



Arbitration CAS 2018/A/5920 Emanuel Briffa v. Union of European Football Associations (UEFA), award of 18 December 2019

Panel: Prof. Martin Schimke (Germany), President; Mr Jacopo Tognon (Italy); Mr Bernhard Welten (Switzerland)

Football

Match-fixing

Determination of the edition of the rules applicable to a dispute

Standard of proof of comfortable satisfaction

Non-acceptance of an offer to fix a football match based on its non-rejection

Assessment of a match-fixers' global conduct

1. In accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment said alleged offence was committed, subject to the principle of *lex mitior*. However, the procedural aspects of the proceedings are governed by the rules in force at the time the appeal was lodged.
2. The standard of proof of “comfortable satisfaction” is greater than a mere “balance of probabilities” but less than proof “beyond a reasonable doubt”, bearing in mind the seriousness of the offence committed. This does not mean that there is some sort of “sliding scale” within the standard of “comfortable satisfaction” depending on the seriousness of the charge, but that in case of serious allegations, an adjudicatory body should have a high degree of confidence in the quality of the evidence.
3. An acceptance of an offer to fix a football match requires some sort of definite agreement on what was to be done and a conclusion of an arrangement, *i.e.* a notional ‘final handshake’. A mere non-rejection of an offer does not necessarily mean that an offer is accepted.
4. Not too much emphasis should be placed on a football player’s counts of failing to report an attempt to fix a match. It is not so much the number of approaches that are informative for the severity of a player’s violation, but his conduct as a whole. In this respect, the fact that a player undertakes an action that could potentially assist in exercising the match-fixing plot, as opposed to an exclusively passive conduct, is an important element in determining the severity of a player’s violation of the rules.

I. PARTIES

1. Mr Emanuel Briffa (the “Appellant” or the “Player”) is a professional football player of Maltese nationality and former player of the Maltese U-21 team that participated in the UEFA European U-21 Championship 2017.
2. The *Union des Associations Européennes de Football* (the “Respondent” or “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. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. General background facts

4. In early 2016, an organized group plotted the fixing of the match played between the U-21 teams of Malta and Montenegro on 23 March 2016 (the “Montenegro Match”) in the European U-21 Championship, as well as the match played between the U-21 teams of Malta and the Czech Republic on 29 March 2016 (the “Czech Republic Match”), (together the “Matches”).
5. According to UEFA, the following elements resulted in an investigation being carried out by the Malta Football Association (the “MFA”) and UEFA’s Maltese Integrity Officer Mr Franz Tabone:

“i) The Maltese A team’s manager reported the presence of suspicious individuals with links to match-fixing having coffee at the hotel in which his team was staying in Floriana. This was then reported by Mr. Tabone to both the Maltese U-21 manager and to the Maltese police (specifically, to Officer Sean Scicluna, who was in charge of investigating match-fixing cases in Malta).

ii) During the Montenegro Match, other suspicious individuals, notably Ronnie Mackay, who had been banned for life by the MFA in 2012 for match-fixing, were seen inside the stadium.

iii) The father of a Maltese U-21 player reportedly stated in a training session of the club, where he was the coach at the time of events under scrutiny, that his son had been approached to fix the Montenegro Match.

iv) Maltese U-21 Joseph Mbong immediately reported to his team manager that he had received an offer to fix the Czech Republic Match via Whatsapp message from player Seyble Zammit. The team manager then informed Mr. Tabone, who in turn contacted police inspector Scicluna”.

6. The ensuing police investigation resulted in the questioning of several Malta U-21 players and the arrests of individuals involved in the fixing of the Matches, notably Mr Ronnie Mackay and Mr Seyble Zammit.
7. As from the first interrogation by the police on 30 March 2016, the Player openly admitted to being approached by Mr Zammit with an offer related to fixing matches of the Maltese U-21 team, mentioning an amount of USD 3,000 and confirming that he did not decline this offer but considered accepting it. In a subsequent interrogation on 14 April 2016, the Player also openly admitted to having downloaded the app “Telegram” (which application allows users to send messages that are automatically deleted upon being read by the recipient). The Player however denied having accepted an offer to fix any match.
8. Following the arrests and the subsequent Maltese criminal court proceedings, it was determined and it is not disputed between the parties that the plot to fix the Matches had been orchestrated chiefly by two main masterminds between early 2016 and the Matches of March 2016:
 - Mr Mackay, who initiated the operation in Malta. He was used as an intermediary by an Asian individual known as “Fred”, who was financing the match-fixing and his task was to find somebody who knew and could approach players in order to involve them in the plot, and he coordinated its implementation with Mr Zammit. Mr Mackay was banned from football for life by the MFA in 2012 due to his involvement in another match-fixing scheme.
 - Mr Zammit, a footballer who was contacted by Mr Mackay and became the person in charge of approaching several Malta U-21 players to fix the Matches, offering them money to lose. He was the intermediary between the organizers of the match-fixing (Mr Mackay and the Asian investor) and its executors – the players of the Maltese U-21 team – and was highly involved in the practical implementation of the fix.
9. The UEFA Betting Fraud Detection System (the “BFDS”) escalated the Montenegro Match and found that there was strong pre-match betting for Malta to lose, resulting in several prominent European bookmakers removing the Montenegro Match from their markets prior to kick-off.
10. The investigations resulted in criminal charges being brought against Mr Mackay, Mr Zammit, the Player and Mr Kyle Cesare (a teammate of the Player in the Maltese U-21 team). The following decisions were issued by the Maltese Criminal Courts:
 - Mr Mackay was found guilty of match-fixing in relation to the Matches and sentenced to serve prison time.
 - Mr Zammit confessed having attempted fixing the Matches and was found guilty in a decision of 8 April 2016. However, because he acted as a whistle-blower and contributed decisively to the clarification of the facts, he was exempted from any criminal punishment for the offences committed by him.

- The Player and Mr Cesare were initially acquitted by the first instance criminal court on 23 August 2016, despite the court finding that they had accepted the bribes offered to fix the Montenegro Match. However, following an appeal by the Maltese Attorney General, they were found guilty of match-fixing on 5 February 2018, but were exempted from punishment subject to their not committing another criminal offence within the subsequent two years.
11. On 23 January 2017, an UEFA Ethics and Disciplinary Inspector (the “EDI”) opened investigations in relation to the Matches. Several players of the Maltese U-21 team were investigated, including the Player.
 12. On 7 February 2017, several of the investigated players of the Maltese U-21 team and Mr Tabone were interviewed by the EDI. The Player was not among them.
 13. On 29 May 2017, the EDI submitted her report to the UEFA CEDB and requested disciplinary proceedings to be opened against eight players, including the Player. The charge against the Player was “*acting in a manner that was likely to exert an unlawful or undue influence on at least one UEFA match with a view of gaining an advantage for themselves and third parties*” in violation of Article 12(2)(a) UEFA Disciplinary Regulations (the “UEFA DR”). The EDI requested the UEFA CEDB to impose a life ban on any football-related activity on the Player, or, alternatively, if the UEFA CEDB would not agree to impose the sanction requested, to “*impose appropriate disciplinary sanctions on each of the persons involved depending on their role and involvement into the attempted match-fixing*”.

B. Background facts specifically related to the Player

14. The Player met with Mr Zammit three times.
15. Mr Zammit first contacted the Player on Facebook to set up their first meeting, which took place on or around 9 March 2016, near the Player’s house. There, Mr Zammit offered the Player money to lose the Montenegro Match, stating that the specific details would be told to him later on. UEFA submits that the Player confirmed that he was considering the offer at that time, whereas the Player submits that he was considering whether or not to meet with Mr Mackay.
16. The second meeting took place in Café Jubilee in Gzira in the presence of Mr Zammit, the Player, Mr Kyle Cesare and Mr Samir Arab on or around 13 March 2016 on the request of Mr Zammit. Here again the fixing of the Montenegro Match was discussed, and, according to UEFA, primarily based on Mr Zammit’s evidence provided in the Maltese Criminal Court proceedings, both the Player and Mr Cesare confirmed their acceptance of the bribe and agreed to participate in the fix.
17. The third meeting took place on or around 14 March 2016, near Café Jubilee in Valletta, and was attended by the Player, Mr Zammit, Mr Arab, Mr Mackay and the Asian investor (“Fred”).

