



Arbitration CAS 2020/A/7061 Athletic Club v. Union of European Football Associations (UEFA), award of 23 September 2020 (operative part of 16 July 2020)

Panel: Mr Rui Botica Santos (Portugal), President; Mr Pierre Muller (Switzerland); Mr Patrick Lafranchi (Switzerland)

Football

Governance

Limits to CAS panels' power as judicial bodies

Protection of third parties' rights and legitimate interests

1. **CAS panels' role is to adjudicate, interpret and apply regulations and the law. CAS can only review the process through which rules were passed and establish whether governing bodies followed the due process or laid down procedures. CAS panels' *de novo* power does not extend to amend regulations and, *in casu*, it could only annul the challenged decision if its rationale would violate the sporting merits principles, a statutory provision, any applicable legal principle or a public policy rule.**
2. **No prayer for relief can be granted which may directly affect third parties' legitimate interests and/or rights, regardless of its merits.**

I. THE PARTIES

1. Athletic Club ("Appellant" or "Athletic") is a Spanish professional football club founded in 1898 in Bilbao, Spain and a member of the Royal Spanish Football Federation ("RFEF"). It currently plays in the top Spanish football league ("La Liga Competition") and it is qualified for the Spanish Football Cup final ("Spanish Cup" or "Copa del Rey").
2. Union of European Football Associations ("Respondent" or "UEFA") is an association under the Swiss law and has its headquarters in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.
3. Athletic and UEFA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with

the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (“Award”) only to the submissions and evidence it considers necessary to explain its reasoning.

A. Origin of the dispute

5. This case is about which Spanish football clubs would qualify for the UEFA Europa League 2020-2021 (“UEL”). UEL and UEFA Champions League (“Champions”) are part of the UEFA competitions (“UEFA Competitions”).
6. Originally scheduled for 18 April 2020, the Spanish Cup final between Athletic and Real Sociedad Fútbol, S.A.D (“Real Sociedad”) was indefinitely postponed on 11 March 2020 due to the Covid-19 pandemic, which had led to football matches being cancelled or played behind closed doors as a measure to prevent the spread of the virus.
7. On 23 April 2020, UEFA issued guidelines for its national associations (“UEFA Guidelines”) without specific provision regarding the eligibility of the clubs participating in the domestic cups. Basically, the UEFA Guidelines encourage the *“national associations and leagues to explore all possible options in order to bring all to domestic competitions giving access to UEFA club competitions to their natural end”*.
8. Prior to the UEFA Guidelines, on 16 April 2020, the RFEF unilaterally adopted a selection criterion (“RFEF Decision”) for the entry in the UEL in the event that the domestic competitions could not be completed. Considering the RFEF Decision, one of the cup finalists would always have access to the UEL. If one of the cup finalists would rank in the first 6 places on La Liga Competition, then the other cup finalist would be entitled to participate in the UEL. If none of the cup finalist could rank in the first 6 places of La Liga Competition, then the eligible club would be the best ranked club in La Liga Competition. On 16 April 2020, with 11 rounds remaining, Athletic were in 10th position in La Liga Competition and Real Sociedad in 4th position. This meant Real Sociedad (4th position) were likely to qualify for at least the UEL and possibly the Champions League via La Liga Competition standings.
9. However, on 30 April 2020, the UEFA Executive Committee (“UEFA EC”) issued a circular letter to regulate the eligibility of club qualification for the UEL in case it would be impossible in some countries to complete their domestic cup competitions because of the Covid 19 pandemic and therefore determine the club that would enter the 2020/2021 UEL (“Appealed Decision” or “UEFA Decision”).
10. The Appealed Decision provides in substance that if a domestic cup cannot be completed, *“the highest ranking non-qualified domestic championship club qualifies for the 2020/21 UEL”*.

11. Given the number of entries in the UEFA Competitions available to the RFEF under the UEFA Europa League Regulations 2018-21 Cycle (“UEFA Regulations”), this meant that the 7th ranked club in La Liga Competition would be qualified for the UEL.
12. The Appellant is challenging the Appealed Decision in its capacity as the finalist of the 2019/2020 Spanish Cup.

B. The main facts related to the dispute

13. For a better understanding of the legal issues related to this appeal, the Panel will develop in this section the main facts related to the dispute in more detail.
14. On 5 March 2020, Athletic qualified for the final of the Spanish Cup by defeating Granada CF in the semi-finals. The finals of the Spanish Cup, in which Athletic was to face Real Sociedad, was scheduled for 18 April 2020.
15. However, on 11 March 2020, RFEF decided, with the agreement of both the Appellant and Real Sociedad, to postpone the final due to the Covid-19 pandemic to an indefinite date.
16. On 16 April 2020, UEFA EC announced that it would meet on 23 April 2020 to discuss the latest developments regarding the impact caused by the coronavirus on European football.
17. Also on 16 April 2020, RFEF unilaterally adopted the RFEF Decision that, *inter alia*, states the following:

“El Secretario General de la RFEF, Andreu Camps, ha valorado el plan desarrollado por la RFEF con el fin de prever todos los escenarios posibles desencadenados por la crisis sanitaria.

“Tenemos claro que estamos atravesando situaciones y circunstancias excepcionales y trabajamos para dar un marco de seguridad jurídica en cualesquiera de los casos que se puedan plantear”, explica Camps.

“En este sentido, la RFEF quiere tener hechos los deberes por sí, llegado el caso de una suspensión de las competiciones, recibiera el requerimiento de la UEFA para solicitar los clubes españoles que tendrían acceso a las competiciones europeas la próxima temporada y España estuviera en una contingencia única que no fuera compartida por otros países. Es decir, debemos prever una hipótesis donde los otros países pudieran acabar y nosotros no. Imaginemos que solo se produzcan positivos en nuestra competición y no en otras, las cuales sí podrían acabar, al contrario que nosotros. Ahora es el momento de prever todas las contingencias”, subraya.

“De este modo, antes de que se reanude la competición, se ha convenido en Comisión Delegada de la RFEF dejar diseñado un plan con el fin de dar certidumbre en un escenario extremo como el de no poder acabar las competiciones de modo que todos los clubes conozcan el nuevo escenario que se afronta”, explica el Secretario General.

En este sentido, de cara al acceso a la Champions League, se propondrían los 4 primeros equipos de acuerdo a la clasificación de la última jornada de Primera División previa a la fecha límite en la que concurra igualdad de número de partidos disputados por los 20 equipos.

Para la UEFA Europa League el quinto y el sexto clasificados con los mismos criterios anteriores.

La tercera plaza en la Europa League se determinaría en función de las siguientes circunstancias:

- Si se ha DISPUTADO la final de la Copa del Rey, iría el campeón, salvo que esté entre los seis primeros en Primera División.

En ese supuesto, si el campeón de Copa estuviera entre los seis primeros y, por tanto, ya clasificado, iría el equipo que ocupara la séptima plaza de Primera División.

- Si NO se hubiera jugado la final:

A) Si los dos clubes están en las 6 primeras posiciones y, por tanto clasificados, iría el séptimo de la competición regular.

B) Si uno de los dos estuviera clasificado entre los seis primeros, iría el otro finalista.

C) Si ninguno de los dos finalistas estuviera entre los seis primeros, sería el que entre ellos dos estuviera mejor clasificado en la competición liguera.

En caso de no haberse disputado la Final de la Copa del Rey, disputaría o disputarían, las fases previas aquellos equipos que tuvieran una menor puntuación en la competición liguera.

