



Arbitration CAS 2016/A/4492 Galatasaray v. Union des Associations Européennes de Football (UEFA), award of 3 October 2016 (operative part of 23 June 2016)

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Bernard Hanotiau (Belgium); Mr Olivier Carrard (Switzerland)

Football

Exclusion of club from participating in UEFA competition for breach of Club Licensing and Financial Fair Play Regulations (CL&FFP Regulations)

Applicability of EU law as foreign mandatory rules

Compatibility of the CL&FFP Regulations with the prohibition of restricting competition “by object”

Compatibility of the “break-even” rule with the prohibition of restricting competition “by object”

Compatibility of the CL&FFP Regulations with the prohibition of restricting competition “by effect”

Compatibility of the CL&FFP Regulations with the EU fundamental freedoms

- 1. Pursuant to Article 19 of the Swiss private international law statute (LDIP), an arbitral tribunal sitting in Switzerland, such as the CAS, must take into consideration foreign mandatory rules where three conditions are met: (i) such rules belong to a special category of norms which need to be applied irrespective of the law applicable to the merits of the case; (ii) there is a close connection between the subject matter of the dispute and the territory where the mandatory rules are in force; (iii) in view of Swiss legal theory and practice, the mandatory rules must aim to protect legitimate interest and crucial values and their application must lead to a decision which is appropriate. EU competition law and EU provisions on fundamental freedoms guaranteed by TFEU meet these three conditions and constitute foreign mandatory rules. Therefore, compliance with these provisions must be taken into account by a CAS panel.**
- 2. The CL&FFP Regulations do not have as their object the restriction or distortion of competition, *i.e.* to favour or disfavour certain clubs rather than to prevent clubs from trading at levels above their resources: their object is the financial conduct of clubs wishing to participate in the UEFA competitions. The fact that the CL&FFP Regulations somehow govern the conduct of a club does not mean *per se* that they restrict competition: otherwise, all regulations (containing rules of conduct) would be a restriction of competition.**
- 3. The so called “break-even” rule contained in the CL&FFP Regulations, pursuant to which, in a nutshell, clubs cannot spend over EUR 5 million in excess of their revenues per “assessment period” (three years), does not impose a limit to, or control on, investments in the meaning of Article 101.1.b) TFEU. It is not a blunt restriction on clubs’ spending, since the CL&FFP Regulations calculate compliance with the “break-even” requirement over a rolling three years’ period and therefore allow “overspending” in one or two years, provided the revenues generated in the subsequent(s) year(s) of the**

period cover it; and investment in infrastructures, for instance, are allowed without limits.

4. The CL&FFP Regulations do not appear to prevent the clubs from competing among themselves on the pitch or in the acquisition of football players. On the contrary, they produce the effect that competition is not distorted by “overspending”, *i.e.* by those clubs that, operating at a loss, allow themselves operations that could not be conducted on a sound commercial basis, and gain an advantage over those clubs which respect the constraints of financial balance (*i.e.*, which take a behaviour that should be expected by any reasonable entity in normal market conditions). In other words, their effect is to prevent a distortion of competition. Further, they do not limit the amount of salaries for the players: clubs are free to pay as much as they wish, provided those salaries are covered by revenues. In addition, they do not “ossificate” the structure of market (large dominant clubs have always existed and will always exist) and do not exclude clubs from “essential facilities”: the UEFA professional club competitions cannot be compared to railway infrastructures or to grids in the electric market. Finally, the “break-even” calculations take place over rolling periods of three years. Therefore, “overspending” is allowed during one or two football season, provided it is covered in the following one(s).
5. The CL&FFP Regulations do not imply any discrimination based on nationality, since they apply to any and all clubs participating in the UEFA competitions. In addition, they apply also to “domestic operations” even absent an intra-EU element and do not restrict the fundamental freedoms: players can be transferred (or offer services) cross-border without limitations; capitals can move from a EU country to another without any limit. In other words, the CL&FFP Regulations do not appear to run against the provisions concerning the freedom of movement of capitals and of workers, as well as the freedom to provide services and Article 16 of the Charter of the Fundamental Rights of the European Union.

1. BACKGROUND

1. THE PARTIES

1. The Appellant, Galatasaray Sportif Sınai ve Ticari Yatirimlar A.S Football Club (the “Appellant”, “Galatasaray” or the “Club”), is a Turkish professional football club registered with the Turkish Football Federation and playing in the Süper Lig (the top professional football league organized under the auspices of the Turkish Football Federation).
2. The Respondent, the Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is the confederation governing the sport football in Europe, and is based in Nyon, Switzerland. UEFA organizes, *inter alia*, club competitions at confederation’s level, which

include the UEFA Champions League (“UCL”) and the UEFA Europa League (“UEL”).

3. The Appellant and the Respondent are hereinafter referred to as the “Parties”.

1.2 THE DISPUTE BETWEEN THE PARTIES

4. In 2004/2005, UEFA, declaring its intent to help national member federations and clubs improve standards of professionalism, set minimum conditions to be satisfied by clubs in order to gain entry into UEFA competitions, on the basis of a “Club Licensing System” to be administered by national federations.
5. In 2012, UEFA adopted new regulations, modifying the existing “Club Licensing System”, intended to promote a “Financial Fair Play” (the UEFA Club Licensing and Financial Fair Play Regulations: the “CL&FFP Regulations”) on the basis, *inter alia*, of a “break-even requirement”: under such requirement a club must break-even over a period of three years or, put differently, the football related expenses of a club must not exceed its football related income, subject to an acceptable deviation. In March 2012, UEFA created a new body within its administration (the UEFA Club Financial Control Body: the “CFCB”), comprising an Investigatory Chamber, led by a Chief Investigator, and an Adjudicatory Chamber, in order to oversee and enforce the application of the CL&FFP Regulations. On 1 July 2015, a new edition of the CL&FFP Regulations entered into force.
6. On 16 May 2014, the Appellant entered into a settlement agreement (the “Settlement Agreement”) with the Chief Investigator of the CFCB in accordance with Articles 14(1) and 15 of the 2014 edition of the Procedural rules governing the UEFA Club Financial Control Body (the “Procedural Rules”), which provide:

Article 14 – *End of the investigation*

- “1. *At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:*
 - a) dismiss the case; or*
 - b) conclude, with the consent of the defendant, a settlement agreement; or*
 - c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*
 - d) refer the case to the adjudicatory chamber”.*

Article 15 – *Settlement agreement*

- “1. *Settlement agreements pursuant to Article 14(1)(b) shall take into account, in particular, the factors referred to in Annex XI of the UEFA Club Licensing and Financial Fair Play Regulations. Such agreements may be deemed appropriate in circumstances which justify the conclusion of an effective, equitable and dissuasive settlement without referring the case to the adjudicatory chamber.*
2. *Settlement agreements may set out the obligation(s) to be fulfilled by the defendant, including the possible application of disciplinary measures and, where necessary, a specific timeframe.*

3. *The CFCB chief investigator monitors the proper and timely implementation of the settlement agreement.*
4. *If a defendant fails to comply with the terms of a settlement agreement, the CFCB chief investigator shall refer the case to the adjudicatory chamber”.*
7. The Settlement Agreement was concluded after the acting Chief Investigator had determined that Galatasaray had breached the CL&FFP Regulations. Specifically, the Chief Investigator considered that the Club had failed to fulfil the break-even requirement set out in Articles 58 to 63 of the 2012 edition of the CL&FFP Regulations.
8. The Settlement Agreement provided, *inter alia*, that
 - Galatasaray “*be break-even compliant in the meaning of [CL&FFP Regulations] at the latest in the monitoring period 2015/16, i.e. the aggregate Break-even result for the monitoring periods 2013, 2014 and 2015 must be a surplus or a deficit within the acceptable deviation in accordance with Article 63 [CL&FFP Regulations]*” (Article 1.2 of the Settlement Agreement); and
 - “[...] *for the reporting period ending in 2015, 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 future financial information for the reporting period ending in 2014, i.e. EUR 90 Mio*” (Article 3 of the Settlement Agreement).
9. In October 2015, the Appellant submitted to UEFA its completed monitoring documentation, comprising the Club’s break-even information for the reporting periods ending in 2013, 2014 and 2015, in accordance with the CL&FFP Regulations. Such documentation showed that, for the reporting periods, the Appellant had a break-even deficit which exceeded the relevant acceptable deviation by EUR 134,200,000 and that its aggregate cost of employee benefits expenses was EUR 95,500,000, *i.e.* exceeding by EUR 5,500,000 the maximum employee benefits expenses set forth by Article 3 of the Settlement Agreement.
10. Between 26 and 28 of October 2015, an independent compliance audit was carried out by PricewaterhouseCoopers, which verified the accuracy and completeness of the Appellant’s financial information and its aggregate break-even deficit.
11. In light of these findings, the CFCB Chief Investigator concluded that the Appellant had not complied with the Settlement Agreement and decided to refer the case to the CFCB Adjudicatory Chamber.
12. The Club submitted written observations and a hearing was held before the CFCB Adjudicatory Chamber at the Club’s request.
13. On 2 March 2016, the CFCB Adjudicatory Chamber issued a decision (the “CFCB Decision”), in which it decided that:
 - “1. *Galatasaray has failed to comply with the terms of the Settlement Agreement.*

