective of this Agreement during the Settlement Regime, i.e. if Rubin reaches a Break-even result, in full compliance with the applicable UEFA rules, Rubin shall exit the Settlement Regime [...]”.*

*“This Agreement shall expire at the end of the Settlement Regime, unless Rubin has reached full compliance with the Break-even Requirements at an earlier stage (as per Art. 7.3) or UEFA had to initiate new measures because of a breach by Rubin of this Agreement (as per Art. 8)”.*

95. The Panel notes that a break-even result in the sense of the UEFA CL&FFPR always comprises three reporting periods. Clause 7.3 of the Settlement Agreement apparently indicates that if the Club, at any point in time during the Settlement Regime, could establish that it had at least a break-even result earlier (for instance covering the reporting periods ending in 2014, 2015 and 2016), then the Club would exit the Settlement Regime immediately.

96. The Club, however, at no stage complied with such requirement entitling it to exit the Settlement Regime before its natural expiration.

97. Insofar the Club contends that UEFA could not initiate legal proceedings against it on the basis of the Settlement Agreement, because the Settlement Regime had already expired in May

2017 (at the end of the 2016/2017 sporting season), the Panel rejects that contention. Even if the Club's argument that the reporting period ending in 2017 would not form part of the Settlement Regime were accepted, UEFA never approved the Club's reported break-even results for the reporting period ending in 2016. The Settlement Regime ultimately did not expire, because UEFA initiated disciplinary proceedings against the Club, *inter alia*, on the basis of a violation of the criteria set for the reporting period ending in 2016, which period undisputedly forms part of the Settlement Regime.

98. Furthermore, as to the Club's observation that its argument in this respect is corroborated by the fact that Clause 3 of the Settlement Agreement does not contain a milestone for the reporting period ending in 2017, the Panel finds that the absence of such milestone can easily be explained in that the structure of the Settlement Agreement is such that the overall target is set out in Clause 1.2 of the Settlement Agreement, whereas the intermediate targets, or milestones, are set out in Clauses 3.1 and 3.2. The Panel finds that an additional milestone solely covering the reporting period ending in 2017 would be redundant, because the Club's compliance with such milestone would have to be assessed at the same time as the ultimate goal, i.e. the Club's compliance with the aggregate break-even result for the reporting periods ending in 2015, 2016 and 2017.
99. The Settlement Regime was only exited due to the commencement of legal proceedings against the Club by UEFA, leading to the Appealed Decision.
100. Consequently, the Panel finds that the reporting period ending in 2017 does not fall outside the scope of the Settlement Agreement, but that the break-even result for the reporting period ending in 2017 is relevant for determining the aggregate break-even result over the reporting periods ending in 2015, 2016 and 2017, in accordance with Clause 1.2 of the Settlement Agreement.

**iii. *Does the application of Clause 1.2 of the Settlement Agreement consume the application of Clause 3.2?***

101. The Club submits that punishing the Club for a violation of Clauses 1.2 and 3.2 of the Settlement Agreement would lead to overpunishment, as happened in the Appealed Decision. UEFA found the Club guilty of violating the aggregate break-even targets for the reporting periods ending in 2015, 2016 and 2017 on the basis of Clause 1.2, whereas UEFA also found the Club guilty of violating the break-even target for the reporting period ending in 2016 alone. The Club argues that the application of Clause 1.2 consumes the application of Clause 3.2 of the Settlement Agreement.
102. UEFA argues that the obligations set out in Clauses 1.2 and 3 respectively, are individually binding, and that they can either be breached separately or jointly. Hypothetically, the Club could breach Clause 1.2, but comply with Clauses 3.1 and 3.2. The Club could however also comply with Clause 1.2, but breach Clauses 3.1 and 3.2. UEFA submits that it is therefore logically wrong to assume that a breach of Clauses 3.1 or 3.2 would "consume" a breach of Clause 1.2, or *vice versa*.

103. The Panel considers it undeniable that a certain overlap exists between Clauses 1.2 and 3.2 of the Settlement Agreement. However, Clause 1.2 does not consume the application of Clause 3.2.
104. Indeed, as set out *supra*, the Panel finds that the overall goal of the Settlement Agreement and the main obligation imposed on the Club by means of the Settlement Agreement is set out in Clause 1.2, whereas Clause 3.1 and 3.2 are only milestones to guide the Club towards compliance with the overarching obligation set out in Clause 1.2.
105. A violation of Clause 3.2 does also not necessarily lead to a violation of Clause 1.2. Indeed, theoretically, a possible deficit for the reporting period ending in 2016 could be repaired by a surplus in the reporting period ending in 2017, so that the aggregate break-even result over the reporting periods ending in 2015, 2016 and 2017 could still be a surplus.
106. It is however true that violation of one of the milestones set out in Clause 3.2 certainly constitutes a less severe violation of the Settlement Agreement than violation of the overarching obligation set out in Clause 1.2.
107. Consequently, the Panel finds that Clause 1.2 of the Settlement Agreement does not consume the application of Clause 3.2.