18. According to UEFA, again primarily based on Mr Zammit's evidence provided in the Maltese Criminal Court proceedings, during this third meeting the financial matters of the scheme were discussed and the Player again confirmed his participation and confidence in the fix to the Asian investor.
19. According to the Player, chiefly relying on a new affidavit provided by Mr Zammit during the proceedings before the UEFA Appeals Body that did not form part of the file in the Maltese Criminal Court proceedings and contradicted his previous evidence in important parts as set out in more detail below, he denied the match-fixing offer presented to him by standing up and leaving the third meeting. Mr Zammit thereby contradicted his previous testimony that the Player had accepted the match-fixing offer without reservation.

C. Proceedings before the UEFA Control, Ethics and Disciplinary Body

20. On 29 May 2017, the UEFA CEDB opened disciplinary proceedings against the Player.
21. On 15 June 2017, the Player submitted his defence, requesting the charges brought against him to be dismissed or, alternatively, that the most lenient sanction be applied.
22. On 14 December 2017, following a hearing, the UEFA CEDB rendered its decision (the "UEFA CEDB Decision"), whereby the UEFA CEDB found that the Player was guilty of violating Article 12(2)(a) UEFA DR. The UEFA CEDB Decision contains the following operative part:

"The player Emanuel Briffa is banned for life on all football-related activities".

23. On 14 February 2018, the grounds of the UEFA CEDB Decision were communicated to the Player.

D. Proceedings before the UEFA Appeals Body

24. On 16 February 2018, the Player announced his intention to lodge an appeal against the UEFA CEDB Decision.
25. On 23 February 2018, the Player filed the grounds of his appeal, requesting the UEFA Appeals Body to overturn the UEFA CEDB Decision.
26. On 15 March 2018, the EDI submitted his reply to the appeal, requesting that it be rejected.
27. On 5 June 2018, the UEFA Appeals Body rendered a decision (the "First UEFA Appeals Body Decision") whereby it rejected the Player's appeal. The First UEFA Appeals Body Decision contains the following operative part:

"1. The appeal lodged by Mr Emanuele Briffa is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 14 December 2017 is upheld.

2. *The costs of the proceedings, totalling € 1'000 (minus the appeal fee), are to be paid by the Appellant”.*
28. On 15 June 2018, the Player requested UEFA to reopen the disciplinary proceedings, invoking Article 53(1) UEFA DR and submitting a new affidavit provided by Mr Zammit under oath. This new affidavit, that was not available to the Maltese Criminal Courts and the UEFA CEDB, sheds a different light on the matter and largely contradicts previous testimonies given by Mr Zammit. Most significantly, Mr Zammit declared in this latest affidavit that the Player “*stood up and left*” the third meeting when Mr McKay unfolded his match-fixing plans, which according to the Player proved that he denied the match-fixing offer. According to the Player, considering that the First UEFA Appeals Body Decision heavily relied on the testimony of Mr Zammit, the proceedings should be reopened to evaluate the new and substantial facts and evidence that only just surfaced.
29. On 21 June 2018, the UEFA Appeals Body decided to reopen the proceedings and the EDI was invited to submit comments.
30. On 26 June 2018, the EDI submitted that the new evidence did not change the conclusion that the Player agreed to fix the match.
31. On 3 July 2018, taking into account the new affidavit signed by Mr Zammit, the UEFA Appeals Body rendered its second decision (the “*Appealed Decision*”), whereby it partially upheld the Player’s appeal. The *Appealed Decision* contains the following operative part:
 - “1. *The appeal lodged by Mr Emanuele Briffa is partially admitted. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 14 December 2017 is amended as follows:*

The player Emanuele Briffa is banned on all football-related activities for the period of ten (10) years.
 2. *The costs of the proceedings, totalling € 1'000 (minus the appeal fee), are to be paid by the Appellant”.*
32. On 14 September 2018, the grounds of the *Appealed Decision* were communicated to the Player.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 22 September 2018, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (the “CAS Code”), challenging the *Appealed Decision*. The Player nominated Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy, as arbitrator. The Player, *inter alia*, requested to be provided with a full copy of the case file from UEFA.
34. On 2 October 2018, the Player informed the CAS Court Office that its Statement of Appeal was to be considered as its Appeal Brief.

35. On 8 October 2018, UEFA informed the CAS Court Office that it nominated Mr Bernhard Welten, Attorney-at-Law in Bern, Switzerland, as arbitrator.
36. On 22 October 2018, UEFA filed its Answer, pursuant to Article R55 CAS Code.
37. On 26 and 31 October 2018 respectively, upon being invited to express their positions in this respect, the Player informed the CAS Court Office that he preferred a hearing to be held, whereas UEFA indicated that it did not consider a hearing necessary.
38. Also on 31 October 2018, upon receipt of comments of UEFA, Mr Welten and Mr Tognon, the Player withdrew his initial challenge against Mr Welten.
39. On 16 November 2018, pursuant to 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:
 - Prof. Martin Schimke, Attorney-at-law in Dusseldorf, Germany, as President;
 - Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy; and
 - Mr Bernhard Welten, Attorney-at-Law in Bern, Switzerland, as arbitrators
40. On 3 December 2018, the CAS Court Office informed the parties that Mr Dennis Koolgaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.
41. On 4 December 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.
42. On 17 December 2018, the CAS Court Office informed the parties that Prof. Schimke wished to make the following disclosure:

“Although this may well already be known to the Parties, the President of the Panel in this case wishes to make clear that having received full details of this case, and in particular having read through the case file, it is apparent that both the President of the Panel and the Ad hoc Clerk in this case performed the same roles respectively in another recent case – CAS 2018/A/5800 Samir Arab v. UEFA – which is connected to this case by some of its facts. In particular, the Appellant in the case before us now was a teammate of the Appellant in the case CAS 2018/A/5800, and his evidence from the relevant FIFA and police investigations was of importance for the outcome of that case. Furthermore he was convicted of a criminal offence on the basis of facts connected to both cases.

Nothing in this declaration affects the ability of the President or Ad hoc Clerk to remain impartial and independent of the Parties as declared in their acceptance of this case and statement of independence. Nevertheless, the President of the Panel feels he has a duty to make this officially clear to the Parties and to obtain their full and unqualified consent before proceeding”.

43. On 27 December 2018, the Player informed the CAS Court Office that he had no objection to Prof. Schimke being appointed as President of the Panel.
44. On 8 January 2019, the CAS Court Office, on behalf of the Panel, invited the Player to indicate whether, in light of the request made in his Statement of Appeal, he was satisfied with the documentation provided together with UEFA's Answer, or if not, to specify which documents should be added that are not already on file.
45. On 14 January 2019, the Player informed the CAS Court Office that he understood that the entire case file of UEFA had already been presented, and that, should this be correct, he was satisfied with the documents exhibited. The Player also requested a copy of the arbitral award issued in *CAS 2018/A/5800 Samir Arab v. UEFA*.
46. On 21 January 2019, UEFA indicated that the exhibits provided with its Answer included all the relevant documents of the case file. UEFA also returned a duly signed copy of the Order of Procedure to the CAS Court Office.
47. On 24 January 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel.
48. In addition to the Panel, Mrs Andrea Zimmermann, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - a) For the Player:
 - 1) Mr Emanuel Briffa, the Player;
 - 2) Dr Keith A. Borg, Counsel;
 - 3) Dr Carlos Bugeja, Counsel.
 - b) For UEFA:
 - 1) Mr Jacques Bondallaz, UEFA Chief of Disciplinary & Regulatory;
 - 2) Mr Miguel Liétard Fernández-Palacios, UEFA Legal Counsel.
49. Prior to the start of the hearing, Mr Briffa returned a duly signed copy of the Order of Procedure to the CAS Court Office.
50. At the outset of the hearing, and following the Player's request in this regard, the parties were provided with the arbitral award issued in *CAS 2018/A/5800 Samir Arab v. UEFA*. The Player also confirmed that he was satisfied with the documentation provided by UEFA.