Free English translation

The Secretary General of the RFEF, Andreu Camps, has assessed the plan developed by the RFEF in order to foresee all possible scenarios triggered by the health crisis “It is clear to us that we are going through exceptional situations and circumstances and we are working to provide a framework of legal certainty in any of the cases that may arise”, explains Camps.

In this sense, the RFEF wants to have its duties done in case, in the event of a suspension of competitions, it receives a request from UEFA to apply for Spanish clubs that would have access to European competitions next season and Spain is in a unique contingency that is not shared by other countries. That is to say, we must foresee a scenario where the other countries could end up and we could not. Let us imagine that there are only positive developments in our competition and not in others, which could end, unlike us. Now is the time to foresee all contingencies”, he stresses.

“Before the competition resumes, the RFEF’s Executive Committee has agreed to draw up a plan to provide certainty in the event of an extreme scenario such as the failure to finish the competition, so that all the clubs are aware of the new scenario that will be faced,” explains the General Secretary.

In this sense, with a view to the access to the Champions League, the first four teams would be proposed according to the classification of the last day of the First Division prior to the deadline in which the 20 teams will play an equal number of matches.

For the UEFA Europa League the fifth and sixth classified with the same criteria as before.

The third place in the Europa League would be determined on the basis of the following circumstances:

- If the King's Cup final has been disputed, the champion would qualify, unless it is in the top six in the First Division.

In that case, if the Cup champion was among the first six and, therefore, already classified, the team that occupies the seventh place in the First Division would qualify.

- If the final had NOT been played:

A) If the two clubs are in the first 6 positions and, therefore, qualified, the seventh one of the regular competition would qualify.

B) If one of the two were classified among the first six, the other finalist would go.

C) If neither of the two finalists were in the top six, the one that would be the best ranked among them in the regular competition would go.

If the King's Cup Final has not been played, those teams that have a lower score in the league competition will play the previous phases”.

18. At the time of the RFEF Decision, the Appellant was ranked 10th position in La Liga Competition while Real Sociedad was ranked 4th. This meant that both Real Sociedad and Athletic would be eligible for the UEL. Athletic – as one of the Spanish Cup finalists – had serious expectation to be eligible and participate in the UEL.

19. On 23 April 2020, the UEFA Guidelines were published for its national associations without the specific provision regarding the domestic cups. These UEFA Guidelines expressly state that:

“2. Given the current unforeseen and unprecedented situation caused by COVID-19, National Associations and Leagues are facing a situation whereby the completion of their domestic competitions is at risk. Whereas the circumstances and restricting measures are different in every country, UEFA has a duty to guarantee the integrity of UEFA club competitions and as such the application of the abovementioned core principle that clubs shall qualify to the UEFA club competitions on sporting merit. However, UEFA stresses that the health of players, spectators and all those involved in football as well as the public at large must remain the primary concern at this time.

3. *In this respect and in order to guarantee the application of the principle of sporting merit, the “Calendar Working Group” that has been established (which includes representatives from UEFA, the ECA and the European Leagues) is looking into finding the best option to apply for the restart of club competitions so as to allow European and domestic competitions to be properly resumed and completed in a manner that safeguards public health. (...).*
 5. *Overall, the objective of these guidelines is to provide guidance under which UEFA will accept clubs from its National Associations where domestic competitions have been prematurely terminated, whilst ensuring that the principles of sporting merit, objectivity, transparency and non-discrimination are respected by National Associations with a view to ensuring fair access to the UEFA club competitions notwithstanding the disruption caused by the COVID-19 pandemic. (...).*
- B. *Guidelines on Eligibility Principles*
1. *Admission to the UEFA club competitions is based on sporting merit. For this reason, UEFA urges National Associations and Leagues to explore all possible options in order to bring all top domestic competitions giving access to UEFA club competitions to their natural end.*
 2. *National Associations and/or Leagues should be in a position to communicate to UEFA by 25 May 2020 the planned restart of their domestic competitions including the date of restart and the relevant competition format.*
 3. *While using best efforts to complete the domestic competitions, National Associations and/or Leagues might have legitimate reasons to prematurely terminate their domestic competitions, in particular in the following cases:*
 - a. *existence of an official order prohibiting sports events so that the domestic competitions cannot be completed or are highly unlikely to be completed before a date that would make it possible to complete the current season in good time before the latest opportunity for the next season to start. In this situation, UEFA would recognise that it may no longer be practical to wait for a final position from the public authorities and that public health considerations mean that the domestic competitions are at high risk of not being played;*
 - b. *specific economic and financial justifications which would make continuing the season to its conclusion financially imprudent or which could put at risk the long-term financial stability of the domestic competition and/or clubs.*
 4. *In the event that a domestic competition is to be prematurely terminated for legitimate reasons in accordance with the above conditions, UEFA would require the National Association to explain by 25 May 2020 (i.e. in line with date referred to in paragraph B.2 above) the special circumstances justifying such premature termination and to select clubs for the UEFA club competitions 2020/21 on the basis of sporting merit in the 2019/20 domestic competitions:*

- a. *the procedure for selecting clubs should be based on objective, transparent and non-discriminatory principles. National Associations and Leagues should otherwise have the ability to decide the final positions in the domestic competitions, having regard to the specific circumstances of each competition;*
 - b. *the final determination of eligible places for the UEFA club competitions should be confirmed by the relevant competent bodies at domestic level.*
5. *UEFA reserves the right to refuse or evaluate the admission to any club proposed by a National Association from a prematurely terminated domestic competition in particular where:*
- a. *the domestic competitions have not been prematurely terminated on the basis of the reasons given in these UEFA guidelines or on the basis of any other legitimate public health reasons;*
 - b. *the clubs were selected pursuant to a procedure which was not objective, transparent and non-discriminatory so that the selected clubs could not be considered as having been qualified on sporting merit;*
 - c. *there is a public perception of unfairness in the qualification of the club.*
6. *The admission process and respective criteria outlined in Article 4 of the abovementioned UEFA club competitions regulations remain valid.*

These guidelines are adopted by the UEFA Executive Committee pursuant to Article 83 of the 2020/21 UEFA Champions League Regulations, Article 80 of the 2020/21 UEFA Europa League Regulations, Article 71 of the 2020/2021 UEFA Women's Champions League Regulations, Article 53 of the 2020/21 UEFA Youth League Regulations and Article 62 of the 2020/21 UEFA Futsal Champions League”.

20. On 30 April 2020, the UEFA EC issued the Appealed Decision which, unlike the UEFA Guidelines, “address[es] the scenario whereby a National Association is not able to complete a domestic cup, and therefore cannot determine a domestic cup winner that would enter the 2020/21 UEL”.
21. The UEFA Decision states as follows:

“Further to the adoption of the “Guidelines on eligibility principles for UEFA Club Competitions – COVID-19” (Guidelines) by the UEFA Executive Committee last week - which were communicated to you via Circular Letter No. 24/2020 on 24 April 2020 - and in light of the fact that the Regulations of the UEFA Europa League (2020/21 season) (UEL Regulations) will come into force on 1 May 2020, the UEFA Executive Committee took today the following decision to address the scenario whereby a National Association is not able to complete a domestic cup and, therefore, cannot determine a domestic cup winner that would enter the 2020/21 UEL:

1. *For entry into the 2020/21 UEL, should a National Association prematurely terminate for legitimate reasons (such as those outlined in the Guidelines) a domestic cup and, as a consequence, not be able to determine a domestic cup winner on sporting merit – in application by analogy of Article 3.04 of the UEL Regulations – the highest ranking non-qualified domestic championship club qualifies for the 2020/21 UEL at the stage initially reserved for the lowest ranking top domestic championship representative and, consequently, each representative of the domestic championship then enters the competition at the stage initially reserved for the domestic championship representative ranked immediately above it. The Access List for the 2020/21 UEFA Club Competitions shall be adjusted accordingly.*
 2. *The entry to the 2020/21 UEL in situations where the domestic cup competition has been completed either in its original or with another format and the qualification of the relevant club(s) is obtained with sporting merit, remains unaltered.*
 3. *The admission process to the 2020/21 UEL and respective criteria as outlined in Article 4 of the UEL Regulations remain valid in all cases”.*
22. The Appealed Decision accordingly meant that the club ranked 7th in La Liga Competition would qualify of the UEL in the event the Spanish Cup final would not be played.
23. On 4 May 2020, the Appellant issued an official statement regarding the Spanish Cup final. It states as follows:
- “The Presidents of Real Sociedad and Athletic Club, both finalists of Copa del Rey (...) after meeting with the president of the Royal Spanish Football Federation, have agreed to ask RFEF (...) for the final to be played open doors, in public and in an official way. On a date to be determined and agreed between the three parties involved. (...).*
- At the same time, Real Sociedad and Athletic Club want the Royal Spanish Football Federation to guarantee that the final will be played as an official competition and will therefore be considered an official title”.*
24. On 4 May 2020, RFEF replied to the Appellant’s above statement as follows:
- “The RFEF fully shares the desire of Athletic Club and Real Sociedad clubs to play the King’s Cup Final when sanitary and sporting circumstances allow said Final to be held open to the public. (...).*
- The Royal Family and the Trophy deserve a final with spectators. For this reason, the RFEF thanks the decision and the joint request of both clubs and will articulate the necessary regulatory mechanisms so that the King’s Cup Final is played as an official competition at the appropriate time during 2020 or 2021 and always before the Final of the 2020/2021 season is played. The RFEF will set, in common agreement with Real Sociedad and Athletic Club, the most convenient date for said Final to be the great celebration of Spanish football”.*

25. On 11 June 2020, La Liga Competition resumed with all the remaining matches being played behind closed doors. The season is set to end on 19 July 2020 and the winner of the Spanish Cup will not be known by that date.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

26. On 11 May 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (“CAS Code”), the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (“CAS”) challenging the Appealed Decision. The Appellant nominated Mr Pierre Muller, Former Judge, Lausanne, Switzerland, as arbitrator.
27. On 26 May 2020, UEFA nominated Mr Patrick Lafranchi, attorney-at-law in Bern, Switzerland as arbitrator.
28. On 5 June 2020, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief with the CAS. In the Appeal Brief the Appellant requests as “*evidentiary issues*” the production by UEFA of “*the minutes of the UEFA Executive Committee meeting of 30 April 2020, at least an excerpt on all debates and decisions relating to the Challenged Decision*”, in order to “*know what was discussed and debate in the UEFA Executive Committee meeting and how the vote took place*”.
29. On 15 June 2020, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:
- President: Mr Rui Botica Santos, attorney-at-law, Lisbon, Portugal;
- Arbitrators: Former Judge Mr Pierre Muller, Lausanne, Switzerland;
Mr Patrick Lafranchi, attorney-at-law, Bern, Switzerland.
30. On 22 June 2020, UEFA informed the Panel that, with the express agreement of Athletic on this date, it was agreed to file its Answer on 29 June 2020. On the same correspondence, UEFA informed the Panel that the Parties would need the operative part of the award by mid-July 2020 and suggested to “*start identifying hearing dates in the week of 6 or 13 July 2020, being understood that the Parties may request from the Panel to have a second exchange of written submissions in the first part of July in lieu of a hearing. However, an agreement on this last point can only be confirmed once the first exchange is completed*”.
31. On 22 June 2020, the CAS Court Office informed the Parties that the Panel considered necessary to hold a hearing in this matter. The Parties and the Panel agreed to schedule the hearing for 14 July 2020.
32. On 30 June 2020, in accordance with Article R55 of the Code, the Respondent filed its Answer with CAS. The UEFA’s deadline to submit its Answer was agreed with the Appellant. In its Answer, the Respondent stated that the minutes of the UEFA EC meeting of 30 April 2020, as

requested by the Appellant in the Appeal Brief, did not exist. The Appealed Decision was circulated to and adopted by the UEFA EC on 30 April 2020 by email. Consequently, in view of the inexistence of the minutes of the UEFA EC meeting of 30 April 2020, the Panel deemed the Appellant's request for the production of these minutes or at least an excerpt on all debates and decisions relating to the Appealed Decision to be moot.

33. On 1 July 2020, the CAS Court Office sent a copy of the Order of Procedure to the Parties. The Parties returned to the CAS Court Office the Order of Procedure duly signed.
34. On 14 July 2020, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
35. In addition to the Panel, Mr Antonio De Quesada, CAS Head of Arbitration, the following persons attended the hearing:

For the Appellant: Mr Jorge Ibarrola, Counsel for the Appellant, Mrs Alexandra Veuthey, Counsel for the Appellant, Mr Luca Di Pietro, intern with Libra Law, as observer.

For the Respondent: Mr Antonio Rigozzi, Counsel for UEFA, Mrs Charlotte Frey, Counsel for UEFA, Mr Angelo Rigopoulos, UEFA representative.
36. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
37. At the end of the hearing, and for purposes of Article R64 of the CAS Code, the Panel invited the Parties to submit a statement of costs incurred in the present proceedings.
38. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.
39. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the Award.
40. On 15 July 2020, both Parties submitted their relevant statement on costs for the Panel's consideration in the determination and allocation of the parties' contribution for costs.

IV. THE PARTIES' POSITIONS

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

A. Appellant's submissions

42. The Appellant prayed the following reliefs:

“Athletic Club applies for the Court of Arbitration for Sport to rule as follows:

I. The UEFA decision issued in its circular dated 30 April 2020 is null.

Alternatively to I

II. The UEFA decision issued in its circular dated 30 April 2020 is annulled.

Ruling de novo

III. Athletic Club is eligible to participate in the UEFA Europa League 2020-2021 as Spanish Cup 2020 finalist, in the situation where it does not rank in the first six places of the Spanish Liga 2019-2020 classification and the other Spanish Cup finalist 2020 ranks in the first six places of such classification. If neither of the Spanish Cup finalists 2020 ranks in the first six places of the Spanish Liga 2019-2020, then Athletic Club shall be eligible to participate in the UEFA Europa League 2020-2021 if it ranks above the other Spanish Cup finalist in the Spanish Liga 2019-2020.

Alternatively to III

IV. The Challenged Decision shall be quashed and referred back to the UEFA competent body to issue a decision compliant with UEFA regulations, within a reasonable time-frame, in order to allow Athletic Club to participate in the UEFA Europa League 2020-2021.

In any event

V. UEFA shall bear all the arbitration costs and pay Athletic Club a contribution towards its legal and other costs incurred in the present proceedings”.