**iv. *Are NKO Fund and Tatenergo to be considered as related parties to the Club in the context of Annex X(F)(3)(b) of the 2015 UEFA CL&FFPR?***

*a) The positions of the parties*

108. The core issue underlying the present dispute is that the Club finds that the donations received from NKO Fund and Tatenergo are not to be considered as donations from related parties, whereas UEFA submits that they are.
109. In concluding that NKO Fund and Tatenergo are to be considered as related parties to the Club, UEFA chiefly relies on the Deloitte Report. The main reasons for considering the entities as related parties are as follows, as summarised by UEFA:

*“NKO Fund and Tatenergo were both fully controlled by an entity called Syvazinvestneftekhim (“SIN-X”);*

*SIN-X was solely owned by the Government of the Republic of Tatarstan;*

*The President of the Republic of Tatarstan (Mr. Rustam Minnikhanov) acted as Chariman of the SIN-X Board;*

*At the same time, Mr. Rustam Minnikhanov also acted as the Chairman of the Board of Trustees of the Club;*

*A number of additional members of both the Club's Board of Trustees and Supervisory Body also served in government-related positions and/or entities significantly influenced by the Republic of Tatarstan".*

110. The Deloitte Report also analysed the type of decisions that were taken by the Board of Trustees of the Club, as summarised by UEFA:

*"Review and adoption of the development strategy;*

*Evaluation of the implementation of the Club's previous strategy or action plans;*

*Discussion of the Club's compliance with CL&FFPR; and*

*Dismissal of the coach".*

111. UEFA submits that the Deloitte Report therefore concludes that, for the purposes of the UEFA CL&FFPR and the relevant definition of related parties, Mr Minnikhanov, in his capacity of Chairman of the Board of Trustees of the Club, had significant influence over the Club. By extension, the Republic of Tatarstan, through the Board of Trustees of the Club, had significant influence over the Club through Mr Minnikhanov serving as its President.
112. UEFA argues that the consequence of such finding is that the monies received as donations from NKO Fund and Tatenergo should not be included within relevant income for the purposes of the break-even calculation. For the reporting period ending in 2017, this results in an amount of EUR 19,655,000 being excluded from the break-even result. For the reporting period ending in 2016, this results in an amount of EUR 13,780,000 being excluded from the break-even result.
113. The Club submits that the decisive question to be addressed by the Panel is whether or not the donations from NKO Fund and Tatenergo should be excluded from the break-even calculation. Depending on this question, an amount of EUR 13,780,000 is to be included or excluded from the break even result over the reporting period ending in 2016.
114. The Club does not elaborate on the consequences for the reporting period ending in 2017 were its argument that such reporting period would fall outside the scope of the Settlement Agreement would be dismissed, but clarified during the hearing that it did not disagree with UEFA's calculations.
115. The Panel therefore observes that it is not in dispute between the parties that if NKO Fund and Tatenergo are to be considered as related parties, an amount of EUR 19,655,000 would have to be excluded from the break-even result for the reporting period ending in 2017.
116. The Club submits that the notion of a "link" finds no basis in the UEFA CL&FFPR and that, in any event, the "link" between the Club and NKO Fund/Tatenergo is very distinct and blurred and does not amount to "control, joint control, or significant influence" over the Club.

b) *The regulatory framework*

117. In assessing whether NKO Fund and Tatenergo are to be considered as related parties to the Club, the Panel observes that UEFA relies on Annex X(F)(3)(b) of the 2015 edition of the UEFA CL&FFPR.

118. Annex X(F) 2015 CL&FFPR provides as follows:

***“F. Related party, related party transactions and fair value of related party transactions***

1. *A related party is a person or entity that is related to the entity that is preparing its financial statements (the ‘reporting entity’). In considering each possible related party relationship, attention is directed to the substance of the relationship and not merely the legal form.*

[...]

3. *An entity is related to a reporting entity if any of the following conditions apply:*

[...]

b) *The entity and the reporting entity are controlled, jointly controlled, or significantly influenced by the same government;*

[...]”.