51. The Panel heard evidence from the Player. The Player, as the Appellant, was invited by the President of the Panel to tell the truth. Both parties and the Panel had the opportunity to examine and cross-examine him.
52. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
53. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
54. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations 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 award.

IV. REQUESTS FOR RELIEF

55. The Player filed the following requests for relief in his Appeal Brief:
 - “1. *address this Statement of Appeal to the opposite Panel of the Appeals Arbitration Division of the Court of Arbitration for Sport;*
 2. *select the English language as the language of these proceedings and order that proceedings be conducted exclusively in such language (R29 of the Code of Sports-related Arbitration);*
 3. *appoint a Panel of Arbitrators; by way of nomination to the same, Appellant nominates Mr Jacopo Tognon (R50 and R54 of the Code of Sports-related Arbitration);*
 4. *request a copy of the case-file from UEFA (R57 of the Code of Sports-related Arbitration);*
 5. *determine this dispute in accordance with the UEFA Disciplinary Regulations (R58 of the Code of Sports-related Arbitration);*
 6. *in terms of R57 of the Code of Sports-related Arbitration to annul and repeal the decision rendered by the UEFA Appeals Body on the 5 June 2018¹ in so far as this has found him responsible of the infringement of Article 12 (2) (a) of the Disciplinary Regulations of UEFA;*
 7. *find him solely responsible of the infringement of Article 12 (2) (d) of the Disciplinary Regulations of UEFA and consequently apply the commensurate sanction;*
 8. *should the sixth and seventh requests not be upheld, amend the decision rendered by the UEFA Appeals Body on the 5 June 2018 in so far as this has imposed a sanction in the form of a ban on all football-*

¹ UEFA remarks in footnote 4 of its Answer that it is UEFA’s understanding that the Player actually intends to refer to the Appealed Decision (*i.e.*, the one dated 3 July 2018), to which the Panel concurs.

related activities for a period of ten (10) years and consequently substitute such ban with a warning, reprimand or football community service, or scale down such ban to a shorter period, after having regard to all circumstances of the case at hand and to the pleadings contained herein;

9. *impute costs and advances related to the proceedings before UEFA unto UEFA (R64 of the Code of Sports-related Arbitration).*
10. *impute any and all costs related to these proceedings unto UEFA (R64 of the Code of Sports-related Arbitration).*
11. *grant the appellant due contribution towards legal fees and other expenses to be incurred in these proceedings (R64 of the Code of Sports-related Arbitration)".*

56. UEFA filed the following requests for relief in its Answer:

- *Rejecting the reliefs sought by Emanuel Briffa.*
- *With regard to the Respondent's costs, bearing in mind that UEFA is represented in these proceedings by in-house lawyers and the fact that UEFA has more financial resources than Emanuel Briffa, the Respondent considers that no contribution towards the legal fees incurred by UEFA in connection with these proceedings must be paid by Appellant regardless of the outcome".*

V. SUBMISSIONS OF THE PARTIES

57. The submissions of the Player, in essence, may be summarised as follows:

- The burden of proof is carried by UEFA's organs and the standard of proof required to be reached by UEFA for the finding of guilt is one of "comfortable satisfaction". Also, there exists a "*sliding scale*", under which the more serious the charge, the higher the degree of satisfaction which must be reached by the adjudicating body, with something close to, but not as strict as, the criminal standard of "beyond reasonable doubt" being the upper limit. Given that the allegations brought forward in this case involve a great imputation, said allegations must be proven to a rigorous standard, which although not as demanding as the criminal standard itself, must be closely scaled to the standard of "beyond reasonable doubt".
- While accepting responsibility in terms of Article 12(2)(d) and/or (e) UEFA DR, this Court cannot be satisfied, whether by applying the test of "comfortable satisfaction" or that of "balance of probabilities" that the Player breached Article 12(2)(a) UEFA DR.
- It is to be noted that the "*conclusion of fact*" reached by the UEFA Appeals Body are a result of a rather selective consideration of the different testimonies available in this case; indeed, in some instances the testimony of the same witnesses was considered as being credible, whereas in other cases related to the same facts (with other players), it was considered as being the product of a downright lie. Had the UEFA Appeals Body

objectively considered all the evidence, it would have arrived at the conclusion that the Player could not have been found guilty of violating Article 12(2)(a) UEFA DR.

- In particular, it is to this day unknown to the Player why the UEFA Appeals Body completely disregarded the fact that Mr Zammit (whose testimony was so much relied on) said that upon hearing about the plan, the Player stood up and left the Café Jubilee during the Valletta meeting. It is to this day unknown to the Player why Mr Mackay's testimony was considered as an utmost lie in other cases, and as the absolute truth in this one.
- In the Appealed Decision, the UEFA Appeals Body considered that when Mr Zammit said that the Player "*accepted*", and others "*refused everything*", he was referring to the proposal to take the bribe. This is not the case. Indeed, it is clear from Mr Zammit's evidence that what the Player had accepted to do was to meet Mr Mackay (after being at the receiving end of a lot of pressure exerted on him by the very same Mr Zammit) and not to actually take the bribe or influence the game.
- The UEFA Appeals Body's reasoning is absurd in that it relies on the assertion that the Player did not actually say the word "*no*". When someone does not want to be part of a plan, he can say the word "*no*", or else, he can act in a manner which is equivalent to a "*no*". It is humbly submitted that it is evidence that the act of promptly standing up, and leaving a building upon hearing of a plan, and then refusing to answer the perpetrator of the plan when he tries calling is evidence of a strong, firm and unequivocal "*no*".
- It should stand uncontested that the sanction imposed by the bodies of UEFA against fellow players in this same case in respect of infringements of Article 12(d) UEFA DR included 12 months' suspensions for Mr Luke Montebello and Mr Llewellyn Cremona, an 18 months' suspension for Mr Ryan Camenzuli and a 24 months' suspension for Mr Samir Arab. Such bans were also accompanied by an order for community football service. The sanction to be imposed on the Player should be no different to that imposed on the aforementioned individuals.
- Without prejudice to the above, in any case, the sanction of the imposition of a ban on all football-related activities for a period of 10 years is disproportionate and excessively severe. The impugned sanction does not strike the necessary balance between the deterring and retributive effect such decision ought to have and the necessary restorative element.
- The Player, arguably still a boy in 2016, is indeed an individual with a clear record both on and off the field of play; he was not the instigator of any plan to fix the Matches; he did not manipulate the match or receive money to affect its outcome; he never became acquainted with Mr Mackay, immediately admitted his failure to report to the Executive Police in Malta, to the EDI and to the UEFA CEDB; until the recent events under scrutiny in these proceedings, his reputation was untarnished, his football skills were recognised locally and internationally.

58. UEFA provided the following summary of its submissions:

- *‘Based on the evidence on file, which was properly evaluated by UEFA’s disciplinary bodies in two instances, it is clear that the Appellant accepted the offer that was made to him to fix the Montenegro Match. This is evident not only from the testimony of the person who actually offered the bribe (Mr. Zammit), but also from that of the other persons involved, including the other mastermind of the plot.*
- *Indeed, not one single person who participated in the scheme has been able to confirm that the Appellant refused the offer, with the exception of the Appellant himself (who has every reason to deny having accepted the bribe to protect his career). In fact, all evidence points to a direct and immediate acceptance of the offer, as confirmed by Mr. Zammit himself on several occasions, with the Player’s only doubt concerning the amount of the bribe which he needed to think over and negotiate afterwards.*
- *The Appellant has in fact provided contradictory statements and failed to substantiate any of his arguments, from either a factual or a legal point of view.*
- *Remarkably, while the Appellant places much emphasis on the alleged need to have met with Ronnie Mackay to consider that the offer to have been accepted, it is confirmed from the testimonies of the Appellant himself, as well as his teammate Samir Arab that:*
 - i. Ronnie Mackay was never mentioned by Seyble Zammit in any of the meetings attended by the Appellant.*
 - ii. Seyble Zammit (not Ronnie Mackay) is the only person who offered the players (including the Appellant) the money to lose the Montenegro Match.*
 - iii. In this sense, Mr. Zammit’s testimony that he allegedly offered them to meet Ronnie Mackay is not only discredited by his own subsequent admission that he instead offered money to the players, but also by the testimony of the persons to whom he had approached. Tellingly, the Appellant expressly testified in court that he was actually offered €3’000 by Mr. Zammit, without any mention being made to an alleged proposal to meet Ronnie Mackay. This further discredits the affidavit submitted in the Appeals Body proceedings by the Appellant.*
- *The seriousness of all offences relating to match-fixing under Art. 12 DR requires the imposition of the most severe disciplinary measures available: bans from football-related activities. This approach is not only confirmed by the jurisprudence of UEFA’s disciplinary bodies, but it has also been endorsed by CAS when dealing with cases involving the manipulation of sports competitions, especially by individuals.*
- *The Appellant has failed to prove any of the alleged mitigating circumstances that he has submitted as a basis for an eventual reduction of the sanction. His arguments in this respect are based chiefly on mere party statements and uncorroborated proof of disproportionality of the Decision, without providing any actual evidence or legal arguments to support his position. Only for this reason the Appellant’s arguments shall be disregarded.*