2. *To impose on Galatasaray an exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. the 2016/2017 and 2017/2018 seasons).*
3. *To order Galatasaray to limit the overall aggregate cost of the employee benefits of all of its players (calculated in accordance with part C of Annex X of the CL&FFP Regulations) in each of the next two reporting periods (i.e. the reporting period ending in 2016 and the reporting period ending in 2017) to a maximum of a sixty-five millions Euros (€65,000,000).*
4. *The Settlement Agreement shall cease to have effect as of the date of this Decision.*
5. *Galatasaray is to pay five thousand Euros (€5,000) towards the costs of these proceedings.*
6. *The costs of the proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Galatasaray. [...]”.*

2. THE ARBITRAL PROCEEDINGS

2.1 THE CAS PROCEEDINGS

14. On 11 March 2016, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed a statement of appeal (the “Statement of Appeal”), drafted in French, with Court of Arbitration for Sport (“CAS”) against the Respondent to challenge the CFCB Decision, which was rendered in English.
15. In a letter of 16 March 2016, the Respondent objected to French being the language of the proceedings and requested that the language of the proceedings be English.
16. The Parties were therefore invited by the CAS Court Office to state whether they would agree to a bilingual procedure, with each party being allowed to file its submissions in French or English. The Parties submitted their positions, the Appellant agreeing on 16 March 2016 to such a bilingual procedure and formally objecting to a procedure solely in English, and the Respondent objecting on 21 March 2016 to a bilingual procedure and requesting that English be chosen as the language of the proceedings.
17. In light of the Parties’ disagreement on the language of the arbitration, the President of the CAS Appeals Arbitration Division issued an Order on Language on 22 March 2016, in which she ruled that:
 - “1. *The language of the procedure TAS 2016/A/4492 Galatasaray c. UEFA, in accordance with Article R29 of the Code of Sports-related Arbitration, is English.*
 2. *The Appellant may however file its written submissions and plead at the hearing in French, without the need for a translation in English.*
 3. *The costs of the present order shall be determined in the final award or in any final disposition of this arbitration”.*

18. On 6 April 2016, in accordance with Article R51 of the Code, the Appellant filed with the CAS its 197 pages appeal brief (the “Appeal Brief”) together with 64 exhibits, submitting the following requests for relief:

“L’appelante demande que la Formation arbitrale:

- *A titre principal, juge que les sanctions infligées par la décision querellée sont illicites, en raison de l’illégalité des dispositions réglementaires sur lesquelles cette décision prétend se fonder, à savoir l’exigence d’équilibre financier imposée par le « Règlement de l’UEFA sur l’octroi de licence aux clubs et le fair-play financier », notamment dans sa version de 2012, laquelle ne prévoyait pas la possibilité pour les clubs de bénéficier d’un « accord volontaire » au sens de l’annexe XII de la version 2015 du règlement susmentionné;*
- *A titre subsidiaire, juge que les sanctions infligées par la décision querellée sont gravement disproportionnée et y substitue dès lors une solution disciplinaire satisfaisante à l’exigence de proportionnalité, telle que par exemple celles évoquées aux points 3.14 et 3.17 du chapitre III;*
- *Condamne l’intimée à supporter la totalité des frais de la procédure et alloue à l’appelante un montant fixé ex aequo et bono afin de compenser ses frais de défense”.*

Which may be translated into English as follows:

“The Appellant requests that the Arbitration Panel:

- *Primarily, rules that the sanctions imposed by the disputed Decision are illegal, due to the illegality of the regulatory provisions on which it is based, that is the requirement of financial fair play imposed by the « UEFA Club Licensing and Financial Fair Play Regulations », specifically in its 2012 edition, which did not provide for the possibility for clubs to benefit from a « voluntary agreement » under Annex XII of the 2015 edition of the above-mentioned Regulation;*
- *Alternatively, rules that the sanctions imposed by the disputed Decision are grossly disproportionate and substitutes accordingly a disciplinary measure that satisfies the proportionality requirement, like for example those mentioned at paragraphs 3.14 and 3.17 of chapter III;*
- *Imposes on Respondent to bear all of the costs related to the proceedings and award the Appellant an amount fixed ex aequo et bono to compensate the legal fees it incurred”.*

19. Together with its Appeal Brief, the Appellant applied for a stay of the CFCB Decision pursuant to Article R37 of the Code.

20. On 14 April 2016, the Respondent filed its answer to the Applicant’s application for a stay, concluding that it should be rejected.

21. On 18 April 2016, the Appellant filed an unsolicited comment to the Respondent’s answer.

22. On 20 April 2016, the Deputy President of the CAS Appeals Arbitration Division rendered an Order on request for a stay, ruling that:

“1. The application for a stay filed by Galatasaray Sportif Sinai Ve Ticari Yatirimlar A.S. on 6 April

2016 in the case CAS 2016/A/4492 Galatasaray c. UEFA is dismissed.

2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
23. On 11 May 2016, Respondent submitted a 55 pages answer to Galatasaray’s Appeal Brief (the “Answer”) and formulated the following request for relief:
“Based on the foregoing, UEFA respectfully requests CAS to issue an award on the merits:
 - (d) rejecting the relief sought by the Appellant;*
 - (e) confirming the Decision; and*
 - (f) in any event, ordering the Appellant to bear all of the costs of these arbitration proceedings and awarding UEFA a contribution of thirty thousand Euros (€30,000) towards the legal fees that it has incurred”.*
24. In a letter dated 13 May 2016, the Appellant expressed its wish that a hearing be held in the present procedure.
25. In a letter dated 17 May 2016, the Respondent stated that it did not deem a hearing necessary in the present matter and that the Panel could issue an award based solely on the parties’ written submissions. However, it confirmed that it would nevertheless participate in a hearing, should the Panel consider one should be held.
26. On 25 May 2016, the CAS Court Office informed the Parties that the Panel appointed to decide their case had been constituted of Prof. Luigi Fumagalli (President), Prof. Bernard Hanotiau Belgium, and Mr Olivier Carrard, (Arbitrators). On 31 May 2016, the CAS Court Office informed the Parties that the Panel had appointed Mr Hervé Le Lay to assist it as *ad hoc* Clerk. Both Parties confirmed at the hearing that they had no objection or observation regarding the composition of the Panel.
27. On 2 June 2016, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the “Order of Procedure”), in which, *inter alia*, it was held that a hearing would take place on 16 June 2016 in Paris, France. On 3 June 2016, both Parties signed the Order of Procedure.
28. The following persons were present at the hearing held in Paris on 16 June 2016:
 - Panel and CAS Court Office:
 - Prof. Luigi Fumagalli, President of the Panel
 - Prof. Bernard Hanotiau, Arbitrator
 - Mr Olivier Carrard, Arbitrator
 - Mr Hervé Le Lay, *ad hoc* Clerk
 - Mr William Sternheimer, CAS Deputy Secretary General

- Appellant:
 - Mr Jean-Louis Dupont, counsel for Galatasaray
 - Mr Martin Hissel, counsel for Galatasaray
 - Mr Dursun Özbek, President of Galatasaray
 - Mr Eşref Alaçayır, vice-President of Galatasaray
 - Mr Ural Akuzum, board member of Galatasaray
 - Ms Sedef Hacisalihoglu, CFO of Galatasaray
- Respondent:
 - Mr Emilio Garcia, UEFA head of disciplinary and integrity matters
 - Mr Andrew Mercer, UEFA in-house counsel
 - Mr Pablo Rodriguez, UEFA in-house counsel
 - Mr Jan Kleiner, counsel for UEFA.