119. The 2015 edition of the UEFA CL&FFPR defines the concept of “significant influence” as follows:

*“Ability to influence but not control financial and operating policy decision-making. Significant influence may be gained by share ownership, statute or agreement. For the avoidance of doubt, a party or in aggregate parties with the same ultimate controlling party (excluding UEFA, a UEFA member association and an affiliated league) is deemed to have significant influence if it provides an amount equivalent to 30% or more of the licensee’s total revenue in a reporting period”.*

120. The 2012 edition of the UEFA CL&FFPR defines the concept of “significant influence” as follows:

*“Significant influence is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. Significant influence may be gained by share ownership, statute or agreement”.*

121. Annex X(F)(5) heading and under (a) 2012 UEFA CL&FFPR further provide the following:

*“In considering each possible related party relationship, attention is directed to the substance of the relationship and not merely legal form. The following are not related parties:*

- a) *Two entities simply because they have a director or other member of key management personnel in common or because a member of key management personnel of one entity has significant influence over the other entity”.*

122. UEFA maintains that the changes between the 2012 and the 2015 editions of the UEFA CL&FFPR are merely cosmetic and that the concept of “related parties” did not materially change. This indeed is supported by the internal documents provided by UEFA in the present proceedings. However, the Panel finds that in case the 2015 edition is more favourable than the 2012 edition towards the Club’s position in respect of the “related parties” definition, than the 2015 edition should be applied, because it does not appear from the evidence on record that UEFA informed its members that the changes made to the 2012 edition were only cosmetic.

- c) *The relevance of Prof. Hari’s Expert Report*

123. The Panel observes that Prof. Hari concluded as follows in his Expert Report:

*“The alleged link between the Club from one side and Tatenergo and NKO Fund from another side because the two later [sic] are fully controlled by SIN-X, which in turn is controlled by the Republic of Tatarstan, in [sic] unproven.*

*To the opposite, the organization of the Club and the decision-making process is rather likely to demonstrate that the Club was controlled by persons at municipal level only, without any proven tangible link between the Club and any person at a Republic level (Mr. Rustam Minnikhavov). The chart of the [Deloitte Report] (Appendix 3, p. 18) should be updated accordingly.*

*The fact that, according to the [Deloitte Report], other persons members of the Club’s Supervisory Body – allegedly – also serve in government-related positions and/ or entities – allegedly – significantly influenced by the Republic of Tatarstan (appendixes 2 and 3 are missing) appears to be inaccurate because the [Deloitte Report] mixes the various governmental levels, without apparently making a clear distinction of the municipal level, and the Republic level.*

*In sum, I am of the opinion that in view of the evidence and information received, it cannot be held that the Club from one side, and NKO and Tatenergo from another side, were in 2016 and 2017 related parties according to the [UEFA CL&FFPR], Editions 2012, 2015 and 2018”.*

124. UEFA argues, as noted above, that, although drafted by an excellent and experienced scholar, the Expert Report is mistaken from the outset since it reiterates the Club’s wrong assumption that the relevant terms of the UEFA CL&FFPR would have to be interpreted under Swiss law.

125. The Panel notes that Prof. Hari indeed interpreted certain relevant terms on the basis of Swiss law and international accounting standards, but finds that this is no reason of itself to ignore the content of the Expert Report as such; also because Prof. Hari explained during the hearing that there is no material difference.

126. The Panel however finds that the relevance of the Expert Report is nonetheless limited, since Prof. Hari chiefly examines the evidence on file and concludes that there is not sufficient evidence to conclude that NKO Fund and Tatenergo are related parties to the Club. The Panel however observes that the Expert Report mainly focusses on the concepts of “control” and “close person”, as opposed to the concept of “significant influence”, which is of particular importance in the matter at hand.
127. Prof. Hari concludes in his preliminary findings that in his view, *“what is actually of importance in the above-mentioned concept of group and closeness is the following: the entity, or individual, which controls another entity, is in a position to take decisions, thus impacting, or being in a position to impact, the whole financial strategy of the concerned entity”*.
128. This analysis is in partial contradiction to the definition of “significant influence” as set out in the 2015 edition of the UEFA CL&FFPR, because it is clarified there that “significant influence” *“is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies”*. It is not about being in a position to take decision, but about the power to participate in the decision-making process.
129. As will be discussed in more detail *infra*, the Panel finds that there is sufficient evidence on file to conclude that the Board of Trustees indeed had the authority to take decisions and that the Republic of Tatarstan had significant influence in the Board of Trustees.
130. Prof. Hari refers to a range of decisions taken by the Supervisory Board of the Club and the Executive Committee of the Municipality of Kazan, which he considers to be important decisions and indicative of the fact that such decisions were thus not taken by the Board of Trustees. Prof. Hari also states that *“[i]t is worth mentioning that I cannot assess that such batch encompasses all decision made during the period at stake”*. Although the Panel does not disagree that the Supervisory Board and the Executive Committee of the Municipality of Kazan indeed issued certain important decisions, this does not *ipso facto* mean that the Board of Trustees did not take any important decisions.
131. Insofar Prof. Hari disagrees with the approach followed in the Deloitte Report regarding the assumption that public officials are presumed to maintain a significant level of influence and that, on the basis thereof it assumes that NKO Fund and Tatenergo are related to the Club, the Panel does not deem it necessary to address such arguments because it finds that there is direct evidence of the significant influence exercised by the Board of Trustees on the Club, as will be set out in more detail below.
132. Finally, the Panel notes that Prof. Hari primarily based his Expert Report on the 2012 edition of the UEFA CL&FFPR, whereas the regulations primarily applicable in respect of the definition of related parties is the 2015 edition of the UEFA CL&FFPR.
- d) *The influence of the Republic of Tatarstan on the Club*
133. The Panel observes that the positions held by Mr Minnikhanov are not disputed. He is i) President of the Republic of Tatarstan; ii) Chairman of SIN-X (a company solely owned by

the Republic of Tatarstan, which in turn owns 100% of the shares of NKO Fund and Tatenergo); and iii) Chairman of the Board of Trustees of the Club.