- *Further, the Appellant has not substantiated his allegation of a supposed fear of the masterminds of the fix, which obviously did not exist, as he was able to voluntarily attend three meetings with Mr. Zammit in which the details of the plot were discussed.*
- *In any event, there are no mitigating circumstances in this case that would warrant the amendment of the Decision.*
- *The sanction imposed by the Appeals Body in the Decision can only be reviewed by the CAS if it is evidently and grossly disproportionate. However, the Appellant has not submitted any evidence of its disproportionality. On the contrary: UEFA's disciplinary bodies have eloquently reasoned in their respective decisions on the basis of the circumstances of the case and CAS' jurisprudence on such matters. The Appeals Body have perfectly justified how the sanction imposed is not only proportionate, and in fact it could even be considered lenient to some extent considering precedents in similar situations and the concurrence with the CEDB's prior analysis of the case.*
- *Not only shall deference be given to the Appeals Body's Decision, but there are no reasons to depart from the conclusions contained therein, or to otherwise reduce the suspension imposed on the Player, which is more than adjusted to the seriousness of the offence committed.*
- *The Player's appeal shall therefore be rejected and the Decision confirmed".*

VI. JURISDICTION

59. The jurisdiction of CAS, which is not disputed, derives from articles 62(1) UEFA Statutes (2017 edition) as it determines 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” and Article R47 CAS Code.
60. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
61. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

62. 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.
63. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

64. The Player did not make any submissions in respect of the law to be applied to the matter at hand beyond requesting that the present dispute be resolved in accordance with the UEFA DR.
65. UEFA submits that the procedural and organizational aspects of the disciplinary proceedings carried out by UEFA in the Player's case are governed by the UEFA DR (edition 2017), but that the merits of the dispute are governed by UEFA's rules and regulations, in particular the UEFA DR (edition 2014) and additionally by Swiss law.
66. 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”.

67. Article 64(1) UEFA Statutes stipulates the following:

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

68. In accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment the alleged offence was committed, subject to the principle of *lex mitior*. However, the procedural aspects of the proceedings are governed by the regulations in force at the time the appeal was lodged.
69. Accordingly, the Panel agrees with UEFA that the various regulations of UEFA are primarily applicable to the dispute. The UEFA DR (edition 2014) are primarily applicable to the merits of the dispute, since the alleged offence was committed before the UEFA DR (edition 2016) entered into force. The Panel is satisfied with the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of UEFA. The procedural and organisational aspects are governed by the UEFA Statutes (edition 2017) and the UEFA DR (edition 2017).

IX. MERITS

70. As a preliminary issue, the Panel notes that both the UEFA CEDB and the UEFA Appeals Body found that the Player accepted a bribe and that, as a consequence thereof, he violated Article 12(2)(a) UEFA DR.

71. Indeed, the UEFA Appeals Body concluded as follows:

“the Appeals Body considers that there is sufficient persuasive evidence to demonstrate that the player accepted the bribe. Consequently, the Appeals Body as it was for the [UEFA CEDB] is comfortably satisfied that

[the Player] acted in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party infringing in accordance with Article 12(2)(a) DR” (para. 146 of the Appealed Decision).

72. The Panel observes that Article 12(1) and (2) UEFA DR determine as follows:

- “1. All persons bound by UEFA’s rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour.
2. The integrity of matches and competitions is violated, for example, by anyone:
 - a. who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party;
 - b. who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;
 - c. who uses or provides others with information which is not publicly available, which is obtained through his position in football, and damages or could damage the integrity of a match or competition;
 - d. who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;
 - e. who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article”.

73. Although the Panel acknowledges that an acceptance of a bribe constitutes a violation of Article 12(2)(a) UEFA DR, it finds that this provision is only an example of a violation of Article 12(1) UEFA DR (“behaviour that damages or could damage the integrity of matches and competitions”). Indeed, Article 12(2) UEFA DR determines that such integrity “is violated, **for example**, by anyone” (emphasis added by the Panel). Accordingly, the examples enumerated in Article 12(2)(a)-(e) UEFA DR are not exhaustive and, while they may have varying degrees of seriousness, all lead to a violation of the general prohibition set out in Article 12(1) UEFA DR.

74. The Panel therefore finds that it is not restricted to strictly assessing whether the Player violated Article 12(2)(a) UEFA DR, but that it has discretion to examine whether any violation of Article 12(1) UEFA DR, including the examples listed in Article 12(2)(a)-(e) UEFA DR is committed.

75. The Panel feels comforted in this conclusion by the admission of the Player that he accepts responsibility in terms of violating Article 12(2)(d) and/or (e) UEFA DR, but that he did not breach Article 12(2)(a) UEFA DR. Upon an enquiry from the Panel during the hearing, UEFA

confirmed that the Panel could hypothetically fall back on the general provision of Article 12(1) UEFA DR or any of the examples listed in Article 12(2) UEFA DR.

76. In light of the above, the Panel finds that the acceptance of a bribe is no precondition for a violation of Article 12(1) UEFA DR. That being said, if it were to be established that a football player accepted a bribe, this would certainly be an aggravating factor and would generally warrant a more severe sanction being imposed on the perpetrator than in a situation where such acceptance is absent.
77. After establishing the applicable standard of proof to be applied in the matter at hand, the Panel will therefore first examine whether the Player indeed accepted a bribe, before analysing whether, in case no such acceptance can be established, the Player nevertheless committed any violation of Article 12(1) UEFA DR. Only in case the Panel were to conclude that the Player violated Article 12(1) UEFA DR, it will assess the proportionality of the sanction imposed on the Player in light of the violation committed.

A. The main issues

78. In light of the above, the main issues to be resolved by the Panel are the following
- i. What is the standard of proof to be applied?*
 - ii. Did the Player accept a bribe?*
 - iii. If not, did the Player nevertheless violate Article 12(1) UEFA DR?*
 - iv. If so, is the sanction imposed on the Player proportionate?*

i. What is the standard of proof to be applied?

79. As to the standard of proof, the Panel observes that both parties agree that the burden of proof lies with UEFA and that the applicable standard of proof shall be one of “comfortable satisfaction”. The views of the parties however diverge as to the interpretation and application of such a standard.
80. Whereas the Player submits that there is some sort of “*sliding scale*” under which the more serious the charge, the higher the degree of satisfaction which must be reached by the adjudicating body and that, given the serious nature of the charge in the matter at hand, the charge must be proven to a rigorous standard, which although not as demanding as the criminal standard itself, must be closely scaled to the standard of “beyond reasonable doubt”, UEFA argues that the Player’s theories about a “*higher*” standard of proof “*within*” the standard of comfortable satisfaction are nothing else than an attempt to mislead the Panel and that, just as one cannot be “*half-pregnant*”, one cannot be “*a bit less comfortably satisfied*” or “*a bit more comfortably satisfied*”.