29. While Appellant had indicated in its Appeal Brief that it reserved its right to present for oral testimony two professors of economics, Mr Joe Swinnen and Mr Stefan Kesenne, it did not submit expert witness affidavits or reports and did not ask that they be heard at the hearing.

30. At the hearing, counsel for the Parties made submissions in support of their respective cases. At the conclusion of the hearing, both parties indicated that they were satisfied with the way the procedure had been conducted and that their right to be heard had been complied with.

2.2. ARGUMENTS OF THE PARTIES

31. The arguments of the Parties are summarised in the discussion section of this award, which follows. The Panel has examined thoroughly the entirety of the file and has taken into account all arguments and exhibits submitted during the written and the oral phase of the proceedings, including those not mentioned in this award.

3. DISCUSSION

3.1 JURISDICTION

32. Article R47 of the Code provides as follows:

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

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by CL&FFP Regulations applicable to the procedure of first instance”.

33. In its Statement of Appeal, Galatasaray relied on Article 62 of the UEFA Statutes which

provides that:

- “1 *Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration.*
- 2 *Only parties directly affected by a decision may appeal to the CAS. However, where doping-related decisions are concerned, the World Anti-Doping Agency (WADA) may appeal to the CAS.*
- 3 *The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.*
- 4 *An appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted.*
- 5 *An appeal shall not have any suspensory effect as a stay of execution of a disciplinary sanction, subject to the power of the CAS to order that any disciplinary sanction be stayed pending the arbitration.*
- 6 *The CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so”.*

34. The jurisdiction of the CAS was not contested by the Respondent and was confirmed by the signature by both parties of the Order of Procedure. The CAS accordingly has jurisdiction over the appeal brought by the Club against the CFCB Decision.

3.2 ADMISSIBILITY

35. As per Article 34(2) of the 2015 edition of the Procedural Rules and Articles 62 and 63 of the UEFA Statutes, the CFCB Decision is subject to an appeal to CAS, to be filed within ten days of the receipt of the CFCB Decision.

36. The Appellant filed its Statement of Appeal within the time limit of ten days of the receipt of the CFCB Decision. In addition, UEFA did not challenge the admissibility of the appeal. It follows that the appeal was filed in due time and is admissible.

3.3 APPLICABLE LAW

37. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and CL&FFP Regulations 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 CL&FFP Regulations of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

38. The Appellant submitted that Swiss law is applicable to the dispute as per Article R58 of the Code. The Appellant also submitted that European Union (“EU”) law, and in particular EU competition law and EU law regarding freedoms guaranteed by the Treaty on the Functioning of the European Union (“TFEU”) is applicable as economic activity generated by UEFA

interclub competition takes place on EU territory and in particular insofar as they constitute mandatory rules (“*dispositions d’ordre public*”) in EU territory. The Appellant essentially invoked EU law to challenge the legality of the CL&FFP Regulations. The Appellant also based arguments on UEFA Regulations and in particular the CL&FFP Regulations, although its primary argument is that CL&FFP Regulations are illegal.

39. The Respondent submitted that the substantive law applicable to the dispute is UEFA’s statutes, rules and regulations, in particular the CL&FFP Regulations and the Procedural Rules and, additionally Swiss Law as per Article R58 of the Code. Respondent submitted that EU law is irrelevant to the dispute as the case is only about Galatasaray’s failure to comply with the Settlement Agreement which is subject to Swiss law, that the Appellant did not establish how any of the EU law matters invoked apply to Galatasaray in the matter in dispute and that Galatasaray did not make any substantive legal argument regarding the legality of the CL&FFP Regulations before the CFCB Adjudicatory Chamber. Yet, the Respondent did not argue that UEFA regulations, and in the case at hand the CL&FFP Regulations, are not subject to the invoked provisions of EU Law or can be applicable even if contrary to these provisions. Respondent stated during the hearing that it does not argue that the Panel cannot consider EU law but that it only argues that it is not relevant.
40. The applicability of Swiss law, and of UEFA regulations, being duly noted that the legality of the latter is challenged by Appellant, does not raise any question. Swiss law and the UEFA regulations are therefore applicable to the merits of the dispute.
41. With regard to EU law, the Panel notes that compliance with EU competition law and EU provisions on fundamental freedoms guaranteed by TFEU must be taken into account by this Panel, insofar as they constitute foreign mandatory rules (“*dispositions impératives du droit étranger*”), pursuant to Article 19 of the Swiss private international law statute, the *Loi fédérale sur le droit international privé* of 18 December 1987 (“LDIP”).
42. Article 19 of the LDIP provides that:

“1. Lorsque des intérêts légitimes et manifestement prépondérants au regard de la conception suisse du droit l’exigent, une disposition impérative d’un droit autre que celui désigné par la présente loi peut être prise en considération, si la situation visée présente un lien étroit avec ce droit.

2. Pour juger si une telle disposition doit être prise en considération, on tiendra compte du but qu’elle vise et des conséquences qu’aurait son application pour arriver à une décision adéquate au regard de la conception suisse du droit”.
43. An arbitral tribunal sitting in Switzerland, such as is the case in this arbitration pursuant to Article R28 of the Code, must therefore take into consideration foreign mandatory rules where three conditions are met:
 - i. such rules belong to a special category of norms which need to be applied irrespective of the law applicable to the merits of the case;
 - ii. there is a close connection between the subject matter of the dispute and the territory

- where the mandatory rules are in force;
- iii. in view of Swiss legal theory and practice, the mandatory rules must aim to protect legitimate interest and crucial values and their application must lead to a decision which is appropriate.
44. The Panel's opinion largely converges with the reasoning followed by the CAS panel in the award rendered on 20 August 1999 in CAS 98/200 (§ 40-43) regarding the fulfilment of such conditions. Indeed,
- i. EU competition law and EU provisions on fundamental freedoms are largely regarded as pertaining to the category of mandatory rules by courts and scholars within the EU;
- ii. the close connection between (a) the territory on which EU competition law and the EU provisions on fundamental freedoms are in force and (b) the subject matter of the dispute results from the fact that the challenged UEFA regulations and CFCB Decision have an obvious impact on the EU territory. The regulations aim at regulating clubs, a majority of which are located within the EU territory (even though this is not the case of Galatasaray) and the regulations and the CFCB Decision relate to the UEFA interclub competitions which largely take place and have impact on the EU territory, and
- iii. the Swiss legal system shares the interests and values protected by the EU competition law and the EU provisions on fundamental freedoms.
45. Therefore, even though Swiss law and UEFA regulations apply to the merits of the dispute pursuant to Article R58 of the Code, the Panel has to take into account also the invoked mandatory provisions of EU law.

3.4 MERITS

3.4.1 The Appeal

46. In essence, Galatasaray's appeal is structured as follows: Galatasaray's primary claim in this arbitration is that the sanctions imposed by the CFCB Decision are illegal ("*illicites*") because the provisions on which they are based (the CL&FFP Regulations, in their 2012 edition) are illegal. The Club submits that the CL&FFP Regulations run against peremptory provisions of EU and Swiss law. In a secondary claim, put forward in the event the primary request is rejected, Galatasaray requests the CAS to modify the sanctions imposed by the CFCB Decision submitting that they are disproportionate.
47. The issues to be addressed by the Panel are therefore the following:
- A. Are the CL&FFP Regulations and the Settlement Agreement illegal?
- B. If the answer to the first question is no, did Galatasaray breach the Settlement Agreement and the CL&FFP Regulations?
- C. If the answer to the second question is yes, are the sanctions imposed by the CFCB

Decision disproportionate?