134. It is not in dispute between the parties that the Republic of Tatarstan had at least a significant influence in NKO Fund and Tatenergo, through the mother company SIN-X. The remaining question is therefore whether the Republic of Tatarstan also had at least a significant influence in the Club. If this question is answered affirmatively, the Panel finds that NKO Fund and Tatenergo are to be considered related parties.
135. Following a detailed analysis of the regulatory framework and the positions of both parties, the Panel finds that in order to qualify an entity as related in accordance with the UEFA CL&FFPR, regardless of whether the 2012 or 2015 edition is applied, requires some sort of direct influence. The most clear example of such direct influence is the competence of taking decisions, be it in a personal capacity or in the framework of a committee. If it is by means of a committee, the individual member or members must have a certain influence on the decision-making process. It is only natural to conclude that a single person has a larger influence in a committee comprised of five members, than in a committee comprised of fifteen members.
- 1) The influence of the Board of Trustees on the Club
136. The quintessential issue to be addressed by the Panel concerns the influence of the Board of Trustees on the Club. Whereas UEFA maintains that the Board of Trustees plays an important role and takes important decisions for the Club, the Club maintains that it does not, and formally does not even exist according to the Statutes of the Club.
137. Insofar the Club contends that the Board of Trustees does not exist, the Panel finds that such argument must be dismissed. Indeed, the Club itself admitted the existence in its letter to UEFA dated 6 June 2018:
- “[...] FC Rubin board of trustees has only representative capacities and such body is a not a managerial body and cannot make any decisions to influence the club’s operation. [...]”*
138. The Panel also sees no reason to exclude the Deloitte Report from the file, as was requested by the Club on the basis that UEFA did not call any representative from Deloitte to be cross-examined. First of all, the Deloitte Report is documentary evidence, not a witness statement. Second, the Club did not request someone from Deloitte to be present for cross-examination as it could have done. Third, at no stage before the hearing did the Club object to the admissibility of the Deloitte Report. Under such circumstances, the Panel finds that the Deloitte Report cannot simply be disregarded. The content of the Deloitte Report was, however, closely scrutinised by the Panel and the content thereof is not accepted as comprising incontestable facts. The Panel made its own assessment of the evidence on record.
139. Turning to the evidence on record, the Panel observes that there is a letter on file from NKO Fund to the Club dated 13 May 2016, providing as follows:

*“The non-commercial organisation ‘Fund for the development of the physical culture and sport’ takes an active participation in the development of the professional sport in the Republic of Tatarstan.*

*Hereby, I confirm that NKO Fund is planning to develop its cooperation in the season 2016/17 based on the preliminary agreed donation contracts in line with the decision of the Board of Trustees of the club.*

*We also inform you that NKO Fund is the main donator of the Municipal autonomous institution ‘Football Club ‘Rubin’”.*

140. The Panel finds that it can be concluded from this letter that NKO Fund agreed to donate a certain amount of money to the Club, based on a contract concluded between NKO Fund and the Club. The Panel finds that this letter shows that the role of the Board of Trustees within the organisation of the Club did not remain limited to *“performing more status-representative functions and having no control or significant influence whatsoever on the decision-making process in the Appellant”*, as contended by the Club. To the contrary, the Panel finds that it transpires from this letter that the Board of Trustees apparently had the authority to take decisions and determine the Club’s policy going forward on the basis of which contracts like the one referred to in this letter could be concluded. The Panel also finds that this letter shows that the Board of Directors had authority to take decisions not only in 2017, but already in 2016.
141. The authority of the Board of Directors to take decisions affecting the Club is further corroborated by the media communication published on the Club’s website on 22 February 2017, providing as follows in a translation provided by UEFA:

*“Decision of the FC Rubin’s Board of Trustees*

*Senior management of FC Rubin had a clear position on necessity to have a sports director for the club from the first day of work of the new management team. Sports director is essential for systematic development of the club, its football pyramid and youth football, he or she will care about players’ lists for all teams of the club.*

*It was decided in the result of long search that it is impossible to find a better candidature for the post of FC Rubin’s sports director than Ilgiz Fabriev, who had gone through from a player to the general manager of the club.*

*Thus, FC Rubin’s Board of Trustees assigned Ilgiz Fabriev as the chairperson of the Supervisory Board of FC Rubin and the sports director of the club. Post of the FC Rubin’s general manager will go to Rustam Sayakhov, who was previously the club’s financial director.*