81. As admitted by UEFA, the UEFA DR only contain a provision determining the applicable standard of proof to be applied since 2016, while the substance of the present proceedings is governed by the UEFA DR (edition 2014). The Panel therefore does not have the benefit of any regulatory guidance as to the applicable standard of proof.
82. Notwithstanding the absence of a standard of proof set in the applicable regulations, the Panel fully agrees with the parties that the applicable standard shall be one of “comfortable satisfaction”.
83. As to the interpretation of such standard, the Panel considers it important to stress that, as also acknowledged by UEFA, the standard of “comfortable satisfaction” is commonly defined as being greater than a mere “balance of probabilities” but less than proof “beyond a reasonable doubt”, bearing in mind the seriousness of the offence committed.
84. In the view of the Panel, this does not mean that there is some sort of “*sliding scale*” within the standard of “comfortable satisfaction” depending on the seriousness of the charge, but that in case of serious allegations, the adjudicatory body should have a high degree of confidence in the quality of the evidence.
85. The Panel feels itself comforted in this analysis by the reasoning of another CAS panel:

“In assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable according to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of the evidence” (CAS 2011/A/2490, para. 40 of the abstract published on the CAS website).
86. The Panel accepts that the charge in the matter at hand is serious and that the consequences for the Player are severe if such charge would be established. The Panel however does not find that this should lead to a higher standard of proof than “comfortable satisfaction” being applied, but that it should have a high degree of confidence in the quality of the evidence.

ii. *Did the Player accept a bribe?*

a. The evidence on file

87. Turning to the issue of whether the Player accepted an offer to be bribed, as indicated above, although the UEFA Appeals Body reduced the sanction imposed on the Player, both the UEFA CEDB and the UEFA Appeals Body concluded that the Player accepted a bribe.
88. In supporting the conclusions reached in the Appealed Decision, UEFA relies, *inter alia*, on the following pieces of evidence in the present appeal arbitration proceedings before CAS:
 - A transcript of the police interrogation of Mr Zammit on 29 March 2016;
 - A transcript of the police interrogation of the Player on 30 March 2016;

- A transcript of tape recordings of Mr Zammit's testimony during his own trial before the Maltese criminal court of first instance on 8 April 2016;
 - A transcript of the police interrogation of the Player on 13 April 2016;
 - A transcript of tape recordings of Mr Zammit's testimony during the trial against the Player before the Maltese criminal court of first instance on 2 June 2016;
 - A transcript of tape recordings of the testimony of Mr Arab (a teammate of the Player) during the trial against Mr Cesare (a teammate of the Player) before the Maltese criminal court of first instance on 13 June 2016;
 - The written witness statement of Mr Zammit dated 15 June 2018 that was provided by the Player during the proceedings before the UEFA Appeals Body;
 - A transcript of tape recordings of the testimony of Mr Mackay during his own trial before the Maltese criminal court of first instance on 1 November 2016;
 - The decision of the Maltese criminal court of first instance in the trial against the Player;
 - The decision of the Maltese criminal court of appeal in the trial against the Player.
89. The Panel is put to the task of analysing the veracity of the evidence provided and observes that the majority of the background facts are not disputed between the parties, *e.g.* it is not disputed that the Player eventually never received any bribe and that the match-fixing plot was never executed. The crucial difference in the parties' respective submissions appears to be that UEFA submits that Mr Zammit made a financial offer to the Player to fix the outcome of the Montenegro Match and that the Player accepted a bribe, whereas the Player maintains that he was only offered to meet Mr Mackay and never accepted a bribe. The Panel will therefore in particular focus on these last aspects by going through the various transcripts in chronological order.
90. Analysing the transcripts of Mr Zammit's statements as regards the alleged acceptance of the bribe by the Player, the Panel notes that he did not mention the Player during the police interrogation on 29 March 2016.
91. On 30 March 2016, the Player stated the following about the first meeting with Mr Zammit during a police interrogation:

"On that day he offered me €3000 so we'd lose and also said that he'd tell me the exact score how he wanted us to lose later. I told him no and that it's better I don't get into such things. It stopped there but a week before the game he phone me once when I was at football training to meet again. Since I was training at Hamrun on that day he offered to go to Valetta and I accepted. On that day he told me the same thing if I wanted to be bribed and even offered me something more than what he had first offered, for me to accept. I insisted on my refusal and left".

92. In his testimony dated 8 April 2016, Mr Zammit first denies having approached the Player:

Prosecution: *“Right, just in case for the match Malta vs Montenegro did you approach Emanuel Briffa, Manuel Briffa?”*.

Mr Zammit: *“No”*.

93. Then, according to UEFA, Mr Zammit recants and comes forward with the truth:

Prosecution: *“What to reply if I tell you that you met Manuel Briffa Hal Gbaxaq, Bir id-Deheb to be precise? We’re not going to go there Your Honour”*.

Mr Zammit: *“So let me tell you everything”*.

Prosecution: *“Good”*.

[...]

Prosecution: *“Mention all the players or what was the agreement and if players were bribed in the match Malta versus Montenegro under twenty-one (21) and/or the match Malta vs Czech Republic under twenty-one (21)”*.

Mr Zammit: *“So Ryan Camenzuli, Joseph Mbong and Luke Montebello”*.

Mr Zammit’s counsel: *“Mbong...?”*.

Mr Zammit: *“Mbong Czech Republic sorry, Mathew Calleja Cremona, Emanuel I don’t know his surname”*.

Mr Zammit’s counsel: *“...”*.

Mr Zammit: *“And Kyle Cesare, Kyle Cesare. Those who accepted were Kyle Cesare and Emanuel Briffa and the rest refused everything”*.

Prosecution: *“They didn’t accept”*.

Mr Zammit: *“But the match turned out as it did he wanted three nil (3-0) this after the match he wanted to pay all the players because it didn’t get in”*.

Mr Zammit’s counsel: *“Because of the one nil (1-0)?”*.

Mr Zammit: *“Exactly”*.

Mr Zammit’s counsel: *“Because then it turned out one nil (1-0)”*.

Mr Zammit: *“And he wanted them to pay the players”*.

Prosecution: *“What players? What do you mean? Explain to the Court in detail this agreement how it was exactly”*.

Mr Zammit: *“After they tried with Cesare since these, obviously he took, he was going to take the money”*.

Prosecution: *“Who proposed the money to Kyle Cesare and Emanuel Briffa?”*.

Mr Zammit: *“I did”*.

Prosecution: *“And what was the amount?”*.

Mr Zammit: *“The amount was there”*.

Mr Zammit’s counsel: *“Tell him”*.

Mr Zammit: *“Of three thousand five hundred (3,500)”*.

94. The Panel also finds another part of Mr Zammit’s testimony of 8 April 2016 relevant, because it indicates that there were not sufficient players to go through with the match-fixing plot:

Prosecution: *“For the match Malta Montenegro and Malta Czech Republic were you in contact with Kyle Cesare or Emanuel Briffa?”*.

Mr Zammit: *“No, since there were fewer players he wanted to add more players. I approached Mbong to add players then all this happened”*.

95. On 13 April 2016, the Player stated, *inter alia*, as follows during an interrogation by the police:

Inspector: *“Did you communicate with Seyble in any way other than telephone calls?”*.

The Player: *“He spoke to me over an app, telegram I think is the name”*.

Inspector: *“Who told you about this application?”*.

The Player: *“Ronnie told me about it he told me it was an application like whatsapp and Seyble talked to me over it. It was on this app that Seyble asked me if I wanted to be in the Czech Republic match”*.

Inspector: *“Do you know the use of this app?”*.

The Player: *“Normal Messages like Whatsapp”*.

Inspector: *“Why did you accept to download and use this application?”*.