3.4.2 The Disputed Issues

A. *The legality of the CL&FFP Regulations and of the Settlement Agreement*

A.1 *Preliminary Observations*

48. The Panel notes that in its request for relief, as a primary claim, Galatasaray expressly aims at the 2012 edition of the CL&FFP Regulations, and makes express reference to the fact that, unlike the subsequent edition of 2015, they do not provide for the possibility to enter into “voluntary agreements”. However, it is not clear whether the Club is requesting the CAS to declare the illegality of CL&FFP Regulations because they do not allow “voluntary agreements”. Indeed, beyond the terms of the request for relief, the Club criticizes at length the “break-even principle”, core of CL&FFP Regulations, which is also the foundation of their 2015 edition, and does not state that the 2015 edition is legal because “voluntary agreements” are allowed. In fact, the Club only states that it would not have an interest to attack CL&FFP Regulations, if a “voluntary agreement” were entered into with UEFA. Since no “voluntary agreement” was executed, the question of the legality of CL&FFP Regulations remains.
49. The Club submits that:
- The break-even rule established by the CL&FFP Regulations is illegal under European Union law and Swiss law. Therefore, the disciplinary sanctions imposed on Galatasaray by the CFCB Decision on the basis of the break-even rule are also illegal.
 - Specifically, the break-even rule is in breach of:
 - Article 101 TFEU, prohibiting “*agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market*”.
 - Article 102 TFEU, prohibiting “*abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it [...] in so far as it may affect trade between Member States*”.
 - Article 63 of the TFEU on the free movement of capital, Article 56 TFEU on the free movement of services, and Article 45 TFEU on the free movement of workers.
 - Relying heavily on press articles and individual statements of football stakeholders, in the press or during TV interviews, the Appellant argues that the main objective of the break-even rule is to impede small clubs’ ability to invest and recruit new talented players, thus preventing them from qualifying and/or accessing UEFA’s interclub competitions at European level. Eventually, the “*you can only spend what you earn*” system put in place by that rule is designed to protect a handful of well-established clubs from the competition of newcomers. Such an objective is illegitimate and cannot justify the

above-mentioned violations generated by the break-even rule, which cannot be justified by the other objectives advanced by UEFA, such as the long-term financial stability of football clubs or the integrity of UEFA competitions. Even if those objectives were legitimate, the break-even rule would not be proportionate, when compared to alternative instruments achieving the same objectives.

- Galatasaray should be eligible to apply for a voluntary agreement under Annex XII of the 2015 edition of the CL&FFP Regulations. However, Article A(3) of the Annex XII, which requires the applicant for a voluntary agreement not to have been subject to a settlement agreement within the last three reporting periods, unjustifiably renders Galatasaray ineligible to apply for such voluntary agreement and is therefore, in addition to being discriminatory, illegal.

50. The Respondent submits that:

- The Club's arguments regarding the legality of the CL&FFP Regulations have no bearing on the issues at stake, limited to an analysis of the Club's breach of the Settlement Agreement.
- The Club did not originally challenge the CL&FFP Regulations, but applied (or tried to apply) them, entered into the Settlement Agreement on their basis and only in its appeal, when it was sanctioned by the CFCB Decision, started to criticize them.
- As indicated by UEFA in the reply submissions filed in other proceedings, launched against the legality of the CL&FFP Regulations before a number of instances, including the EU Commission, on the basis of identical arguments as those advanced by the Appellant, the "break-even" requirement and the CL&FFP Regulations are prudential rules necessary for the proper functioning of football clubs, and, by their nature, do not constitute restrictions on competition, but rather encourage and facilitate innovative and sound competition between clubs. Any restriction they may cause pursues legitimate governance objectives and is proportionate to their achievement.

51. The Panel noted the preliminary observations submitted by UEFA, under which the legality of the CL&FFP Regulations should not be an issue for this arbitration, to be focussed only on the CFCB Decision and the finding that the Club had breached the Settlement Agreement.

52. In the Panel's opinion, however, the fact that the Club did not clearly challenge the legality of the CL&FFP Regulations before the appeal to CAS, and that Galatasaray entered into the Settlement Agreement, even though it sheds some light on the original impact and perception of the rules (§ 71 below), does not appear to offer in law a sufficient basis to discard *in limine* the claim. Although in some jurisdictions it is possible to enter into valid settlements to define a dispute in which the legality of a contract is discussed, it is noteworthy that UEFA did not offer any legal basis for such conclusion advocated in its pleadings. In any case, the Panel remarks that the issue of the legality of CL&FFP Regulations was not an object of the Settlement Agreement, and therefore does not appear to be covered by it.

53. The Panel also finds that the breach of the Settlement Agreement is indeed the source of the dispute appealed before CAS, but remarks that, contrary to UEFA's argument, the Settlement Agreement is not a stand-alone legal instrument. As expressed by the Appellant during the hearing, the Settlement Agreement finds its "*raison d'être*" in the CL&FFP Regulations. In other words, no settlement agreement would have been entered but for the CL&FFP Regulations, as no original breach justifying the Settlement Agreement would have existed without the CL&FFP Regulations. The Panel notes that the very text of the Settlement Agreement appears to indicate that the obligations therein accepted by the Club (in a sort of "plea bargaining") are themselves based on the CL&FFP Regulations.
54. Therefore, the Panel must examine the Appellant's claim that the CL&FFP Regulations are illegal and that, as a result, the Settlement Agreement is also illegal. In the examination of such claim, the Panel shall consider issues of EU law (*Section A.2*) as well as issues of Swiss law (*Section A.3*). Specific attention shall then be paid to the Appellant's challenge to the validity of a Article A(3) of Annex XII of the 2015 edition of the CL&FFP Regulations (*Section A.4*).

A.2 *Issues of EU Law*

A.2.1 Competition law

a) Article 101 TFEU

55. Article 101 TFEU provides as follows:

- "1. *The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*
- (a) *directly or indirectly fix purchase or selling prices or any other trading conditions;*
 - (b) *limit or control production, markets, technical development, or investment;*
 - (c) *share markets or sources of supply;*
 - (d) *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
 - (e) *make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*
2. *Any agreements or decisions prohibited pursuant to this Article shall be automatically void [...]"*

56. In light of such provision, several conditions need to be satisfied in order to conclude that an agreement is prohibited (and therefore "*automatically void*"). The CL&FFP Regulations have to be verified against those conditions.

57. The first condition is that the CL&FFP Regulations qualify as an "*agreement between*

undertakings”, a “*decision of an association of undertakings*” or a “*concerted practice*”.

58. In this regard, the Panel notes that the European Court of Justice (“ECJ”) ruled in the *Meca-Medina* case that the International Olympic Committee (IOC) was an “*association of undertakings*”, or more precisely “*as an association of international and national associations of undertakings*” in the meaning of Article 101.1 TFEU (then Article 81 of the EU Treaty) (ECJ, 18 July 2006, Case C-519/04P, *Meca-Medina and Majcen v Commission*, § 38). The EU Commission similarly ruled that the Fédération Internationale de Football Association (FIFA) was an “*association of associations of undertakings*” in the meaning of Article 101 TFEU (then Article 81 of the EU Treaty). It is constituted of national associations which are themselves constituted of clubs, which are undertakings in the meaning of Article 101 TFEU, as professional football is an economic activity where football clubs provide sport shows by playing games with other teams, which are sold on several markets (EU Commission decision, 28 May 2002, Case IV/36583-SETCA-FGTB/FIFA, § 30). Finally, and more specifically for the subject matter of this appeal, the EU Commission considers that “*Football clubs engage in economic activities and they are undertakings within the meaning of Article 81(1) of the Treaty [now Article 101 TFEU] and Article 53(1) of the EEA Agreement. The membership of the national football associations consists of those football clubs. The national football associations are therefore associations of undertakings within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. The national football associations are also undertakings themselves in so far as they engage in economic activities. The members of UEFA are the national football associations. UEFA is therefore both an association of associations of undertakings as well as an association of undertakings. UEFA is moreover an undertaking in its own right as it also engages directly in economic activities. Notwithstanding the fact that some of these entities are non-profit making bodies, UEFA, the national football associations and the football clubs are all undertakings within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement*” (EU Commission decision 2003/778/EC, 23 July 2003, Case COMP/C.2-37.398 - *Joint selling of the commercial rights of the UEFA Champions League*, §§ 106-107).
59. The ECJ jurisprudence ruled, notably in its *Wouters* decision, that “*a professional organization such as the Bar of the Netherlands must be regarded as an association of undertakings within the meaning of Article 85(1) of the Treaty [now Article 101.1 TFEU] where it adopts a regulation such as the 1993 Regulation. Such a regulation constitutes the expression of the intention of the delegates of the members of a profession that they should act in a particular manner in carrying on their economic activity*” (ECJ, 19 February 2002, Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, § 64). A more recent example of this ECJ jurisprudence is to be found in its *Consiglio nazionale dei geologi* decision of 18 July 2013, in which the ECJ decided that “*when it adopts a measure such as the Code of Conduct, a professional organisation such as the National Association of Geologists is neither fulfilling a social function based on the principle of solidarity, nor exercising powers which are typically those of a public authority. It acts as the regulatory body of a profession, the practice of which constitutes an economic activity (see, to that effect, Wouters and Others, paragraph 58). In the light of those considerations, the Court finds therefore that a professional organisation such as the National Association of Geologists acts as an association of undertakings within the meaning of Article 101(1) TFEU when drawing up rules of professional conduct such as those at issue in the main proceedings*” (ECJ, 18 July 2013, Case C-136/12, *Consiglio nazionale dei geologi v. Autorità garante della concorrenza e del mercato*, §§ 44-45).