*Rearrangement in the club’s management is pointed to the further increasing of effectiveness and achieving maximum results.*

*[...]”.*

142. The Club provided the following translation:

*“Decision of the FC ‘Rubin’ Board of Trustees*

*From the first day of the FC “Rubin” new managers’ work, the directors of the club had a clear position on the fact that for the orderly development “Rubin” needed a sporting director who would be in charge of recruiting to all the teams of the system, development of the football pyramid of the club and junior football.*

*After a long search a decision was made that there was no better candidate for the post of sporting director of FC “Rubin” than Ilgiz Fabriev, who has gone all the way from a “Rubin” player to the Director General.*

*Hence, by a decision of the FC “Rubin” Board of Trustees Ilgiz Fabriev is appointed a sporting director of the club. The position of the “Rubin” Director General will be held by Rustam Sayakhov who has earlier held the post of the financial director of the club.*

*Changes in the management of the club are directed at the further improvement of the work efficiency of “Rubin” and achievements of the highest results”.*

143. The Panel finds that, regardless of the translation chosen, this document shows that the Board of Trustees was not only an important organ in determining the policy of the Club, but that it was indeed competent to take important decisions such as the appointment of the Club’s Sporting Director.
144. Prof. Hari further comments as follows in respect of this media release:
- “One can seriously question the accuracy of the website regarding news dated [2]2/02/2017 given the fact that at least two of the three appointments have been decided by the executive committee of the municipality of Kazan City”.*
- I noticed that Mr. Fabriev had been previously appointed as General Director according to the decision dated 4 September 2015 issued by the executive committee of the municipality of Kazan. [...]”.*
145. The Panel accepts Prof. Hari’s position in respect of the position of Mr Sayakhov, who was apparently indeed appointed as Director General by the Executive Committee of the Municipality of Kazan City.
146. However, this does not explain which body appointed Mr Fahriev as Sporting Director if it was not the Board of Trustees. Prof. Hari refers to a decision of the Supervisory Board dated 4 September 2015, but such decision shows that Mr Fahriev was appointed as Director General, not as Sporting Director, and the time which elapsed between the two decisions (nearly one and a half year) shows that the appointments were distinct. The Panel is therefore satisfied to accept that the Board of Trustees appointed Mr Fahriev as Sporting Director in February 2017.
147. Finally, the translation provided by UEFA shows that Mr Fahriev was also appointed as Chairperson of the Supervisory Board by the Board of Trustees. The translation provided by the Club however does not refer to such appointment. The Panel finds that this can be left undecided as it has already concluded that, based on the evidence available to it, the Board of Trustees appointed Mr Fahriev as Sporting Director.

148. The Panel however agrees with the Club that the media release published on the Club's website on 31 May 2017 does not prove that "*the Board of Trustees approved a new business model for the Club*" as the headline suggests. Indeed, as argued by the Club, the content of this media release does not indicate that any actual decisions were taken by the Board of Trustees.
  149. The Panel also agrees with the Club that media releases cannot simply be accepted as conclusive evidence. However, the Panel finds that these media releases, published by the Club itself on its website, allow a *prima facie* presumption that such information is correct. The Club is however of course perfectly entitled to prove that the information provided in such media releases is not correct. The burden to establish that NKO Fund and Tatenergo are related parties clearly lies with UEFA and the Panel finds that UEFA satisfied this burden, *inter alia*, by presenting these media releases. The burden of proof subsequently shifts to the Club to prove that such media releases are incorrect. The Panel however finds that the Club did not satisfy its burden of proof in this respect, as a consequence of which the conclusion remains that UEFA provided sufficient evidence on the relatedness of NKO Fund and Tatenergo.
  150. In addition to this, the Panel finds that this conclusion is fortified by the fact that the Board of Trustees consists of five members. The influence of the Republic of Tatarstan is however not only exercised by means of the fact that the chairman of the Board of Trustees is also the President of the Republic of Tatarstan, which in itself already represents a large influence, but there are other connections between the Club and the Republic of Tatarstan that make their relationship intrinsically close.
  151. Mr I. Fardiev, General Director of Tatenergo, a company owned by SIN-X, and in turn by the Republic of Tatarstan, is one of the five members of the Board of Trustees of the Club.
  152. Mr A. Shigabutdinov, General Director of TAIF, a company significantly influenced by the Republic of Tatarstan and main sponsor of the Club, is one of the five members of the Board of Trustees of the Club.
  153. Accordingly, three out of five members of the Board of Trustees have a position with the Republic of Tatarstan or with companies fully controlled by the Republic of Tatarstan. The Panel finds that this comprises a significant influence of the Republic of Tatarstan in the decision-making process of the Board of Trustees.
  154. Overall, the Panel finds that UEFA succeeded in establishing that the Board of Trustees was indeed an important body within the organisation of the Club with direct decision-making authority. The Panel finds that, taking these elements together, it can be concluded that the Club, NKO Fund and Taternago are all significantly influenced by the Republic of Tatarstan, which makes them related parties to the Club.
- 2) The prior qualification of NKO Fund as a related party
155. Not much attention was given to this issue by the parties in argument, but it remained undisputed that a donation of approximately EUR 28,000,000 from NKO Fund in 2015 was

qualified by the Investigatory Chamber as a donation from a related party on 14 June 2016. The Club did not object to this qualification and the break-even calculation for the reporting period ending in 2015 was adjusted accordingly (see para. 9 *supra*).