The Player: *“Seyble and Ronnie told me to download it and talk to me with it”.*

Inspector: *“Did you speak to Samir Arab of this offer made to you?”.*

The Player: *“Only at that moment, Samir asked me what I thought and I told him better not and he agreed”.*

Inspector: *“What do you reply if I tell you that you did accept Seyble Zammit’s and Ronnie Mackay’s offer for €3500?”.*

The Player: *“I didn’t accept and you can ask them and even if you watch the game, I had a good game and the only goal we suffered I had nothing to do with it”.*

Inspector: *“What do you say if I tell you that you were going to be paid the amount of €3500 after the match according to the result?”.*

The Player: *“He offered me €3000 he would not give me the exact money after the match or the following day but he told me that the first day we met”.*

Inspector: *“What was the agreement about the score in the match Malta vs Montenegro?”.*

The Player: *“Ronnie and Seyble when we met told us, me and Samir, that were we to accept, the score had to be Malta loses 0-1 first half and 0-3 final score”.*

96. Subsequently, during his testimony of 2 June 2016, Mr Zammit first denied that he offered money to the Player, but that he only offered to arrange a meeting between the Player and Mr Mackay:

Prosecutor: *“How many players you approached accepted your offer?”.*

Mr Zammit: *“In my offer there was no offer except that they meet Ronnie Mackay”.*

Defence: *“Come again?”.*

Court: *“The offer was to meet Ronnie”.*

Mr Zammit: *“I never offered players money”.*

Prosecution: *“I don’t know at this stage if can we [sic] declare him as a relevant witness for what he said in the other case”.*

Court: *“Hostile witness, why doesn’t he say what he knows?”.*

Prosecution: *“To remind him what he said”.*

Court: *"I reminded him, I told him to state the whole truth, now he is basically saying what he knows well, Continue Inspector"*.

Prosecution: *"Explain, I asked you which players you approached accepted your offer?"*.

Mr Zammit: *"Kyle Cesare and Manuel"*.

Court: *"Now your offer was to meet someone or else..."*.

Mr Zammit: *"To meet Ronnie Mackay"*.

97. Later on, during the same testimony of 2 June 2016, Mr Zammit however confirmed that the Player accepted his offer to fix the Montenegro Match:

Prosecution: *"So Luke Montebello didn't accept and Kyle Cesare accepted your offer and there was an occasion when Emanuel Briffa accepted your offer and Samir Arab did not accept your offer, why are you saying that one accepted and the other one didn't? Explain to the court why one accepted and the other didn't?"*.

Mr Zammit: *"No I didn't tell them on the mobile let's meet to fix this game, I told them let's have a coffee. One of them accepted, the other didn't"*.

Prosecution: *"What did he accept?"*.

Mr Zammit: *"To fix the game"*.

Prosecution: *"Explain in a bit of detail the exact words you said"*.

Mr Zammit: *"To fix the game against Montenegro two nil (2-0)"*.

Prosecution: *"To whom did you say these words?"*.

Mr Zammit: *"To both of them eh, but one of them told me he wasn't interested and the other one told me yes"*.

Prosecution: *"So you said the words that the game must be lost by Malta, by the Maltese team, to whom? To Kyle Cesare and to Luke Montebello and in regard to Samir Arab and Emanuel Briffa the same thing happened?"*.

Mr Zammit: *"Exactly, I didn't tell them on the mobile eh"*.

98. On 13 June 2016, Mr Arab (a teammate of the Player), *inter alia*, testified as follows about the encounter with Mr Zammit that was also attended by the Player and Mr Cesare (the second meeting of the Player with Mr Zammit) before the Criminal Court:

Prosecution: *"Samir explain to the Court what was this proposal"*.

Mr Arab: *"He began asking about..."*.

Prosecution: *"He who?"*.

Mr Arab: *"Seyble Zammit began asking about the national U21 team and boasted that they were doing well and told us that since we were obtaining good results the match could be lost"*.

Prosecution: *"What do you mean, explain, you were doing well and the match was good to fix?"*.

Mr Arab: *"He said that because in terms of betting he knew that there were good odds because abroad we got a good result and acquired points which usually the national team [sic] does not get"*.

Prosecution: *"Did Seyble Zammit tell you what he wanted from you exactly?"*.

Mr Arab: *"On that day for sure he said nothing, sort of, to lose the game and he didn't spell out anything"*.

Prosecution: *"What would you have acquired if the game was lost?"*.

Mr Arab: *"Speaking for myself it didn't cross my mind because I don't do these things"*.

Prosecution: *"Well alright but Seyble Zammit what did he say you would obtain if you lose?"*.

Mr Arab: *"He mentioned the sum of three thousand (€3000) Euros"*.

Prosecution: *"So when you were all there present he told you to lose for three thousand (€3000) Euros?"*.

Mr Arab: *"Exactly"*.

99. On 1 November 2016, Mr Mackay testified, *inter alia*, as follows regarding the second meeting of the Player with Mr Zammit before the criminal court in the criminal law proceedings against him:

Dr De Marco: *"Now you told me that Seyble was leading the conversation and the Chinese. What was said in front of you?"*.

Mr Mackay: *"I heard the Chinese tell them: Are you confident? Are you confident? And the others said: Yes"*.

Dr De Marco: *"He told them are you confident and they said yes. And what did Seyble tell them?"*.

Mr Mackay: *"Seyble told them: He just wants to see if you're confident, this is what he told them, he told them: the money and what will happen I'll tell you later on"*.

Dr De Marco: *“Did he mention money to you, to them was money mentioned?”*

Mr Mackay: *“He told them: I’ll tell you later on what’ll happen, but he told them some three thousand (3,000) Seyble”*.

Dr De Marco: *“Three thousand (3,000) in what context?”*

Mr Mackay: *“Euro”*.

100. Finally, the Panel notes that, the witness statement of Mr Zammit dated 15 June 2018 that was provided during the Player’s proceedings before the UEFA Appeals Body, *inter alia*, determined as follows:

“I offered Emanuel Briffa to meet Mc Kay. Briffa did not reply and told me he would think about it. He seemed shocked.

McKay kept pressuring me to set up meetings with players. McKay put a lot of pressure on me and was threatening me that I would have to pay money. I put a lot of pressure on Emanuel Briffa. I called him many times and also went to look for him. I told him that all he had to do was to meet McKay. At least listen to what McKay had to say.

A meeting was held and McKay told all those present what he was planning to do in the presence of the Asian person I had already met. Briffa having heard what was being said stood up and left. After I tried calling Briffa but he did not answer my calls”.

b. The Panel’s assessment of the evidence on file

101. The Panel did not have the benefit of hearing any direct evidence from the persons with direct knowledge of the match-fixing plot, *i.e.* no witnesses were called by the parties to testify before the Panel. The Panel is cognisant of the fact that it is presumably not easy for a sports-governing body such as UEFA to bring a witness such as Mr Zammit before CAS, but it does not appear that UEFA undertook any efforts in this regard. Although this does not make the evidence provided inadmissible, it does affect the quality of the evidence, because the Panel can now only analyse the documents provided, which puts the Panel to the task of assessing a previous assessment.
102. The Panel considers the transcripts of police interrogations and court examinations of Mr Zammit of particular importance for the matter at hand. Although Mr Zammit’s declaration were given under oath, which enhances the credibility, the Panel also notes that Mr Zammit was treated as a whistle-blower and was eventually exempted from criminal sanctions because of his cooperation with the authorities, and that the Player argues that Mr Zammit had to compromise certain persons in the match-fixing scheme in order to fully exploit his whistle-blower status, which reduces the credibility of his statements. The Panel finds that there may be some merit in the Player’s argument in this respect. The Panel also finds that Mr Zammit’s undisputed role as an intermediary between the football players and Mr Mackay and his

undeniable involvement in the match-fixing scheme necessarily taints the evidence given by Mr Zammit. Above all, the Panel was not enabled to make its own assessment of Mr Zammit's demeanour and could therefore not confront him with certain inconsistencies in his various interrogations and testimonies and form an opinion on the credibility of his personality in general or on certain statements made during his various interrogations in particular.