43. In summary, the Appellant submitted the following arguments in support of its Appeal:

i) Lack of jurisdiction of the UEFA EC

44. The Challenged Decision is null, since it was made by the UEFA EC, which lacked jurisdiction in the present case.

45. Pursuant to Article 80.01 of the UEFA Regulations, matters not provided within these regulations, such as cases of *force majeure*, must be decided by the UEFA Emergency Panel, the UEFA President or the UEFA General Secretary. As a result, the UEFA EC lacked jurisdiction on this matter and its decision is null.

ii) *The Appealed Decision lacks legal basis*

46. According to Articles 3.01 to 3.04 of UEFA Regulations, six Spanish teams are qualified through La Liga Competition and an additional one is the cup winner of the Spanish Cup.
47. Article 3.04 provides that, if the winner of the domestic cup qualifies through La Liga Competition to the Champions League or to the UEL, then the next best ranked team in La Liga Competition – the 7th ranked team in Spain – qualifies for the UEL. It follows that the participation of the 7th ranked team in Spain depends and is contingent on, the realization of the suspensive conditions that (1) there is a winner of the Spanish Cup and (2) such winner qualifies for the European competitions through its ranking in the national championship.
48. The UEFA Regulations do not contemplate the extraordinary situation where there would be no cup winner. However, it clearly provides that a team having gained the sporting merit in the domestic cup, in this appeal case the Spanish Cup winner, must necessarily and in all circumstances be qualified for a UEL, either because it qualifies through La Liga Competition or because it wins the Spanish Cup.
49. In the UEFA Guidelines, it is adopted a specific general rule pursuant to which it would “*accept clubs from its National Associations where domestic competitions have been prematurely terminated, whilst ensuring that the principles of sporting merit, objectivity, transparency and non-discrimination are respected by National Associations with a view to ensuring fair access to the UEFA club competitions notwithstanding the disruption caused by the COVID-19 pandemic*”. Concretely, if the Spanish Cup was to be prematurely terminated for legitimate reason, the RFEF had to explain by 25 May 2020 the special circumstances justifying such premature termination and to select clubs for the UEL on the basis of sporting merit in the 2019/20 domestic competitions, following a selection procedure based on objective, transparent and non-discriminatory principles.
50. In the UEFA Guidelines, UEFA highlighted that the final determination of eligible places for the UEL should be confirmed by the relevant competent bodies at domestic level.
51. The RFEF adopted transparent, non-discriminatory, objective and predictable rules to determine which club would participate in the UEL in case the Spanish Cup final was not played due to legitimate public health reasons. There is thus absolutely no valid reason for UEFA to derogate or breach its own guidelines and refuse the selection process adopted by the RFEF based on the delegation of powers granted by UEFA itself.

iii) *Arbitrary analogy*

52. In the Appealed Decision, rather than applying the UEFA Guidelines, UEFA wrongfully and arbitrarily applied Article 3.04 of the UEFA Regulations, not directly, but by analogy. However, no decision can be duly based on the application by analogy of a rule which is not applicable. If a rule is not applicable, the judge must look for a solution existing in a similar situation, but certainly not amend the non-applicable rule to apply it otherwise.

53. Pursuant to the Swiss Federal Tribunal (SFT) jurisprudence, the use of an analogy with another law or regulation must be exercised with great restraint and must not contravene the spirit of the original law.
54. The Appealed Decision wrongly relies on Article 3.04 UEFA Regulations, which cannot apply in the absence of any domestic cup winner.

iv) *Estoppel*

55. UEFA's contraction and non-abidance to the rules it adopted in the UEFA Guidelines amounts to a case of *venire contra factum proprium*. UEFA is estopped from changing the rules in question by way of a *new circular*, affecting the choices and selection criteria already adopted by the RFEF for the qualification of the Spanish Cup representative in the UEL.
56. In view of the above, the Appealed Decision lacks legal basis, as Article 3.04 UEFA Regulations does not apply and can thus not apply by analogy. Besides, it contradicts the UEFA Guidelines and is thus unsustainable pursuant to the estoppel doctrine.
57. Finally, it harms the Appellant's expectations to qualify for the UEL further to the selection decision taken by its national association, as provided by UEFA itself in the UEFA Guidelines.

v) *UEFA wrongly applied and interpreted the rules*

58. The interpretation of UEFA Regulations under Swiss law clearly shows that the Appellant, as potential winner of the Spanish Cup, should be directly eligible to play in the UEL:
 - a) if the other finalist qualifies as one of the six best ranked clubs in La Liga Competition;
or
 - b) if the Appellant's ranking below the 6th position is higher than the other finalists.

v.a) *Literal interpretation*

59. The literal interpretation of Article 3.04 of the UEFA Regulations gives more value to the Spanish Cup finalists than to the club ranking at the 7th position of La Liga Competition. The rule says explicitly that the 7th ranked club deserves less to play the UEL than the Spanish Cup winner. It only deserves more to be in the UEL than the loser of the Spanish Cup final.

v.b) *Systematic interpretation*

60. Articles 3.01 to 3.04 of the UEL Regulations are directly followed by provisions which refer to the notion of "*sporting merit*":

“4.01 To be eligible to participate in the competition, clubs must:

a. have qualified for the competition on sporting merit; (...).

4.04 If a club refuses to enter the competition, having qualified for it on sporting merit and obtained a licence from the competent national body, no other club from the same association may be entered in its place and the access list (see Annex A) is rebalanced accordingly. (...).

5.02 If two or more clubs fail to meet the criteria aimed at ensuring the integrity of the competition, only one of them may be admitted to a UEFA club competition, in accordance with the following criteria (applicable in descending order):

a. the club which qualifies on sporting merit for the most prestigious UEFA club competition (i.e., in descending order: UEFA Champions League or UEFA Europa League)”.

61. In the present case, from a probability perspective, either of the Spanish Cup finalists deserves more, in terms of sporting merits, to be eligible to participation in the UEL than the club ranked 7th in La Liga Competition, because:

- a) 89% of the Spanish Cup is completed, *i.e.* 8 rounds have been played out of 9 in total, and only two teams can complete it 100% by winning the final, each finalist having 50% of chances of becoming the winner.
- b) On the other hand, La Liga Competition is currently completed at only 71% (27 played matches out of 38 matches in total). There are 11 matches to go. Seven teams with difference of only 9 points between them are susceptible to qualify between the 4th and the 7th place at the end of the domestic championship.
- c) It is quite complicated to assess what the probability is for each of those seven clubs to eventually rank 7th in La Liga Competition. But indisputably, such probability is way below 50%.
- d) Therefore, currently and if La Liga Competition is not completed, either finalist of the Spanish Cup would be at 50% each of completing the 100% of the cup competition, while the teams which compete for the 7th or better place have lower probabilities to rank eventually 7th of La Liga Competition.
- e) Even if La Liga Competition is completed, the club ranking 7th will have achieved 65% of the effort to obtain such classification; if La Liga Competition is the best of 20 teams in the league, the 7th only achieves 13 out of 20 competing teams: $13/20 = 65\%$.
- f) In comparison, the Spanish Cup finalists have achieved to be the final 2 clubs out of a total amount of 108 clubs participating in the Spanish Cup. There are actually more clubs competing in the Spanish Cup since the beginning of this competition, but 108 clubs

participated in the second round of the Spanish Cup in which both finalists started competing. Therefore, the finalists have achieved 98% of the objective and total effort to be in the Spanish Cup final (106 out of 108 clubs).

- g) Any club ranking at the 7th position, other than the Spanish Cup finalists, has been eliminated from the Spanish Cup competition. It can thus not contend having more sport merits to qualify for the UEL instead of either club which has succeeded to reach the Spanish Cup final.

62. Therefore, the Spanish Cup finalist has more sporting merits than the team which will eventually rank 7th in La Liga Competition.

v.c) Historical and teleological interpretation

63. Since its creation of the UEL and until 2015, the UEFA Regulations allowed the Spanish Cup runner-up to qualify for the UEL if the winner of the Spanish Cup qualifies for the Champions League or the UEL through its ranking in La Liga Competition.