156. The Panel notes that the Club underwent some structural changes, but the Panel was utterly unpersuaded how and why this explains that the Club accepted that donations from NKO Fund were to be considered as donations from a related party in the reporting period ending in 2015, but now contends that donations received from the same entity in 2016 and 2017 are no longer to be qualified as donations from a related party.
157. UEFA submits that the Club had explained to it that this difference was based on “*a change in Appellant’s structure which had occurred in late 2015*” (although no evidence was submitted by UEFA from which such statement of the Club derives). By letter dated 14 June 2016, UEFA informed the Club that the Investigatory Chamber “*decided that the donations from the main donor, i.e. [NKO Fund], for a total amount of € 27,596k must be reported under “Contributions/Donations from related parties”. Indeed, the change intervened in the club structure in late 2015 did not significantly modify its relation with the Funds compared to previous years*”.
158. Be it as it may, the Panel notes that there is no evidence on file suggesting that the structural changes made to the Club in late 2015 should lead to the conclusion that NKO Fund is no longer a related party as from 2016.
159. An important structural change may have been implemented on 1 March 2018 when “*the football activities were transferred from MAI Rubin to the new legal entity, “Football Club Rubin Kazan Limited Liability Company”*”. The FUR informed the UEFA Administration on 26 April 2018 that the football activities of the Club were transferred from the legal entity MAI Rubin to a new legal entity, i.e. FC Rubin Kazan LLC. The change of membership with the FUR was apparently approved by the FUR Executive Committee on 16 March 2018.
160. The Panel understands that a change from a “Municipal Autonomous Institution” (i.e. MAI Rubin) to a Limited Liability Company, could eliminate – at least formally – the direct links of the Club with the Republic of Tatarstan or public authorities in general. The fact that the Club used to be a combined private/public entity is supported by a statement dated 31 May 2017 from Mr Ilsur Metshin, then President of the Club, published on the website of the Club:

*““In order to ensure the compliance with the rules of the UEFA financial fair-play we have engaged a famous audit company PriceWaterhouseCooper. One of the most difficult strategic goals set before the club was to find a way of transition from a private-public model to a fully private one, that would provide a single center of decision-making”, - Ilsur Metshin noted”.*

161. Consequently, because of the transition from a private-public entity to a private entity, arguably, donations received from government-owned companies were to be qualified as related party donations before the structural change, but not anymore after the structural change. That structural change, however, only occurred in March 2018, so this structural change should not have any retrospective impact on the qualification of NKO Fund and

Tatenergo before this date and therefore should not impact on the reporting periods ending in 2016 and 2017.

162. In view of the above, the Panel finds that an inference can be drawn that because the Club did not object to qualifying NKO Fund as related parties during the reporting period ending in 2015, and in the absence of any proof to the contrary, this entity is still to be considered as a related party during the reporting periods ending in 2016 and 2017. Since there is no material difference between NKO Fund and Tatenergo in the sense that both are ultimately fully controlled by the Republic of Tatarstan, the Panel finds that also Tatenergo is to be qualified as a related party.

3) Conclusion

163. On the basis of the arguments set out above, the Panel finds that NKO Fund and Tatenergo are indeed to be considered as related parties to the Club, with the consequence that the donations received from these entities are to be excluded from the break-even results for the reporting periods ending in 2016 and 2017.

**v. *Did the Club violate Clause 3.2 of the Settlement Agreement?***

164. The consequence of the above finding is that an amount of EUR 13,780,000 is to be deducted from break-even result for the reporting period ending in 2016. Given that the deductions made on the basis of the Deloitte Report are to be accepted in their entirety, the reporting period ending in 2016 shows a deficit of EUR 19,113,000 (see para. 33 *supra*).

165. Clause 3.2 of the Settlement Agreement provides as follows:

*“Break-even result 2016: Rubin undertakes to reach a minimum Break-even result of EUR 0 million for the reporting period ending in 2016”.*

166. The Club submits in this respect that this deficit is not in excess of the acceptable deviation of EUR 30,000,000.

167. The Panel finds that the Club’s argument in this respect must be dismissed. The “acceptable deviation” is only applied over an aggregate break-even covering a reporting period of three years.

168. This is corroborated by the fact that Clause 3.2 of the Settlement Agreement, contrary to Clause 1.2, does not refer to an “acceptable deviation”.