60. Following the jurisprudence of the ECJ and the practice of the EU Commission, the Panel considers that UEFA falls under the qualification of an “*associations of undertakings*”, insofar as it consists of national associations which themselves consist of football clubs, which are undertakings in the meaning of Article 101 TFEU. The CL&FFP Regulations, therefore, adopted by UEFA to regulate the manner in which clubs affiliated to its members conduct their economic activities, constitute a “*decision by associations of undertakings*” in the meaning of Article 101 TFEU.
61. The second condition is that the CL&FFP Regulations “*may affect trade between Member States*” (*i.e.*, that they do not have a purely domestic effect in a single EU Member State). The CL&FFP Regulations obviously meet this condition, as they are designed to affect the economic activities of all European professional football clubs including from all EU Member States. Even though UEFA is a Swiss entity and Galatasaray is not a club from a EU Member State, it operates in the market affected by the CL&FFP Regulations, *i.e.* the market of football club games in Europe and the related economic activities taking place *inter alia* in the EU market, such as selling tickets, transferring players, distributing merchandising articles, concluding advertising and sponsorship contracts, selling broadcasting rights, and the Club is itself affected by the CL&FFP Regulations.
62. As a third condition, the CL&FFP Regulations would be prohibited under Article 101 TFEU if they “*have as their object or effect the prevention, restriction or distortion of competition within the internal market*”: in other words, the prohibition would apply if the CL&FFP Regulations were anti-competitive “*by object*” or “*by effect*”.
63. The Panel finds that the CL&FFP Regulations do not have as their object the restriction or distortion of competition: their object is the financial conduct of clubs wishing to participate in the UEFA competitions. Article 2 of the CL&FFP Regulations expressly provides for the self-declared objectives of these regulations, which do not include on their face, measures the object of which is to restrict or distort competition:
- “1. *These regulations aim:*
- a) *to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
 - b) *to ensure that clubs have an adequate level of management and organisation;*
 - c) *to adapt clubs’ sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
 - d) *to protect the integrity and smooth running of the UEFA club competitions;*
 - e) *to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*
2. *Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:*
- a) *to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*

- b) *to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;*
- c) *to introduce more discipline and rationality in club football finances;*
- d) *to encourage clubs to operate on the basis of their own revenues;*
- e) *to encourage responsible spending for the long-term benefit of football;*
- f) *to protect the long-term viability and sustainability of European club football”.*

64. The Appellant failed to demonstrate that the object of the CL&FFP Regulations would not be that stated in its Article 2. To put it differently, the Panel did not find convincing evidence in Appellant’s submissions that the object of the CL&FFP Regulations would be to distort competition, *i.e.* to favour or disfavour certain clubs rather than to prevent clubs from trading at levels above their resources to achieve the above-mentioned purposes.
65. The Panel, however, acknowledges that anti-competitive agreements or decisions rarely present themselves expressly as such, and that the analysis of whether the CL&FFP Regulations are anti-competitive by object should not be limited to their stated objectives or intentions.
66. The Appellant specifically targets the so called “break-even” rule contained in the CL&FFP Regulations, pursuant to which, in a nutshell, clubs cannot spend over EUR 5 million in excess of their revenues per “assessment period” (three years). Clubs can exceed this level to a certain limit, if it is entirely covered by a direct contribution/payment from the club owner(s) or a related party. A number of costs are excluded from the break-even calculation, *i.e.* investment in stadiums, training facilities, youth development and (from 2015) women’s football.
67. The EU Commission Guidelines applicable to Article 101 TFEU provide that “*Restrictions of competition by object are those that by their very nature have the potential of restricting competition. These are restrictions which in light of the objectives pursued by the Community competition rules have such a high potential of negative effects on competition that it is unnecessary for the purposes of applying Article 81(1) [now Article 101 TFEU] to demonstrate any actual effects on the market. This presumption is based on the serious nature of the restriction and on experience showing that restrictions of competition by object are likely to produce negative effects on the market and to jeopardise the objectives pursued by the Community competition rules*” (Communication from the EU Commission of 27 April 2004 - *Guidelines on the application of Article 81(3) of the Treaty*, (2004/C 101/08), §21; see also EU Commission *Staff Working Document Guidance on restrictions of competition “by object” for the purpose of defining which agreements may benefit from the De Minimis Notice Brussels, 25/6/2014 (European Commission)* of 26 June 2014, SWD(2014) 198 final, p. 3). However, the Appellant failed to demonstrate that the CL&FFP Regulations impose a restriction which by its very nature has the potential to produce negative effects on the market. The Appellant did not establish that the “break-even rule”, as set out in the CL&FFP Regulations, is a restriction for which previous experience showed that it is likely to produce negative effects on the market – and that therefore there is no need to enter into the demonstration of its actual effects. The Appellant failed to provide the Panel with experience showing that measures such as those contained in the CL&FFP Regulations (and in particular the break-even requirement as provided for by the CL&FFP Regulations) is likely

- to restrict competition. In particular, the Appellant did not refer to any precedent from the ECJ, the EU Commission or any national competition authority regarding a sufficiently similar provision, which would have been found to have an anti-competitive effect. Neither did the Appellant make reference to sufficiently similar agreements, decisions or practice in the lists of restrictive agreements by object established by the EU Commission, such as those contained and referred to in the above-mentioned guidelines (Communication from the EU Commission of 27 April 2004 - *Guidelines on the application of Article 81(3) of the Treaty*, 2004/C 101/08), § 23).
68. Paragraphs (a) to (e) of Article 101.1 TFEU provide indeed for categories of agreements which fall under the scope of Article 101 TFEU. The Panel however notes that they do not specifically mention agreements, decisions or practice setting rules such as the break-even requirement, and again that the Club did not submit any evidence that prior experience shows that the break-even requirement has a high potential to produce negative effects on the market. It is to be noted that the fact that the CL&FFP Regulations somehow govern the conduct of a club does not mean *per se* that they restrict competition: otherwise, all regulations (containing rules of conduct) would be a restriction of competition.
69. The Appellant only submitted, in this respect, that the break-even rule set forth by the CL&FFP Regulations would impose a limit to, or control on, investments in the meaning of Article 101.1.b) TFEU, which refers to agreements or decisions of associations which have as “[...] *their object or effect the prevention, restriction or distortion of competition within the internal market and in particular those which [...] b) limit or control production, markets, technical development, or investment*”, and would therefore constitute a violation of the TFEU without the need for proving anti-competition effects.
70. Contrary to this submission, the Panel notes that the break-even rule of the CL&FFP Regulations is not a blunt restriction on clubs’ spending, since the CL&FFP Regulations calculate compliance with the “break-even” requirement over a rolling three years’ period and therefore allow “overspending” in one or two years, provided the revenues generated in the subsequent(s) year(s) of the period cover it; and investment in infrastructures, for instance, are allowed without limits. Indeed, the CL&FFP Regulations provide for a detailed set of provisions regarding, for example, (a) the calculation of the break-even result, (b) the identification of the expenditures and the revenues which are (or are not) to be taken into account for such calculation (Articles 58 and 60 and Annex X), (c) the mechanisms of flexibility, such as the period of time over which compliance with the break-even rule must be met and the acceptable deviations (Articles 59, 60 and 61), (d) the possibility for settlement agreements in case of breach that allows clubs to benefit from extended period of time over which to meet the break-even requirements (Article 68 and Article 15 of the Procedural Rules), as well as (e) the Annex XI mitigating factors described hereafter (§§ 107-114).
71. The Panel finally notes that the Club did not challenge the CL&FFP Regulations until it was sanctioned by the CFCB Decision for breaching the Settlement Agreement, and after that it had in substance agreed to abide by these rules and benefited from the regime set forth by the CL&FFP Regulations under its Article 68, which provides for the possibility to enter into a