64. Article 3.01 to 3.04 of the UEFA Regulations clearly reserve a spot to participate in the UEL to the winner of the Spanish Cup, which shall always participate in this competition.

B. UEFA's submissions

65. The Respondent asks CAS to issue an award:

- *“Dismissing Athletic Club’s appeal, to the extent it is inadmissible.*
- *Confirming the Decision under appeal.*
- *Ordering Athletic club to pay the costs of the arbitration.*
- *Ordering Athletic Club to pay a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings”.*

66. The submissions of the Respondent, in essence, may be summarised as follows:

i) The appeal is inadmissible

67. In case where the Appellant should not qualify for the UEL in application of the rules provided in the Appealed Decision, then the admission of the appeal would result in qualifying the Appellant instead of the club that will have ranked 7th in La Liga Competition. As none of the clubs that might potentially be affected by the appeal if they eventually finish 7th in La Liga Competition have been named as a respondent in the present arbitration, the appeal shall be declared inadmissible.

68. By the time the Panel will render its award, La Liga Competition will be completed and it might well be the case that the appeal is moot because either (i) the Appellant ranks in the first 6 positions in La Liga Competition and hence qualify for UEFA Competitions in accordance with the applicable UEFA Regulations or (ii) the Appellant ranks 7th position in which case it would qualify for the UEL in accordance with the Appealed Decision.
69. It is also possible that the Appellant will not finish in the top 7 positions and in which case upholding the appeal would deprive the club that eventually finishes 7th of its right to participate in the UEL in accordance with the Appealed Decision. CAS cannot uphold an appeal without that affected club being a party in the present proceedings.
70. UEFA EC has authority to issue the regulations concerning its competitions including the one governing eligibility to participate in the UEL. Under Article 4 of the UEFA Organisational Regulations, the UEFA Emergency Panel is composed of a small group of the UEFA EC members (the UEFA President, the First Vice President, the treasurer and two other members of the Executive Committee appointed by the President on a case by case basis).
71. In addition, under Article 5.1 of the UEFA Organisational Regulations “[b]etween meetings of the Executive Committee, the Emergency Panel is authorized to take and execute final decisions on urgent matters that fall under the authority of the Executive Committee”.
72. In other words, the purpose of the UEFA Emergency Panel is to take and execute final decisions on urgent matters where there is insufficient time to convene a meeting with the entire UEFA EC.
73. UEFA is free to determine the eligibility to its own competitions and is not restricted by general guidelines issued previously, let alone unilateral decisions prematurely issued by a member association.
74. Therefore 5 out of the 19 members of the UEFA EC has jurisdiction to issue decisions in cases of *force majeure*.

ii) *The Appealed Decision does not lack legal basis*

75. It is undisputed that the UEFA EC is responsible for regulating the UEL. The UEFA Guidelines and the UEFA Decision were adopted to adjust the UEFA Regulations in view of the pandemic.

iii) *No arbitrary analogy*

76. The Appellant’s position that the UEFA Regulations do not contemplate the extraordinary situation where there would be no domestic cup winner is misconceived. Under the UEFA Regulations, the runner-up is never admitted to the UEL. In deciding to favour the highest

ranking non-qualified club in the domestic championship instead of a potential Spanish Cup winner, the UEFA EC has filled a regulatory lacuna according to its prerogatives in the UEFA Statutes.

77. The UEFA EC indicated that in order to reflect the principle of sporting merit in a situation where there is no Spanish Cup winner, it was reasonable to apply, by analogy, Article 3.04 of the UEFA Regulations which states that *“if the winner of the domestic cup qualifies for UEFA Champions League, the access stage finally reserved for the domestic cup winner is reserved for the club which finishes the domestic championship in the highest position out of all the clubs which qualify for the UEFA Europa League from the association concerned”*.
78. Article 3.04 is not applicable, which is precisely why the Appealed Decision refers to it by analogy. Since there was no existing rule to regulate the situation in which there is no cup winner, UEFA EC was free to enact the rule it deemed fit. This discretion was exercised correctly in the spirit of the UEFA Regulations, namely that only the winner of the cup competition is qualified for the UEL and in the absence of a winner, precedence should be given to the highest ranking non-qualified club in the domestic championship.

iv) *No estoppel*

79. The Appealed Decision is not contrary to the UEFA Guidelines. Even if it was, it would still not constitute a case of *venire contra factum proprium*.
80. The RFEF Decision was adopted before the issuing of the UEFA Guidelines. Therefore, if any legitimate expectations have been created on the part of the Appellant (which is denied), then it's in reality the RFEF that created such expectations. UEFA cannot be held responsible for the RFEF adopting premature rules.
81. There can be no legitimate expectations in the present case because neither the RFEF Decision nor the UEFA Guidelines granted the Appellant a right to participate in the UEL nor ensured that the club would be qualified.
82. The Appealed Decision is lawful as it was adopted prior to the UEFA Regulations coming into force and also gave the national associations sufficient time to adopt their operations ahead of the 25 May 2020 deadline to inform UEFA about their decision regarding the domestic competitions.

v) *Wrong interpretation of the rule: methods of interpretation under Swiss law*

83. The Appellant's efforts to show that Article 3 of the UEFA Regulations gives more value to the Spanish Cup finalists than to the club ranking 7th in La Liga Competition is misconceived because they are irrelevant. UEFA EC decided to give more value to the domestic championship ranking – La Liga Competition and indicate the analogy with Article 3.04 of the UEFA Regulations – than to give relevance to any of the Spanish Cup finalists.

v.a) The literal interpretation suggested by the Appellant

84. Article 3.04 of the UEFA Regulations is clear that if the Spanish Cup winner qualifies for the UEFA Competitions through La Liga Competition, then it is the first non-qualified club of La Liga Competition (*i.e.* in Spain the club positioned in the 7th place) that qualifies for the UEL.
85. This provision says nothing in the event there is no winner of the Spanish Cup. It is preposterous to read Article 3.04 as indicating that either of the Spanish Cup finalists definitely appears to deserve more to participate in the UEL than the 7th ranked club. There is no mention of cup finalists in Article 3.04.

v.b) The systematic interpretation suggested by the Appellant

86. The Appellant's reliance on Articles 3.01 to 3.04 of the UEFA Regulations to reason that the Spanish Cup finalists has more sporting merits than the team which will finish 7th of La Liga Competition is flawed because:
- a) La Liga Competition resumed its matches on 11 June 2020 and will be completed by the weekend of 18-19 July 2020. However, the Spanish Cup will not;
 - b) The teams competing in La Liga Competition are the best 20 teams in Spain. Conversely, the 108 clubs competing in the Spanish Cup, all from several divisions and therefore different levels; and
 - c) The Appellant only needed to win 7 games to reach the Spanish Cup final. However, at the time the Appeal Brief was filed, the club ranked 7th had already played 27 games and won 11.

v.c) The historical and teleological interpretation suggested by the Appellant

87. The fact that the UEFA Regulations were amended in 2015 to remove the provision which granted a UEL spot to the Spanish Cup runner up shows that since 2015, UEFA's intention is to favour the first non-qualified club, *i.e.* the 7th ranked club over the cup runner up. The teleological interpretation should be dismissed.

V. JURISDICTION

88. Article R47.1 of the CAS 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 sports-related body”.

89. Article 82 of the UEFA Regulations states as follows:

“Article 82 Court of Arbitration for Sport (CAS)

82.01 In case of litigation resulting from or in relation to these regulations, the provisions regarding the Court of Arbitration for Sport (CAS) laid down in the UEFA Statutes apply”.