103. In general, the Panel finds that the various statements and testimonies given by Mr Zammit are contradictory in important parts of the evidence. Mr Zammit basically gave two explanations as to the offer that was presented to the Player (*i.e.* agreeing to meet Mr Mackay or accepting a bribe to fix the Montenegro Match) and also as to whether or not the Player accepted the offer.
104. The Panel is however comfortably satisfied to conclude that Mr Zammit made an offer to the Player to fix the Montenegro Match, because this appears not only from Mr Zammit's declarations, but also from Mr Arab's testimony of 13 June 2016, where the latter declared that he was offered EUR 3,000 to lose the Montenegro Match and that the Player was present at such meeting as well. This is in line with the Player's statements made during the police interrogations of 30 March and 13 April 2016. Ultimately, the Player also testified before the Panel that Mr Zammit told him that Mr Mackay was going to offer him EUR 3,000 for fixing the Montenegro Match, which the Panel does not consider to be fundamentally different from an offer being made by Mr Zammit himself. The Panel finds that these elements together are sufficiently strong to support the conclusion that, through Mr Zammit, an offer was made to the Player to fix the Montenegro Match for an amount of EUR 3,000.
105. Turning then to the question whether the Player accepted such offer, the Panel observes that the main evidence on file corroborating this theory are the various testimonies of Mr Zammit, who is therefore a key witness in the present proceedings.
106. Importantly, as indicated *supra*, the Panel is faced with the situation that it did not hear direct evidence from this key witness, while this witness provided contradictory statements. In the absence of such direct evidence, the Panel finds that Mr Zammit's contradictory statements are to be given equal weight.
107. Although satisfied that an offer was made, the Panel finds that an acceptance requires some sort of definite agreement on what was to be done and a conclusion of the arrangement, *i.e.* a notional 'final handshake'. The mere non-rejection of an offer does not necessarily mean that an offer is accepted.
108. Although it is perfectly legitimate for UEFA to rely on the statements and testimonies of Mr Zammit made during the Maltese criminal law proceedings, the Panel finds that such statements and testimonies are not particularly clear in proving that the Player unconditionally accepted the bribe offered to him by Mr Zammit to fix the Montenegro Match. As stated in para. 83 above, the Panel should have a high degree of confidence in the quality of the evidence in order to be comfortably satisfied that the Player accepted a bribe. That high degree of confidence in the evidence does not exist for the Panel here.

109. Mr Mackay's confirmation of the Player's acceptance is also not considered very credible by the Panel. Mr Mackay was convicted by the Maltese Criminal Court for match-fixing and sentenced with prison time and the Panel therefore does not consider it appropriate, also considering the fact that Mr Mackay only met with the Player very shortly (for approximately 20 seconds), to put much reliance on the testimony of a convicted criminal.
110. The Panel also finds that the mere fact that the Maltese Criminal Court of Appeal found the Player guilty of having "*accepted or obtained, or agreed to accept or obtain, or attempted to obtain, from any person for themselves or for any other person whomsoever any gift or consideration as an inducement or reward for doing or for omitting from doing, of for having, after the enactment of this act, done or omitted from doing, any act the doing or omission of which is against the interests of the side for which they played, or those of the person or club by whom or by which they are engaged or whom or which they represented*" does not mean that the Player is necessarily to be found guilty of accepting a bribe in the present proceedings before CAS.
111. Indeed, the Maltese Criminal Court of Appeal had the benefit of direct evidence before it, while the Panel in the matter at hand is faced, *inter alia*, with an affidavit issued by Mr Zammit under oath during the Player's proceedings before the UEFA Appeals Body that was not available to the Maltese Criminal Court of Appeal, which contradicts the evidence initially provided by Mr Zammit.
112. The Panel finds that UEFA's argument that the statement of Mr Zammit that was provided during the Player's proceedings before the UEFA Appeals Body is of no avail, must be dismissed. Indeed, while the UEFA Appeals Body initially decided that the Player was to be banned from football for life, upon receipt of this additional statement, the UEFA Appeals Body re-opened the proceedings and ultimately decided to reduce the ban from participating in professional football to 10 years.
113. The Panel finds that this shows that, at least for the UEFA Appeals Body, Mr Zammit's additional statement was important and justified a significant reduction of the ban imposed on the Player. The Panel finds it difficult to see why such new and contradictory statement would justify a reduction of the ban imposed on the Player, if not for Mr Zammit's declaration that the Player stood up and left the third meeting, which contradicted his previous declarations.
114. The Panel finds that this fact must be discounted in the reasoning and justifies a deviation from the conclusions reached by the Maltese Criminal Court of Appeal.
115. Contrary to the findings of the UEFA Appeals Body, the Panel finds that Mr Zammit's new affidavit does not only impact on the seriousness of the violation committed (and therefore impacts on the proportionality of the sanction), but indeed also on whether the primary accusation of UEFA (*i.e.* that the Player accepted a bribe) can be proven.
116. Given Mr Zammit's contradicting declarations, the Panel is not convinced based on this statement and the Player's confirmation thereof, that the Player indeed stood up and left the third meeting, less that this is to be interpreted as a refusal to accept the bribe, but it finds that

it casts a significant shadow on UEFA's argument (and the Maltese Criminal Court of Appeal's ruling) that the Player accepted a bribe.

117. The Player was the only witness that testified before the Panel. The Player denied that he was offered a bribe by Mr Zammit, indicating that he was only offered to meet Mr Mackay. As indicated above, the Panel does not agree with this statement. However, the Player's testimony in general did not strike the Panel as untruthful. Rather, the Panel found that the Player was naïve in his assessment of the situation he was confronted with and did not fully comprehend the seriousness thereof, but did not tell any downright lies or otherwise circumvent the truth. The Panel took note of the fact that the Player apparently discussed the situation with his parents and that he cooperated with the police during the investigations. Although the Player obviously has an interest in denying the accusations against him, the Player's testimony did not strike the Panel as untruthful and therefore the Panel gives a certain value to it.
118. Considering all the above, leaving aside suspicions and assumptions, and basing itself on the hard evidence in front of it, the Panel is, especially considering the high degree of confidence in the quality of the evidence required (see para. 83 above), simply not comfortably satisfied that the Player accepted the bribe offered to him by Mr Zammit to fix the Montenegro Match, *i.e.* the Panel is not convinced that there was any form of notional 'final handshake' or that the Player otherwise confirmed his participation in the match-fixing scheme. On the other hand, the Panel is also not comfortably satisfied that the Player clearly rejected the offer to fix the Montenegro Match.
119. Consequently, the Panel is of the opinion that, based on the evidence filed by the parties and the Panel's confidence in the quality of the evidence, the Player neither accepted nor clearly rejected the bribe he was offered to fix the Montenegro Match.

iii. If not, did the Player nevertheless violate Article 12(1) UEFA DR?

120. As alluded to above, the Panel finds that the mere fact that the Player did not accept a bribe, does not necessarily mean that the Player did not violate Article 12(1) UEFA DR.
121. As admitted by the Player himself in the Appeal Brief, the Panel finds that there can be no doubt that the Player violated Article 12(2)(d) and (e) UEFA DR.
122. It is not disputed that the Player had three separate meetings with Mr Zammit and that the match-fixing plot was presented to him already during the first meeting. The Panel therefore has no doubt concluding that the Player indeed violated both Article 12(2)(d) ("*who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition*") as well as (e) ("*who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article*") UEFA DR and thereby acted with "*behaviour that damages or could damage the integrity of matches and competitions*", resulting in a violation of the overarching Article 12(1) UEFA DR.