Settlement Agreement in case of breach. It is only before the CFCB Adjudicating Body that the Club claimed – as a subsidiary claim to its primary claim that a milder sanction be imposed in consequence of the breach of the Settlement Agreement – that the CL&FFP Regulations and the “break-even rule” would constitute a restriction to competition. Not only this late challenge of the legality of the CL&FFP Regulations, after having agreed to abide (or attempted to abide) by them and benefited from their provisions, represents an inconsistent behaviour; it also reveals that, on its face, the CL&FFP Regulations did not appear in the eyes of the Club (an important “market player”), to be restrictive of competition and in breach of Article 101 TFEU, until the Club was sanctioned for their breach.

72. In the view of the above, the Panel considers that the Appellant failed to demonstrate that the CL&FFP Regulations and the break-even rule contained therein are a restriction of competition “*by object*” in the meaning of Article 101 TFEU.
73. The question, therefore, is whether the CL&FFP Regulations have “*the effect*” of restricting competition.
74. The Panel remarks that the Appellant did not provide any detailed economic analysis or empirical evidence of the impact of the CL&FFP Regulations and of its break-even requirement on competition and the market: the Appellant failed to provide a precise definition of the relevant market, product(s) or service(s) concerned and to assess them; it also failed to provide a sound assessment, based on evidence, of the actual effects of the CL&FFP Regulations on such market, product(s) or service(s), *i.e.* changes in the market or situation of competitors (competitors’ market positions, barriers to entry, competitors’ behaviour, prices increases, etc.). The Panel also notes that, while Appellant had indicated in its Appeal Brief that it reserved its right to present for oral testimony two professors of economics, Mr Joe Swinnen and Mr Stefan Kesenne to address economic issues raised by the case, it did not submit any expert witness affidavits and did not ask that they, or any other expert, be heard at the hearing.
75. It results from the above that Appellant did not meet its burden of proof to demonstrate that the CL&FFP Regulations have the actual effect of restricting competition.
76. This notwithstanding, the Panel notes that the CL&FFP Regulations do not appear to prevent the clubs from competing among themselves on the pitch or in the acquisition of football players. The Panel agrees with the Respondent that, on the contrary, they produce the effect that competition is not distorted by “overspending”, *i.e.* by those clubs that, operating at a loss, allow themselves operations that could not be conducted on a sound commercial basis, and gain an advantage over those clubs which respect the constraints of financial balance (*i.e.*, which take a behaviour that should be expected by any reasonable entity in normal market conditions). In other words, their effect is to prevent a distortion of competition. Further, they do not limit the amount of salaries for the players: clubs are free to pay as much as they wish, provided those salaries are covered by revenues. In addition, they do not “ossify” the structure of market (large dominant clubs have always existed and will always exist) and do not exclude clubs from “essential facilities”: the UEFA professional club competitions

cannot be compared to railway infrastructures or to grids in the electric market. Finally, it is to be noted that the “break-even” calculations take place over rolling periods of three years. Therefore, “overspending” is allowed during one or two football season, provided it is covered in the following one(s).

77. In addition, as noted by the ECJ in the *Wouters* decision, “*not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 85(1) [now 101 TFEU] of the Treaty. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects. More particularly, account must be taken of its objectives [...]. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives*” (19 February 2002, C-309/99, §97). In other words, even if Appellant had established that the CL&FFP Regulations have an anti-competitive effect, the analysis should then refer to the overall context in which the CL&FFP Regulations operate, whether the objectives sought by them are legitimate and whether the restrictive effects they produce are necessary (inherent) and do not go beyond what is necessary to achieve the legitimate objectives.
78. The Panel’s view is that the declared objectives of the CL&FFP Regulations, and in particular their provisions relating to financial fair play, the legality of which is challenged by the Club, are legitimate. Insofar as financial fair play is concerned, they intend specifically to achieve the objectives set forth in Article 2.2 of the CL&FFP Regulations:
- a) *to improve the economic and financial capability of the clubs, increasing their transparency and credibility;*
 - b) *to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/ tax authorities and other clubs punctually;*
 - c) *to introduce more discipline and rationality in club football finances;*
 - d) *to encourage clubs to operate on the basis of their own revenues;*
 - e) *to encourage responsible spending for the long-term benefit of football;*
 - f) *to protect the long-term viability and sustainability of European club football”.*
79. The restrictions the CL&FFP Regulations pose (in essence: limit spending beyond revenues) appear to be inherent to the achievement of those results: if the CL&FFP Regulations intend to effectively control the levels of indebtedness reached in European football, the imposition of limits to spending beyond revenues is a natural element of financial discipline seeking that objective. The fact that the CL&FFP Regulations provide for exemption or mitigating factors to be taken into account by the CFCB in reaching a decision when one of the monitoring requirement is not fulfilled by a club (Article 68 and Annex XI of the CL&FFP Regulations) is also a guarantee that the restrictions do not turn out to be disproportionate in the given case. In any case, the existence of abstract alternatives does not make the CL&FFP Regulations disproportionate, if their content (decided on the basis of policy considerations by the competent “political” UEFA bodies) are in themselves proportionate. Therefore, also

the fact that the CL&FFP Regulations evolved over the time with a new edition being adopted in 2015 (providing for alternative means to reach the same objectives) does not mean that the restrictions (if any) caused by the superseded version was not inherent to the purpose sought. In addition, the alternatives suggested by the Club would not make the CL&FFP Regulations more (or less) in line with EU law: an extended settlement or even a “voluntary agreement” (which is not possible for a plurality of reasons) would always be based on illegal CL&FFP Regulations.

80. In conclusion, the Panel considers that the Club did not establish that the CL&FFP Regulations violate Article 101 TFEU and are therefore “illegal”.

b. Article 102 TFEU

81. The Club further challenges the legality of the CL&FFP Regulations invoking Article 102 TFEU, which prohibits the “*abuse of a dominant position*”. It provides that:

“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- (b) limiting production, markets or technical development to the prejudice of consumers;*
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts”.*

82. The Appellant only provided arguments as to whether UEFA may be considered to be in a dominant position and failed to provide specific explanations regarding how the CL&FFP Regulations and the “break-even rule” would constitute an abuse of such position: it relied only on the arguments formulated regarding Article 101 TFEU. As noted above in the context of Appellant’s claim based on Article 101 TFEU, however, the Club failed to submit a sound assessment of the effects on the market of the CL&FFP Regulations and therefore failed to demonstrate that they distort competition.

83. As a result, the Panel finds that the Appellant did not demonstrate that the CL&FFP Regulations constitute an abuse of dominant position: it is not necessary to enter into the issue of whether UEFA is in a dominant position on a given market, because in any case there is no evidence of any abuse.

c. Conclusion

84. The Panel therefore concludes that no violation of EU competition law has been established.

A.2.2 Fundamental freedoms

85. The Club submits that the CL&FFP Regulations affect the freedom of movement of capitals and of workers, the freedom to provide services, as well as the freedom to conduct a business, and therefore violate Article 63 of the TFEU on the free movement of capitals, Article 56 TFEU on the free movement of services, Article 45 TFEU on the free movement of workers and Article 16 of the Charter of the fundamental rights of the European Union. The Appellant however submitted very little argumentation in support of its claim that the CL&FFP Regulations would violate these freedoms.