90. Article 62 of the UEFA Statutes states as follows:

“Article 62

- 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.*
- 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”.*

91. The Appealed Decision was issued by the UEFA EC, which is a UEFA organ. Legally speaking the UEFA Decision is a deliberation/resolution from the UEFA EC and not a “decision” in the *stricto sensu* of a ruling, judgment or determination of findings - in relation to concrete facts - decided by an adjudicatory body that applies the relevant law/regulations. The UEFA Statutes do not comprehend an internal remedy through which a member can challenge a deliberation/resolution passed by the UEFA EC. The only remedy available to a dissatisfied member is to challenge that resolution or regulation at CAS (which effectively should be included in the concept of “decision”) through Article 62 of the UEFA Statutes. Thus, CAS has jurisdiction to decide and rule on this appeal. The CAS Jurisdiction is not contested by the Respondent and the Order of Procedure duly signed by both Parties also confirms CAS jurisdiction on this matter.

VI. ADMISSIBILITY

92. As provided by Article 62.3 of the UEFA Statutes, the time limit to file an appeal with the CAS against a UEFA decision is 10 days from receipt of the decision in question. The Appealed Decision was never notified to the Appellant, but it was published on 30 April 2020 by a circular letter from the Secretary General of UEFA.
93. The 10-day deadline to appeal provided under Article 62.3 of the UEFA Statutes was to expire on Sunday 10 May 2020 and was automatically extended until the following working day, *i.e.* 11 May 2020.
94. Since the Statement of Appeal was filed on 11 May 2020, it follows that it was done on time and this appeal is admissible.
95. The Panel takes notice of the Respondent's submission that the appeal is inadmissible because (i) the Appellant failed to name any of the clubs that might potentially be affected by the appeal if they eventually finish 7th in La Liga and (ii) the appeal is moot or premature because the current La Liga Competition season has not finished. These are issues touching on the substance which will be addressed in the merits section of the Award.

VII. APPLICABLE LAW

96. Article R58 of the CAS Code, which provides the following:
- “The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
97. Article 64.1 of UEFA Statutes provides that the UEFA Statutes *“shall be governed in all respect by Swiss law”*.
98. Therefore, the present appeal shall be decided in accordance with the UEFA rules and regulations and supplemented by Swiss law. This is also not disputed by the Parties.

VIII. LEGAL ANALYSIS

99. The issues for determination are:

On a preliminary basis (A.):

1. Whether CAS has the power to decide on the alternative Appellant's request for *ruling de novo* and determine that:

“Athletic Club is eligible to participate in the UEFA Europa League 2020-2021 as Spanish Cup 2020 finalist, in the situation where it does not rank in the first six places of the Spanish Liga 2019-2020 classification and the other Spanish Cup finalist 2020 ranks in the first six places of such classification. If neither of the Spanish Cup finalists 2020 ranks in the first six places of the Spanish Liga 2019-2020, then Athletic Club shall be eligible to participate in the UEFA Europa League 2020-2021 if it ranks above the other Spanish Cup finalist in the Spanish Liga 2019-2020”.

2. Whether the Appeal Decision should be declared inadmissible because (a) the Appellant failed to name any of the clubs that might potentially be affected by the appeal if they eventually finish 7th in La Liga Competition; and (b) the appeal is moot or premature because the current La Liga Competition season has not finished.

On the merits (B):

3. Whether the Appealed Decision should be declared null because UEFA EC lacked jurisdiction to issue such decision.

and, on a subsidiary basis,

4. Whether the Appeal Decision should be annulled because: (a) it is illegal, arbitrary and lacks basis; and (b) it is inconsistent / contrary with the UEFA Guidelines.

A. On a preliminary basis

1. Whether CAS has the powers to decide on the alternative Appellant's request for ruling de novo

100. It is firstly necessary to identify the legal nature of the UEFA Decision.
101. The UEFA Decision is an act in the nature of a deliberation/resolution made by the UEFA EC in the exercise of and in accordance with its powers and duties, as provided in Article 23.1 of the UEFA Statutes.
102. The purpose of the UEFA Decision is to resolve a lacuna in the UEFA Regulations that was caused by the Covid-19 pandemic, which unexpectedly resulted in the cessation of the domestic competitions via which clubs, which are finalists in domestic cup competitions, compete in UEFA Competitions.

103. The UEFA Regulations, particularly Article 3.04 thereof, provide that only clubs that are cup winners can compete in UEFA Competitions.
104. Article 3.04 of the UEFA Regulations clearly provides that if a domestic cup winner qualifies for the UEFA Competitions via its domestic championship, then the highest ranking non-qualified domestic championship club (*i.e.* the club ranked in 7th place, in Spain) qualifies to play in the UEL.
105. Article 3.04 of the UEFA Regulations only applies where the domestic cup winner qualifies for the UEFA Competitions, but makes no provision with regard to domestic cup finalists, where the cup final is suspended and postponed to an uncertain date after the final date on which clubs can qualify for the UEFA Competitions.
106. The UEFA Decision was made to resolve an obvious lacuna in the UEFA Regulations, which do not provide that finalist clubs are eligible to play in the European Competitions.
107. The UEFA Decision is therefore a regulatory provision that applies to all clubs that play in their domestic competitions, in a general and abstract manner.
108. By asking CAS to rule *de novo* and grant Athletic Club qualification for the 2020-2021 UEL at the expense of the club that finishes 7th in La Liga Competition, the Appellant is basically asking CAS to amend the UEFA Regulations.
109. Pursuant to Article R57.1 of the CAS Code “[t]he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
110. Article R57.1 of the CAS Code allows the Panel to rule *de novo*. This means reviewing the facts and the law and also curing procedural defects in the lower instances (CAS 2016/A/4704).
111. CAS is a judicial body and its role, just like that of other courts across the world is to adjudicate, interpret and apply regulations and the law. CAS can only review the process through which the laws were passed and establish whether the governing body followed the due process or laid down procedures.
112. The *de novo* power do not extend to amend regulations issued by governing bodies. This is the sole and exclusive discretion of UEFA as an executive and law-making body as was emphasized in CAS 2016/A/4787 at paragraph 137 that “[i]t is not the role of the CAS to replace the due discretion of a body of a sports association by the discretionary views of the respective Panel”.
113. In view of this, the Panel finds that it cannot grant the ruling *de novo* as the Appellant requests.

2(a). The Appellant failed to name any of the clubs that might potentially be affected by the appeal if they eventually finish 7th in La Liga Competition

114. It is undeniable that the *annulment* or the *amendment* of the UEFA Decision, in the terms proposed and sought by the Appellant, could affect some Spanish clubs that, in accordance with the law of probabilities, can be ranked in 7th place in La Liga Competition and which would therefore forfeit access to the UEFA Competitions, at the expense of one of finalist clubs in the Spanish Cup. The issue in question is whether the affected parties have the right to be heard in this appeal procedure.
115. It follows therefore that the preliminary issues with which the Panel is confronted are twofold, *i.e.*: (i) whether the Spanish clubs potentially affected by the cancellation of UEFA Decision should be joined as Respondents in these appeal proceedings; and (ii) how to identify the Spanish clubs potentially affected by the cancellation of the UEFA Decision.
116. The Panel considers, so far as the first question is concerned, that the *erga omnes* effect of the mere *cancellation* of the UEFA Decision does require the intervention of all Spanish clubs potentially affected by the cancellation of the decision at issue.
117. The mere application for the *cancellation* of the UEFA Decision does not give rise to a preliminary procedural issue of failure to join necessary respondents, but is rather and above all a substantive issue, which affects all those, including the Appellant, who are subject to the decision at issue and risk being placed in the position they would have been in, if it had never been made.
118. The Panel takes a different view regarding the Appellant's alternative request for the *amendment* of the UEFA Decision by a new CAS decision which ensures that one of the finalists in the Spanish Cup plays in the UEFA Competitions.
119. Despite the Panel's determination above that it has no power to decide *de novo* in this case, it is considered appropriate to clarify some of the issues raised by the Respondent in this regard.
120. The Appellant seeks to ensure that one the finalists in the Spanish Cup is automatically eligible to play in the UEFA Competitions, to the detriment of other clubs that would be automatically eligible to play in the UEL, if ranked in 7th position in La Liga Competition.
121. The Panel considers that all Spanish clubs potentially affected by the outcome of this appeal by the "imposition" of the Appellant's participation in UEL would require their enjoining in the proceedings as respondents. The Panel is of the view that all potential affected clubs have a legitimate interest to be heard in this appeal procedure.
122. As the Appellant did not enjoin the clubs potentially interested in and affected by the outcome of the alternative prayer for relief at issue, the CAS is also unable – based on this additional argument – to consider the said request, or to hand down the new decision sought by the Appellant.