169. Finally, the Panel finds that the Club’s argument that the Club cannot be sanctioned for a violation of Clause 3.2 of the Settlement Agreement because the Appealed Decision did not establish that such violation was committed, must be dismissed. The Panel notes that the ultimate conclusion in the Appealed Decision does not specifically refer to either Clause 1.2 or Clause 3.2 of the Settlement Agreement, but it is clear from the Referral Decision that the Club was accused of having violated Clause 3.2. Also, as determined in the Appealed Decision

*“[i]n its Observations, the Club did not dispute that on the basis of the break-even information submitted by the Club under Article 62 of the CL&FFP Regulations in respect of the monitoring period ending in 2015, it was in breach of Clauses 1.2 and 3.2 of the Settlement Agreement”.*

170. Importantly, the Adjudicatory Chamber concludes the following in the Appealed Decision:

*“Having examined the evidence, in particular the findings of the CFCB Chief Investigator, the Observations and the arguments presented by the Club, the CFCB Adjudicatory Chamber determines that the Club has failed to comply with the terms of the Settlement Agreement since it had an aggregate break-even deficit which exceeded the relevant acceptable deviation by forty-five million, nine hundred and fifty-three thousand Euros (€45,953,000) for the reporting periods ending in 2015, 2016 and 2017”.*

171. Since the Adjudicatory Chamber reached the conclusion that the Club had an aggregate deficit of EUR 45,993,000 over the reporting periods ending in 2015, 2016 and 2017, the Panel finds that this implies that the Club must necessarily have violated Clause 3.2 of the Settlement Agreement, because the total aggregate deficit of EUR 45,993,000 is comprised of deficits of EUR 39,972,000 related to the reporting period ending in 2017, EUR 19,113,000 related to reporting period ending in 2016 and EUR 16,868,000 related to the reporting period ending in 2015 respectively, minus the acceptable deviation of EUR 30,000,000 (see para. 175 *infra*).

172. Consequently, the Panel finds that since the Club had a deficit of EUR 19,113,000 over the reporting period ending in 2016, the Club violated Clause 3.2 of the Settlement Agreement.

**vi. *Did the Club violate Clause 1.2 of the Settlement Agreement?***

173. Having already determined the consequences of the conclusion that NKO Fund and Tatenergo are to be considered related parties to the Club for the reporting period ending in 2016, the Panel needs to determine the consequences of this conclusion for the reporting period ending in 2017, before the aggregate break-even result over the reporting periods ending in 2015, 2016 and 2017 can be determined.

174. It is not in dispute between the parties that in case NKO Fund and Tatenergo are to be considered related parties to the Club, an amount of EUR 19,655,000 is to be excluded from the break-even result for the reporting period ending in 2017. Given that the deductions made on the basis of the Deloitte Report are to be accepted in their entirety, the reporting period ending in 2017 shows a deficit of EUR 39,972,000 (see para. 33 *supra*).

175. In view of the above, the conclusions of the Investigatory Chamber in respect of the calculation of the aggregate break-even result for the reporting periods ending in 2015, 2016 and 2017 are to be accepted in full, which already takes into account the mitigating factor “operating in an inefficient market”:

	T (Financial Year 2017)	T-1 (Financial Year 2016)	T-2 (Financial Year 2015)
Aggregated break-even result considered by the Investigatory Chamber	-/- EUR 39,972,000	-/- EUR 19,113,000	-/- EUR 16,868,000
Aggregated break-even result in 2017/2018	-/- EUR 75,953,000		
Acceptable deviation	EUR 30,000,000		
<b>Break-even breach</b>	<b>-/- EUR 45,953,000</b>		

176. Clause 1.2 of the Settlement Agreement provides as follows:

*“The objective of this Agreement is to achieve that Rubin is Break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2017/18; i.e. the aggregate Break-even result for the reporting periods 2015, 2016 and 2017 must be a surplus or a deficit within the acceptable deviation in accordance with Art. 63 UEFA CLFFPR”.*

177. Consequently, the Panel finds that, deducting an acceptable deviation of EUR 30,000,000, the Club had an aggregate deficit of EUR 45,953,000 over the reporting periods ending in 2015, 2016 and 2017. The Club therefore violated Clause 1.2 of the Settlement Agreement.

**vii. *Is the sanction imposed on the Club by the Adjudicatory Chamber disproportionate?***

178. There is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association’s expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its *de novo* powers of review, be free to say so and apply the appropriate sanction (CAS 2017/A/5003, para. 274, with further reference to CAS 2015/A/4338, para. 51).

179. The Club maintains that it cannot be sanctioned because it has not breached the Settlement Agreement. More specifically, the Club contends that i) the Settlement Regime does not encompass the reporting period ending in 2017; ii) the Settlement Agreement does not provide for any duty of the Club for the 2017 reporting period; and the self-contradiction between Clauses 1.1 and 1.2 of the Settlement Agreement which makes it impossible to accomplish the objective set out in Clause 1.2 within the limited time period of the Settlement Regime.