86. It is apparent that the CL&FFP Regulations do not imply any discrimination based on nationality, since they apply to any and all clubs participating in the UEFA competitions. In addition, they apply also to “domestic operations” even absent an intra-EU element and do not restrict the fundamental freedoms: players can be transferred (or offer services) cross-border without limitations; capitals can move from an EU country to another without any limit. In other words, the CL&FFP Regulations do not appear to run against the provisions concerning the freedom of movement of capitals and of workers, as well as the freedom to provide services and Article 16 of the Charter of the Fundamental Rights of the European Union.

87. Consequently, the Panel considers that the Appellant did not establish that the CL&FFP Regulations, and consequently the Settlement Agreement, violate any fundamental freedom under EU law.

A.3 *Issues of Swiss law*

88. The consistency of the CL&FFP Regulations with Swiss competition law has not been addressed by the Club at any length. The Appellant in fact mainly relies on EU law. In particular and tellingly, Appellant failed to refer to any specific provision of Swiss law in that regard.

89. The Panel notes however that Swiss rules on competition have a content similar to the content of EU rules: only the reference to the domestic market makes the difference. The reasoning, therefore, regarding the existence and relevance of anticompetitive effects of the CL&FFP Regulations would be the same. And the same would be the conclusion.

90. As a result, the Panel finds that the Appellant did not establish that the CL&FFP Regulations and consequently the Settlement Agreement are illegal in view of Swiss law.

A.4 Legality of Article A(3) of Annex XII of the 2015 edition of the CL&FFP Regulations

91. The Club challenges the legality of Article A(3) of Annex XII of the 2015 edition of the CL&FFP Regulations insofar as it provides that in order to benefit from a voluntary agreement under Article 57.5 of the 2015 CL&FFP Regulations, the club must not have concluded a settlement agreement during the last three reporting periods.
92. Article 57.5 of the 2015 CL&FFP Regulations provide that:
“Under certain circumstances, as further illustrated in Appendix XII, a licensee can apply to enter into a voluntary agreement with the UEFA Club Financial Control Body for the fulfilment of the break-even requirement”.
93. Article A of Annex XII of the 2015 CL&FFP Regulations provides that:
“A. Principles
1. *A club may apply to the UEFA Club Financial Control Body investigatory chamber to enter into a voluntary agreement with the aim of complying with the break-even requirement.*
2. *A club is eligible to apply to enter into a voluntary agreement if it:*
i) *has been granted a valid licence to enter the UEFA club competitions by its national licensor but has not qualified for a UEFA club competition in the season that precedes the entry into force of the voluntary agreement; or*
ii) *has qualified for a UEFA club competition and fulfils the break-even requirement in the monitoring period that precedes the entry into force of the voluntary agreement; or*
iii) *has been subject to a significant change in ownership and/or control within the 12 months preceding the application deadline.*
3. *The club must not have been party to a voluntary agreement (as defined in this annex) or subject to a disciplinary measure or settlement agreement (as foreseen in the Procedural rules governing the UEFA Club Financial Control Body) within the last three reporting periods.*
4. *A voluntary agreement can cover up to four reporting periods.*
5. *A voluntary agreement includes a structured set of obligations which are individually tailored to the situation of the club, break-even targets defined as annual and aggregate break-even results for each reporting period covered by the agreement, and any other obligations as agreed with the UEFA Club Financial Control Body investigatory chamber”.*
94. In accordance with Article A(3) of Annex XII of the 2015 CL&FFP Regulations, the Club is not eligible to apply for a voluntary agreement, because it entered into the Settlement Agreement on 16 May 2014, *i.e.* within the last three reporting periods, as noted by the CFCB Decision. The Club submits that, should it be able to conclude such a voluntary agreement, it would no longer have an interest in challenging the legality of the CL&FFP Regulations: in that situation, in fact, it could benefit from the opportunity introduced in the 2015 edition of the CL&FFP Regulations, which allows a club to “overspend” during a certain period (up to four reporting periods); in that event, the new management of the Club would be in a position

to implement its economic and sporting projects and therefore resorb the consequences of prior mismanagement without having to abandon all sporting ambitions.

95. The Appellant submits that Article A(3) of Annex XII of the 2015 CL&FFP Regulations is illegal because it results in placing the Club in a similar position as that under the 2012 version of the CL&FFP Regulation, which, in the Appellant's opinion, is grossly illegal. As a result, it refers to the arguments formulated in the context of the illegality claim brought against the 2012 edition of the CL&FFP Regulations.
96. As pointed out by the CFCB Decision, the Panel notes that even if the Club were not prevented from entering into a voluntary agreement by Article A(3) of Annex XII of the 2015 CL&FFP Regulations, it would still be prevented from benefiting from a voluntary agreement because it failed to meet the time limits set forth by Articles A(1) and B(1) of Annex XII of the 2015 CL&FFP Regulations for the submission of an application for a voluntary agreement. Such application must be made by the 31 December of the year preceding the season in which the voluntary agreement would come into force, and the Panel has not been made aware of any such application, since the Appellant did not address this issue in its written or oral pleadings.
97. At the same time, the Panel remarks that even if the Club were not prevented from entering into a voluntary agreement by Article A(3) of Annex XII of the 2015 CL&FFP Regulations for failure to comply with time limits, it would still not be eligible to apply for a voluntary agreement because it did not establish that it falls within one of the hypothesis set forth by paragraphs (i) to (iii) of Article A(2). In particular, the Club invoked the fact that it would fall under paragraph (iii) since its management had changed. However, paragraph (iii) of Article A(2) only refers to hypothesis where the club was subject to "*significant change in ownership and/or control within the 12 months preceding the application deadline*": therefore, a mere change in management personnel does not meet that condition.
98. In any event, since the Panel finds that the Appellant failed to demonstrate the illegality of the 2012 CL&FFP Regulations, the same finding applies to the claim that Article A(3) of Annex XII of the 2015 CL&FFP Regulations is illegal. This claim, therefore, is dismissed and the CFCB Decision is confirmed insofar as it held that the Club could not apply for a voluntary agreement under Article 57.5 of the 2015 edition of the CL&FFP Regulations.

B. Breach of the Settlement Agreement

99. The Panel notes that the monitoring documentation submitted by the Club to UEFA in October 2015, comprising the Club's break-even information for 2013, 2014 and 2015, revealed:
 - i. that for such reporting periods, the Appellant had a break-even deficit (totalling EUR 164,200,000), which exceeded the relevant acceptable deviation by EUR 134,200,000, therefore breaching Article 1.2 of the Settlement Agreement, under which the Club agreed to "*be break-even compliant ... in the monitoring period*

2015/16, *i.e.* the aggregate Break-even result for the monitoring periods 2013, 2014 and 2015 must be a surplus or a deficit within the acceptable deviation [of EUR 30,000,000] in accordance with Article 63” of the CL&FFP Regulations, and

- ii. that the Appellant’s aggregate cost of employee benefits expenses was EUR 95,500,000, *i.e.* exceeding by EUR 5,500,00 the maximum employee benefits expenses allowed by Article 3 of the Settlement Agreement.
100. In other words, the documentation provided by the Club shows that it breached the Settlement Agreement under two aspects. The Appellant does not contest the above information, subsequently verified by an audit carried out by a reputed auditing company, and, in fact, does not deny that it breached the Settlement Agreement.
 101. In addition, the Panel remarks that, while the Appellant invoked and developed contentions on the basis of the mitigating factors set out in Annex XI of the CL&FFP Regulations (see § 107-114_below), it did not argue that the circumstances put forward in that regard “excuse” the breach of the Settlement Agreement. The Appellant’s submission, in fact, is only that the occurrence of such circumstances should result in a less severe sanction than that imposed by the CFCB Decision, which, in light of them, would be disproportionate.
 102. As a result, the Panel confirms that the Club breached the Settlement Agreement.