123. This is also in line with the ruling on a request for provisional measures in CAS 2017/A/4947 where the CAS emphasized the importance of enjoining a third party that stood to be affected by an appeal challenging the eligibility of a club to participate in a competition. It stated as follows:

“26. Before analysing the above criteria, the Deputy President of the CAS Appeals Arbitration Division notes that the Applicant itself indicates that its request for provisional measures could impact on third parties, namely [A] and [B]. Even if it is true that granting the provisional measures would reinstate said third parties in the same position as if the Appealed Decision had not been taken, the latter created rights in favour of such third parties and the Deputy President of the CAS Appeals Arbitration Division, according to CAS jurisprudence, is not in a position to grant any provisional measures which could affect third parties without them being heard. On this basis alone, the Deputy President of the CAS Appeals Arbitration Division considers that the application for provisional measures shall be rejected”.

124. There are, however, CAS jurisprudence with different views. In CAS 2016/A/4642 the Panel stated at para. 122 *“[t]he key point is a crucial distinction between [A’s] interests and [A’s] rights. It is obvious that [A] has an interest in the outcome of [the] appeal. If the Appellant club was admitted to the Competition, [A] could have been required to drop out”.* According to the Panel in CAS 2016/A/4642, the critical point is whether any third parties’ *“rights”* are taken away. The participation of a third affected party should only be required if the decision to be taken affects the rights of an absent third party. Legitimate and potential *“parties’ interests”* should not be covered by a required participation in an appeal proceeding as co-respondent(s) because such third parties do not have any legal *“right”*. The same Panel adds at para 128 that *“it may well be that there are cases where it is only sensible for affected third parties to be joined, even if it is not essential to the resolution of the appeal and the granting of relief as sought. But that is a question to be dealt with in each case when and where it arises”.*

125. The present Panel has a broader understanding of this issue and does unequivocally accept the principle that no order for relief can be granted which affects the rights and legitimate interests of absent third parties. This understanding is also supported by a few CAS jurisprudence (CAS/2014/A/3862; CAS 2011/A/2654; CAS 2011/A/2551 and CAS 2004/A/594).

126. The UEFA’s submission that the non-joinder of all Spanish clubs potentially affected by the Award is fatal to this appeal, is only valid for the Appellant’s prayers for relief that may have a direct affect to the third parties’ legitimate interests and/or rights, regardless of its merits.

127. In addition to the present Panel’s lack of power to rule *de novo*– as explained above – the Appellant’s 3rd request cannot be considered without the enjoining of all potentially affected clubs.

128. The Panel also considers, with regard to the second issue on this topic, that the clubs in question should have been identified in abstract and in accordance with the law of probabilities, when the appeal was lodged. The Appellant should therefore have enjoined all Spanish clubs that play

in La Liga Competition and have a legitimate expectation of finishing in 7th position in La Liga Competition ranking, as respondents in the proceedings.

2(b). Whether the appeal is premature or moot

129. The UEFA states that by the time the Panel will render the Award, La Liga Competition will be completed and it might well be the case that the appeal is moot because either (i) the Appellant ranks in the first 6 positions in La Liga Competition and hence qualifies for a UEFA Competition in accordance with the applicable UEFA Regulations or (ii) the Appellant ranks 7th position in which case it would qualify for the UEL in accordance with the Appealed Decision.
130. The Panel does not share UEFA's position in relation to the abovementioned arguments. First, because this appeal is decided before the final classifications of La Liga Competition. Second, because the object of the appeal comprehends some prayers for relief whose analysis and decision are not conditioned to the event that the Appellant ranks below the first seven positions in La Liga Competition. The Panel takes specific notice of the Appellant's request for a finding that the UEFA EC lacked jurisdiction to issue the Appealed Decision.
131. The same reasoning applies in relation to the Appellant's alternative request seeking the annulment of the UEFA Decision because: (i) is illegal, arbitrary and lacks basis; and (ii) is arbitrary and inconsistent / contrary with the UEFA Guidelines. Also, in these requests, the Appellant's legitimate interest in challenging the UEFA Decision is neither conditioned nor linked with its final classification on La Liga Competition.

B. On the merits

3. Whether the Appealed Decision should be declared null because UEFA EC lacked jurisdiction to issue such decision.

132. The Appellant states that the UEFA EC lacked competence to issue the Appealed Decision and submits that pursuant to Article 80.01 of the UEFA Regulations, matters not provided for in UEFA Regulations, such as cases of *force majeure*, must be decided by the UEFA Emergency Panel, the UEFA President or the UEFA General Secretary. As a result, the UEFA EC lacked jurisdiction on this matter and its Appealed Decision is null.
133. UEFA states that the EC had authority to issue regulations concerning its competitions including the one governing eligibility to participate in the UEL, especially on urgent matters where there is insufficient time to convene a meeting with the entire UEFA EC.
134. Under Article 23.1 of the UEFA Statutes "[t]he Executive Committee shall have the power to adopt regulations and make decisions on all matters which do not fall within the legal or statutory jurisdiction of the Congress or another Organ".

135. Article 23.2 adds that “[t]he Executive Committee shall manage UEFA, except to the extent that it has delegated such management, or unless such management has been delegated by the Statutes to the President or the Administration”.
136. Article 5.1 of the UEFA Organisational Regulations states that “[b]etween meetings of the Executive Committee, the Emergency Panel is authorized to take and execute final decisions on urgent matters that fall under the authority of the Executive Committee”.
137. Therefore, the UEFA EC is the UEFA’s supreme executive body. It is empowered to adopt regulations and make decisions on all matters which do not fall within the legal or statutory jurisdiction of the UEFA Congress or another organ.
138. The Panel’s views on this issue is that the UEFA Emergency Panel has only jurisdiction when UEFA EC cannot meet or take decisions. Its jurisdiction is restricted to circumstances where there is insufficient time to convene a meeting with the entire UEFA EC. The UEFA Emergency Panel is composed of 5 out of 19 members of the UEFA EC. If 5 out of the 19 members of the UEFA EC have powers to take the Appealed Decision, the UEFA EC as a whole is a *fortiori* competent to issue the relevant decision. This is a legal reasoning *a maiore ad minus* and also a matter of common sense. The good governance principles also imply that, whenever feasible, UEFA EC shall take the important decisions.
139. The Panel finds that the UEFA EC had jurisdiction / authority to issue the Appealed Decision.