180. Such arguments have already been dismissed *supra* and therefore do not provide a basis for reduction of the sanctions imposed on the Club.

181. Also the argument of the Club that the violation of Clause 3.2 of the Settlement Agreement was lighter (a lower deficit) than established in the Appealed Decision must be dismissed, because the Panel finds that this is not the case.
182. The Club also contends that the exclusion from future competitions imposed on the Club is grossly disproportionate in comparison with the sanction imposed on Galatasaray in CAS 2016/A/4492.
183. The Panel notes that Galatasaray exceeded the relevant acceptable deviation by EUR 134,200,000, whereas the Club exceeded the relevant acceptable deviation by only EUR 45,953,000. Although the breach of Galatasaray may have been more severe, the Panel finds that the Club also clearly violated the overall objective of the Settlement Agreement with a very considerable amount. The Panel does not consider this difference to be sufficient reason to distinguish between the sanctions imposed upon Galatasaray and upon the Club.
184. Also the Club's contention that Galatasaray breached two elements of the settlement agreement, whereas the Club only breached one element must be dismissed, because the Panel finds that the Club also breached two elements of the Settlement Agreement.
185. Finally, as to the Club's argument that the breach committed by Galatasaray was more serious because it breached the terms of the settlement agreement during its participation in UEFA competitions, the Panel finds that this may indeed make the violations of Galatasaray more severe than the violations of the Club, but does not consider it appropriate to reduce the sanctions imposed on the Club for this reason.
186. Insofar the Club submits that the Adjudicatory Chamber was "*blatantly incorrect*" in concluding that the Club had a break-even deficit for the reporting period ending in 2015, the Panel finds that such contention of the Club is wrong, as it is based on an incomplete citation of the conclusion of the Adjudicatory Chamber in the Appealed Decision. In fact, the Adjudicatory Chamber considered "*the large scale of the Club's aggregate break-even deficit for the reporting periods ending in 2015, **2016 and 2017***" (emphasis added by the Panel). UEFA has never accused the Club of violating the terms of Clause 3.1 of the Settlement Agreement.
187. Ultimately, the Panel finds the pronouncement of an exclusion from participation in future competitions to be an appropriate sanction for violating the terms of a settlement agreement. Indeed, the Settlement Agreement was concluded as a consequence of the fact that the Club had already violated the UEFA CL&FFPR before and was therefore afforded a second chance by means of the Settlement Agreement. Considering the fact that the Club failed to comply with the terms of this second chance, the Panel finds that a serious sanction is warranted and that the exclusion from participation in a future edition of any of the UEFA club competitions is not disproportionate. The Panel does not consider it appropriate to suspend the exclusion from UEFA club competitions for a probationary period or to apply such possible exclusion only to the 2019/2020 sporting season.

188. On this basis, the Panel does not deem it appropriate to draw any comparisons with the arbitral award issued in respect of AC Milan in CAS 2018/A/5808, because no breach of a settlement agreement was at stake in such proceedings.
189. Consequently, notwithstanding its *de novo* power to review the proportionality of the sanction, the Panel finds it reasonable and fair to confirm the sanction imposed on the Club in the Appealed Decision, namely to impose on the Club an exclusion from participation in the next UEFA club competition for which it would otherwise qualify in the next two seasons (i.e. the 2019/2020 and 2020/2021 seasons).

## **B. Conclusion**

190. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- i. Clause 1.2 of the Settlement Agreement imposes obligations on the Club and the failure to comply therewith may subject the Club to the imposition of disciplinary sanctions.
  - ii. The break-even result for the reporting period ending in 2017 is relevant for determining the aggregate break-even result over the reporting periods ending in 2015, 2016 and 2017, in accordance with Clause 1.2 of the Settlement Agreement.
  - iii. Clause 1.2 of the Settlement Agreement does not consume the application of Clause 3.2.
  - iv. NKO Fund and Tatenergo are to be considered as related parties to the Club, with the consequence that the donations received from these entities are to be excluded from the break-even results for the reporting periods ending in 2016 and 2017.
  - v. The Club violated Clause 3.2 of the Settlement Agreement.
  - vi. The Club violated Clause 1.2 of the Settlement Agreement.
  - vii. The sanction imposed on the Club in the Appealed Decision, namely an exclusion from participation in the next UEFA club competition for which it would otherwise qualify in the next two seasons (i.e. the 2019/2020 and 2020/2021 seasons), is confirmed.
191. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 29 October 2018 by FC Rubin Kazan LLC, against the decision issued on 19 September 2018 by the Adjudicatory Chamber of the Club Financial Control Body of the *Union des Associations Européennes de Football* is dismissed.
2. The decision issued on 19 September 2018 by the Adjudicatory Chamber of the Club Financial Control Body of the *Union des Associations Européennes de Football* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.