123. Indeed, the Panel finds that the Player's infringements are more severe than only failing to report an approach and failing to report behaviour he is aware of that may fall within the scope of Article 12(1) UEFA DR, because the Player had three different encounters with the masterminds of the match-fixing plot and never informed UEFA or other relevant authorities about such meetings.
124. In particular, the fact that the Player agreed to meet Mr Zammit again, after having been presented with the offer to fix the Montenegro Match, is to be condemned. Mr Zammit may have exercised pressure on the Player to meet again by repeatedly calling him several times (nine times), but the Panel finds that such pressure did not amount to such an extent that the Player could no longer be reasonably expected to ignore such pressure. As admitted by the Player, not only should he immediately have reported such offer to the authorities in accordance with Article 12(2)(d) UEFA DR, but he did the opposite of what he should have done by meeting Mr Zammit on two other occasions. The Panel finds that, although there was no unequivocal acceptance of a bribe, the Player also certainly did not unequivocally refuse the offer. Indeed, the Panel finds that the only reasonable explanation for the Player agreeing to meet Mr Zammit again on two additional occasions was his **interest** (as opposed to his unconditional acceptance) in participating in the match-fixing plot and accepting the offer that was made to him. The Player thereby gave the masterminds the confidence that they could count on his participation if, for instance, the amount of the bribe would be increased.
125. The Panel finds that in violating the more specific Article 12(2)(d) UEFA DR, the Player also violated the more generic Article 12(2)(e) UEFA DR, *i.e.* by having received an offer to fix the Montenegro Match, the Player was surely aware of behaviour that falls under the scope of Article 12 UEFA DR. He should therefore have immediately reported such behaviour, which he failed to do.
126. By failing to clearly refuse the offer and reporting the proposal to the authorities, the Player kept the match-fixing plot alive. He did nothing to protect his teammates from getting into trouble or even danger, nor to prevent the match-fixers from possibly approaching further persons.
127. Although the Panel finds that, in the absence of the Player's acceptance of a bribe, the Player's violation cannot be stretched to result in a violation of Article 12(2)(a) UEFA DR ("*who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party*"), it does find that the Player violated the general provision of Article 12(1) UEFA DR by repeatedly failing to report match-fixing approaches, failing to report any behaviour he is aware of that may fall within the scope of Article 12 UEFA DR (and thus violating Article 12(2)(d) and (e) UEFA DR), and continuing to meet with the person that offered him the bribe to fix the Montenegro Match and thereby showing a certain interest in participating in the match-fixing scheme.
128. Consequently, the Panel is comfortably satisfied that the Player violated Article 12(1) UEFA DR.

iv. If so, is the sanction imposed on the Player proportionate?

129. The ultimate question to be answered by the Panel is whether a 10-year ban on all football-related activities is proportionate in light of the violations established.
130. In this regard, the Panel finds that it must be taken into account that the UEFA Appeals Body considered such sanction proportionate while finding the Player guilty of Article 12(2)(a) UEFA DR, *i.e.* for having accepted a bribe, while the Panel is not comfortably satisfied that the Player committed such violation. Should such violation have been established, the Panel considers that a ten-year ban would not have been disproportionate.
131. However, given that the most serious charge is not proven to its comfortable satisfaction, the Panel finds that this must be reflected in the sanction that is to be imposed on the Player by reducing the ban on all football-related activities to a shorter period of time.
132. The Panel nevertheless finds that the Player's behaviour still constitutes a serious violation of Article 12(1) UEFA DR and that he set a wrong precedent by acting in the way he did.
133. In determining the appropriate period of exclusion from all football-related activities, the Panel finds that the sanction to be imposed on the Player should not be disproportionate if taken alone, but also that such sanction should not be disproportionate in comparison with the sanctions imposed on his teammates.
134. Although the Panel does not have full information about the specific facts and circumstances concerning the other players, it finds that it can draw certain inferences from the information provided in the CAS award issued in *CAS 2018/A/5800 Samir Arab v. UEFA*.
135. Indeed, whereas neither the Player nor his teammate in *CAS 2018/A/5800* were found guilty of violating Article 12(2)(a) UEFA DR, the Panel considers the Player's violation to be more severe. The Panel finds that this is true for the following reasons in particular.
136. Whereas Mr Arab cooperated with the Maltese authorities to uncover the match-fixing scheme, the Player did not. Mr Arab's cooperation with the authorities was taken into account as a mitigating circumstance by the UEFA CEDB, which ultimately determined that a two-year ban on participating in any football-related activity was a proportionate sanction for Mr Arab, that was subsequently confirmed by the UEFA Appeals Body and CAS. The Panel finds that no such mitigating circumstance exist in the Player's case and that he should therefore not benefit from any reduction of his ban for this reason.
137. Furthermore, whereas Mr Arab met with the masterminds of the match-fixing plot only twice, the Player met with them for a third time, which the Panel considers to be an indication of his deeper involvement in the scheme.
138. As mentioned by the Panel in *CAS 2018/A/5800*, "*not too much emphasis should be placed on the two counts of failing to report in the matter at hand, as it is not so much the number of approaches that are informative for the severity of the Player's violation but the conduct of the Player as a whole, as is indeed submitted by the*

Player. In this respect, the Panel finds the second meeting important because it shows that the Player did exactly the opposite of what he should have done after being approached with an offer to engage in match-fixing: he did not report the approach, but he attended a second in-person meeting with the fixer” (CAS 2018/A/5800, para. 131). The Panel finds that the same reasoning can be applied here and that the Player in the matter at hand had a further possibility to reflect on the match-fixing proposal made to him and do the right thing, but rather than reporting the first two approaches to the authorities, he chose to meet with the masterminds for a third time.

139. Finally, the Player admits to having downloaded the application “Telegram” on his mobile phone upon the request of Mr Zammit. There is no indication that Mr Arab ever downloaded such application. The Panel finds that downloading such an application upon the request of Mr Zammit demonstrates the Player’s deeper involvement and interest in participating in the scheme. Indeed, the Panel finds that this is an important element in that the Player undertook an action that could potentially assist in exercising the match-fixing plot, as opposed to the exclusively passive conduct of Mr Arab. The CAS panel in CAS 2018/A/5800 indeed reasoned that “[t]he Panel is however willing to concede that, in general, passive match-fixing violations, such as the one committed by the Player in the matter at hand, shall in principle be sanctioned less severely than active match-fixing offences” (CAS 2018/A/5800, para. 118).
140. In view of the above considerations, the Panel considers it appropriate and reasonable that a 7-year ban on participating in any football-related activity is imposed on the Player.
141. In addition, and in accordance with the sanctions imposed by the UEFA CEDB on other Maltese football players that were implicated in the match-fixing scheme (notably Mr Montebello and Mr Camenzuli), the Panel considers it appropriate and reasonable that the Player shall participate in community football services, more specifically in at least five anti-match fixing prevention events and to inform UEFA at least seven days before the event of his participation.
142. It should be clarified that UEFA confirmed during the hearing that the Player has been suspended ever since the UEFA CEDB Decision that was pronounced on 14 December 2017. The period of ineligibility already served by the Player is therefore to be discounted from the ban pronounced above.
143. Finally, insofar the Player requests to be reimbursed with the costs of the proceedings before UEFA’s internal bodies, the Panel observes that it has been determined in CAS jurisprudence that “it is not for the CAS to reallocate the costs of the proceedings before the previous instances” (CAS 2013/A/3054, para. 89 of the abstracts published on the CAS website; CAS 2016/A/4387, paras. 181-182 of the abstracts published on the CAS website). The Player has developed no argumentation to the contrary, nor has he invoked any legal or statutory basis in order to demonstrate that this solution should not apply in the present case. The Panel therefore does not consider it appropriate to order UEFA to reimburse the Player in this respect.

B. Conclusion

144. Based on the foregoing, and after taking due consideration of all the evidence produced and all arguments made, the Panel finds that:
- i. It is not established to its comfortable satisfaction that the Player accepted a bribe;
 - ii. It is established to its comfortable satisfaction that the Player violated Article 12(1) UEFA DR;
 - iii. The Player shall be banned from all football-related activities for a period of 7 years. The period of ineligibility already served by the Player since 14 December 2017 is to be discounted.
 - iv. During the period of ineligibility, the Player shall participate in at least five anti-match fixing prevention events and inform UEFA at least seven days before the event of his participation.
145. 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 by Mr Emanuel Briffa on 22 September 2018 against the decision issued on 3 July 2018 by the Appeals Body of the *Union des Associations Européennes de Football* is partially upheld.
2. The decision issued on 3 July 2018 by the Appeals Body of the *Union des Associations Européennes de Football* is set aside.
3. Mr Emanuel Briffa is banned from all football-related activities for a period of 7 (seven) years. The period of ineligibility already served by Mr Emanuel Briffa since 14 December 2017 is to be discounted.
4. During the period of ineligibility, Mr Emanuel Briffa shall participate in at least 5 (five) anti-match fixing prevention events and inform UEFA at least 7 (seven) days before the event of his participation.

5. (...).
6. (...).
7. All other and further motions or prayers for relief are dismissed.