4(a). Whether the Appealed Decision is illegal, arbitrary and lacks basis

140. The Appellant states that according to Articles 3.01 to 3.04 of UEFA Regulations, the participation of the 7th ranked team in Spain depends and is contingent on the realization of the suspensive conditions that (i) there is a winner of the cup and (ii) such winner qualifies for the UEFA Competitions through its ranking in the national championship. The Appellant argues that although the UEFA Regulations do not contemplate the extraordinary situation where there would be no cup winner, their regulations provide that a team having gained the sporting merit in the national cup competition, in principle the cup winner, must necessarily and in all circumstances be qualified for a UEFA Competition, either because it qualifies through the national championship or because it wins the cup.
141. According to the Appellant, the Appealed Decision is also illegal because the UEFA Guidelines highlighted that the final determination of eligible places for the UEFA Competitions should be confirmed by the relevant competent bodies at domestic level. The RFEF adopted transparent, non-discriminatory, objective and predictable rules to determine which club would participate in the UEL in case the Spanish Cup final was not played.
142. The Panel does not agree with the Appellant.

143. In the Panel's views, the UEFA Regulations had a lacuna in result of the exceptional situation caused by the Covid-19 pandemic. The UEFA Regulations do not contemplate the situation where there would be no cup winner. The Appealed Decision provides a clear rule precisely in anticipation of the scenario whereby a national association is not able to complete a domestic cup and, therefore, cannot determine a domestic cup winner that would enter the UEL.
144. The relevant provision implies the existence of a "*cup winner*" which it is not the case at stake. Under the UEFA Regulations, the cup finalists do not have any right or prerogative to participate in the UEL. Only the cup winner has this right.
145. The Panel underlines that the Appellant has not established that it was impossible or that legitimate reasons caused the final of the Spanish Cup not to be organized before the deadline to establish the eligible Spanish clubs for the UEFA Competitions. This argument will be further developed in the next section.
146. UEFA has filled a regulatory lacuna according to a criterion based on sporting merit. The Appealed Decision states in its second paragraph that "*should a National Association prematurely terminate for legitimate reasons (...) a domestic cup and, as a consequence, not be able to determine a domestic cup winner on sporting merit – in application by analogy of Article 3.04 of the UEL Regulations – the highest ranking non-qualified domestic champions club qualifies*". It is the Panel's understanding that UEFA is not filling the identified lacuna in the UEL Regulations by an interpretation of the rules by analogy, but rather issuing a clear rule on the matter. The used expression in the Appealed Decision "*in application by analogy*" is used – and must be construed - in the sense that Article 3.04 of the UEL Regulations is replaced by the new rule resulting from the UEFA Decision.
147. The Appellant has not invoked that the Appealed Decision violates either any public policy rule or any statutory provision. In the Panel's assessment of this case, it has not been possible to establish that the Appealed Decision breaches any universally applicable principle such as objectivity, transparency, non-discriminatory and fairness. In relation to the sporting merit criteria, the Panel highlights that it is not within its powers to decide which sporting merit criteria deserves better protection and relevance. UEFA is free, has full powers and discretion to adopt the rules that it considers more appropriate in this regard.
148. UEFA has not violated any provision by considering only the winner of the cup competition and that, in the absence of a cup winner, precedent should be given to the highest ranking non-qualified club in the domestic championship.
149. Sporting merit can be assessed in different perspectives and, as mentioned, UEFA is free to determine how it implements the principle of sporting merits in defining the conditions to assess its competence. It is not the role of a CAS Panel to adopt another rationale.
150. In other words, the CAS Panel could only annul the decision if the rationale of such decision would violate (i) the sporting merit principles, (ii) a statutory provision, (iii) any applicable legal principle, or (iv) a public policy rule, which is not the case at stake. First, because the Appellant

does not specify and consubstantiate such violations; and second, because the Appealed Decision is in line with the spirit of the UEFA Regulations and respects the sporting merit principles.

151. Finally, and in relation with this matter, the Panel would like to add that UEFA EC has powers to rule on the matter, according to Articles 49(2)(b) and 50(1) of the UEFA Statutes. UEFA EC has the sole powers to establish the requirements of the eligibility criteria that should apply for a club to participate in the UEL if there is no cup winner.

4(b). Whether the Appealed Decision is inconsistent / contrary with the UEFA Guidelines

152. It is the Appellant's position that the Appealed Decision is arbitrary and not consistent with the UEFA Guidelines. In substance, the Appellant also argues that *"UEFA is estopped from changing the rules in question by way of a new circular letter, affecting the choices and selection criteria already adopted by the RFEF for the qualification of the Spanish cup representative in the UEFA Europa league 2020-21"*.
153. The Panel disagrees with the Appellant that the Appealed Decision *"contradicts"* or *"breaches"* the UEFA Guidelines and that UEFA should have the national associations decide which club of the domestic cup competition should participate in the UEL.
154. First, because the UEFA Guidelines are only applicable in the event of *"premature termination"* of the domestic competitions. The Spanish Cup was not prematurely terminated but rather postponed. The UEFA Guidelines are only applicable if the Spanish Cup is terminated without reaching its final match.
155. Second, the UEFA Guidelines are neither binding regulations nor binding decisions. The UEFA Guidelines do not prevent UEFA from issuing rules in order to fill a lacuna in its regulations.
156. Third, UEFA has the prerogative to enact regulations governing the access to the UEFA Competitions and to issue decisions that complete said regulations when an unprecedented event occurs.
157. RFEF had enacted the rules after the adoption of the UEFA Guidelines and that the latter did indeed contain a delegation of powers. However, this delegation of powers does not mean that UEFA EC could not have retracted such delegation by taking a new decision.
158. The application of the estoppel principle implies - *inter alia* - that a person/entity, through its behavior, has created specific expectations on the Appellant in a manner that it is contrary to a good faith.
159. The theoretical possible breach of legitimate expectations was created by the RFEF Decision, not by UEFA. But RFEF does not have the power to regulate on the eligibility of club qualification for the UEFA Competitions. Moreover, UEFA cannot be responsible for the

RFEF adopting premature rules, which might end up contrary to the Appealed Decision, rendered afterwards.

160. Finally, it is not true that the Appealed Decision does not contemplate or give certain weight to the cup winner. The Appealed Decision respects the cup winner. It is true that the UEFA Decision does not give any consideration to the “*cup finalists*”, but only to the “*cup winner*”. This is UEFA’s own decision that must be respected.
161. The cup finalists (Athletic and Real Sociedad) and RFEF have jointly decided to postpone the final of the Spanish Cup. It was their decision not to play the final match that would determine the Spanish Cup winner. The Panel understands and respects the specific circumstances that led to the postponement of the Spanish Cup final, but the Appellant has not been demonstrated – presented any evidence – that the organization of the Spanish Cup final is impossible or that legitimate reasons exist for not organizing the final match until 3 August 2020 (the deadline that the clubs need to respect for UEFA’s determination of the participating clubs in the UEL).
162. The Appellant might not like the manner in which the Appealed Decision limits the chances of a cup finalist to participate in the UEL, but this does not make the Appealed Decision arbitrary or illegal.
163. The Appellant still has (or had) the opportunity to play the Spanish Cup final together with Real Sociedad if RFEF proceeds to organize such match. There is nothing in the Appealed Decision that limits or restricts such possibility.

C. Conclusion

164. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that the appeal filed by Athletic lacks merit. Consequently, it is rejected, and the UEFA Decision confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 May 2020 by Athletic Club against the decision issued by the UEFA Executive Committee on 30 April 2020 is dismissed.
2. The decision issued by the UEFA Executive Committee on 30 April 2020 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.