C. Proportionality of the sanctions imposed by the CFCB Decision

C.1 The Issue

103. The Appellant submits that if the Panel decides that the CL&FFP Regulations are not “illegal”, it should take into account the “mitigating factors” set out in Annex XI of the CL&FFP Regulations, in order to be more flexible in the application of the break-even requirement and to render a less severe decision than the CFCB Decision. Specifically, the Panel should pay particular attention to the set of external factors which affected the finances of the Club, and thus its ability to meet the objectives set forth by the Settlement Agreement: namely, the Syrian refugee crisis, the terrorist attacks in Turkey, the Turkish major match-fixing scandal, the introduction of the so-called “*Passolig*” electronic ticketing system in Turkey, the exchange rate and interest rate fluctuations, the national economic downturn in Turkey, the fact of operating in a structurally inefficient market, and the management changes.
104. The Appellant further submits that the disciplinary measures pronounced against it by the CFCB Decision are disproportionate, in light of the circumstances of the case and of the objectives of the financial fair play system. In particular, the financial consequences of an exclusion from the UCL alone are to be valued to a loss of tens of million Euros, and would prevent the Club from future compliance with financial fair play requirements.
105. The Appellant therefore requests, as an alternative to its primary claim, that the Panel rules that the sanctions imposed by the CFCB Decision are grossly disproportionate, and that it

imposes milder alternative sanctions on the Club.

106. UEFA submits in reply that:

- The Club failed to comply with the Settlement Agreement it willingly entered into with the CFCB Chief Investigator and is in breach of the break-even requirement imposed by the CL&FFP Regulations. Since the Settlement Agreement is a second chance offered to the Respondent, failure to comply with its terms represents a consistent attitude of non-compliance and must be considered to be a particularly serious offence. Such seriousness is further reinforced by the fact that the Club is in breach of the Settlement Agreement by a very significant margin.
- The mitigating factors set out in Annex XI of the CL&FFP Regulations and the other external factors invoked by the Appellant should be considered in the context of the breaches of the Settlement Agreement, and not in relation to the proportionality of the disciplinary measures.
- Except for general comments, the Club has failed to provide any accounting evidence supporting its contention that its revenues were so seriously affected by the alleged external factors that it was impossible for the Club to meet the break-even targets. On the contrary, there has been an overall increase in the Club's revenues, which is inconsistent with the Club's argument. Even if the Club were successful in arguing all points raised under Annex XI of the CL&FFP Regulations, this could only account for a very small part of its very substantial breach of the Settlement Agreement.
- The Club's breaches of the Settlement Agreement have been proven and even admitted by the Club. The CFCB Adjudicatory Chamber was therefore fully entitled to impose on the Appellant disciplinary measures properly addressing the seriousness of these breaches. The sanctions adopted by the CFCB Adjudicatory Chamber after a careful consideration of the facts of the case are proportionate, fair and arguably even too lenient.

C.2 *Annex XI CF&FFP Regulations factors*

107. The Panel largely agrees with the conclusions reached and the reasoning followed by the CFCB Decision with regard to the submission of the Appellant about the factors set forth by Annex XI of the CF&FFP Regulations. In particular, the Panel notes that the Club, while submitting general considerations regarding those factors, largely failed to provide comprehensive and substantial data and evidence specific to its situation, the quantitative impact of such factors on its accounts and how they would have prevented it from complying with the Settlement Agreement.

108. It is particularly telling that while the CFCB Decision precisely underlines the lack of evidence (in particular, of accounting evidence) of how, and in which proportion, each these factors would have caused, the losses (and the break-even deficit) of the Club, no additional substantial club specific evidence and demonstration was provided by the Appellant before

this Panel.

109. This lack of substantial specific evidence and demonstration cannot be overlooked, given the scale of the aggregate break-even deficit, which exceeded the relevant acceptable deviation by EUR 134,200,000.
110. The above is applicable to the claims of *force majeure* (paragraph (e) of Annex XI), relating to the Syrian refugee crisis and the terrorist attacks in Turkey, the Turkish match-fixing scandal and the introduction of the so-called *Passolig* electronic ticketing system. The Club failed to demonstrate how these events would have, *in casu*, met the criteria of *force majeure* making it impossible for the Club to comply with its obligations under the Settlement Agreement. This demonstration would have implied to submission of evidence not only of the actual (and to a certain extent quantified) effects on Galatasaray of these events, but also of their impact on the Club's breach of its obligations under the Settlement Agreement and of the impossibility to comply with these obligations under the circumstances by taking appropriate measures. In addition, the fact that the revenues of the Club increased during the relevant period of time suggests that these events had limited or no impact on the Club's capacity to meet its obligations under the Settlement Agreement, and in any event did not render such compliance impossible. As a result, the Club cannot benefit from the factor mentioned at paragraph (e) of Annex XI of the CL&FFP Regulations.
111. The above is also applicable to the claims of *major and unforeseen changes in the economic environment* (paragraph (f) of Annex XI), relating to the same events invoked as *force majeure*, as well as to the Turkish macro-economic conditions, and the interest and foreign exchange rates fluctuations: the Club did not demonstrate how and in which amount the economic circumstances it puts forward affected its ability to abide by its obligations under the Settlement Agreement. The evidence provided regarding interest and foreign exchange rates fluctuations does in any event not relate to amounts sufficient to justify the EUR 164,200,000 aggregate break-even deficit (exceeding by EUR 134,200,000 the acceptable deviation). As a result, the Club cannot benefit from the factor mentioned at paragraph (f) of Annex XI of the CL&FFP Regulations.
112. Finally, beyond the break-even obligations, these events and changes in circumstances cannot justify the Club's breach of the other obligation under the Settlement Agreement, *i.e.* that its aggregate cost of employee benefit expenses did not exceed the amount of EUR 90,000,000 during the relevant period of time.
113. Finally, a contention was advanced by the Appellant on the basis of paragraph (g) of Annex XI of the CL&FFP Regulations, relating to the fact of *operating in a structurally inefficient market*. In this regard, the Panel notes that the wording of the relevant provision is clear and unambiguous in stating that "*the inefficiency of a football market [...] is determined by the UEFA administration on a yearly basis on the basis of a comparative analysis of the top division club's total gate receipts and broadcasting rights revenues relative to the population of the territory of the UEFA member association concerned*". The Appellant's arguments that other comparisons should be applied to determine that Turkey would in fact be an inefficient football market are therefore

inadmissible. The Panel notes that it is not contested that Turkey was not included in this list for the relevant years, and that the Club does not allege that the criteria set forth by paragraph (g) would have been incorrectly applied in establishing this list. As a result, the Club cannot benefit from the factor mentioned at paragraph (g) of Annex XI of the CL&FFP Regulations.

114. In summary, the Panel considers that the Appellant did not establish that its breach of the Settlement Agreement was justified, in totality or partially, by one of the factors listed in Annex XI of the CL&FFP Regulations.

C.3 The sanctions

115. The Panel considers that the sanction imposed on the Club by the CFCB Decision is not disproportionate, in view of the fact that it was imposed as a sanction for a second violation. After its first breach of the CL&FFP Regulations, the Club had the benefit of a second chance through the conclusion of the Settlement Agreement, the content of which was defined with its participation. The Club first avoided sanctions and benefited from the Settlement Agreement, the purpose of which is precisely to provide an opportunity to allow compliance by clubs with UEFA's fair play regulations, in view of their indication that they can and are willing to do so if provided with the extra time, under the conditions mutually agreed. But still it failed to comply with this second chance and has to bear the consequences thereof.
116. In addition, an exclusion limited in time (one season) from the UEFA competitions is consistent with the principle of equal treatment and fair competition, as it protects clubs that respect the CL&FFP Regulations and does not prevent the future compliance with the CL&FFP Regulations: gaining revenues from participating in UEFA competitions is not the only way to meet the break-even requirements set forth by the CL&FFP Regulations, and, as a matter of fact, the Club did not comply with the CL&FFP Regulations also while competing in the UCL.
117. Furthermore, the Club's request for 'special treatment', by asking for the renegotiation/extension of the Settlement Agreement and/or the imposition of new disciplinary measures similar to those typically imposed in a settlement, such as the alternative sanctions suggested by the Appellant, must be disregarded, especially considering that the Club is the architect of its own failure to meet the terms of the Settlement Agreement, set by reference to the financial information provided by the Club.
118. The Appellant's challenge to the measure of the sanction is therefore dismissed.

D. Conclusion

119. In view of the above, the appeal filed by the Club against the CFCB Decision is to be dismissed. The CFCB Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 March 2016 by Galatasaray Sportif Sınai Ve Ticari Yatırımlar A.S. against the decision rendered by the UEFA Club Financial Control Body Adjudicatory Chamber on 2 March 2016 is dismissed.
2. The decision rendered by the UEFA Club Financial Control Body Adjudicatory Chamber on 2 March 2016 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.