



Arbitration CAS 2020/A/7572 Ukrainian Association of Football (UAF) v. Union des Associations Européennes de Football (UEFA) & Swiss Football Association (SFA), award of 19 March 2021

Panel: Mr Manfred Nan (The Netherlands), President; Mr Jeffrey Benz (USA); Prof. Ulrich Haas (Germany)

Football

Forfeit of a match due to the impossibility to play it before the applicable deadline

Interpretation of the meaning of a rule

Consequences of the application of a lex specialis

1. Where a provision reads *inter alia* that a football match will be rescheduled at another date “*subject to viable rescheduling options being available*”, a “*viable*” option means an option that is able to work as intended or able to succeed, not merely be possible. Such UEFA-drafted phrase is directed at outcomes that would work within the context of the relevant competition and the relevant rules. UEFA, as the event organizer, is primarily competent to decide whether or not viable rescheduling options exist in a specific case. Moreover, when deciding on the existence or not of a viable rescheduling option in a specific case, UEFA benefits of a wide margin of discretion.
2. The rules provided for in the UEFA Circular Letter No. 66/2020 and which apply to the League phase of the UEFA Nations League 2020/2021 shall be considered as *lex specialis* to Article 25.02 of the UEFA Nations League Regulations 2020/2021 which, as a result, is not applicable. However, the UEFA Nations League Regulations 2020/2021 may assist in the interpretation of said Circular, in particular in view of completing a gap or loophole left by it, if any.

I. PARTIES

1. The Ukrainian Association of Football (“UAF” or the “Appellant”) is the governing national sports association for football in Ukraine and is recognised as such and is a member of the Union des Associations Européennes de Football (“UEFA”).
2. UEFA is the governing body of European football and is recognized as such by the Fédération Internationale de Football Association (commonly known as FIFA). UEFA is an association formed under Articles 60, *et seq.*, of the Swiss Civil Code with its headquarters in Nyon, Switzerland.

3. The Swiss Football Association (“SFA”) is the governing body of football in Switzerland and is recognised as such and is a member of UEFA.
4. SFA and UEFA are jointly referred to herein as the “Respondents”. The Appellant and the Respondents are jointly referred to herein as the “Parties”, and singularly as a “Party”.

II. INTRODUCTION

5. The present appeal arbitration proceedings concern an appeal brought by UAF against the decision of the UEFA Appeals Body dated 25 November 2020 (the “Appealed Decision”), by means of which the 2020/2021 UEFA Nations League match between the representative football teams of SFA and UAF, scheduled to be played on 17 November 2020 (the “Match”), was declared as forfeited by UAF (which is therefore deemed to have lost the match 3-0) for being responsible for the Match not occurring.
6. UAF requests, generally, that the Appealed Decision be set aside, that the Match will be rescheduled or that the Match will be decided by drawing of lots.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions, pleadings and evidence. 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, evidence, submissions, pleadings and legal arguments submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background of the dispute

1. *UEFA’s return to play policy*

8. The very considered UEFA Return to Play Protocol (the “Protocol”) consists of an exceptional set of rules, outlining the framework of medical, sanitary and hygiene procedures, together with operational protocols, that are to be applied when staging UEFA competition matches in the context of the on-going COVID-19 pandemic.
9. It was approved by the UEFA Executive Committee on 9 July 2020. *Via* Circular Letter No. 53/2020 dated 15 July 2020, the UEFA Administration informed its member associations of the implementation of the Protocol.
10. On 31 August 2020, *via* Circular Letter No. 66/2020 (the “Circular”), the UEFA Administration informed its member associations of the special rules applicable to UEFA National Team competition matches, *i.e.*, the 2020/21 UEFA Nations League (league phase), the 2019/21 UEFA Under-21 European Championship (qualifying phase) and the UEFA Women’s EURO

qualifiers (the “Rules”), that were approved by the UEFA Executive Committee at its meeting on 29 August 2020. Most notably, the Circular outlines the consequences of national associations being unable to field a team for a specific match if it cannot be rescheduled. More specifically, the Circular provides as follows:

“[Rule 1:] Should a group of players of a team be placed into mandatory quarantine or self-isolation following a decision of a competent national/ local authority, the match will go ahead as scheduled as long as the team has at least 13 players available (including at least one goalkeeper), irrespective of any other provision of the respective competition’s regulations (including the deadline for the submission of the list of players), provided that all players are eligible to represent the Under-21 or the relevant national team in accordance with the applicable FIFA regulations and have been tested negative as required by the UEFA Protocol.

“[Rule 2:] If a national association is not in a position to field a team with the above-mentioned minimum number of players (i.e. 13 including at least one goalkeeper), the match will, if possible (i.e. subject to viable rescheduling options being available), be rescheduled at a date to be fixed by the UEFA administration, which shall also have the power to assign the rescheduled match to a venue which may be in a neutral country (within the territory of a UEFA member association) if deemed appropriate; in any event, the home team will remain responsible for the organisation of the match and all related costs.

“[Rule 3:] If the match cannot be rescheduled, the UEFA Control, Ethics and Disciplinary Body (CEDB) will take a decision on the matter. The national association that is responsible for the match not taking place or not being played in full will be declared to have forfeited the match by the UEFA CEDB unless the latter comes to the conclusion that both or none of the teams is/ are responsible for the match not taking place or not being played in full, meaning the match cannot be declared as forfeited. If the match cannot be declared as forfeited, the outcome of the match will be decided by drawing of lots (i.e. win 1-0, loss 0-1 or draw 0-0) carried out by the UEFA administration”.

11. Via Circular Letter No. 71/2020 dated 28 September 2020, the UEFA Administration informed its member associations and their clubs that the UEFA Executive Committee had approved several amendments to the Protocol at its meeting on 24 September 2020.
12. On 28 October 2020, an online meeting was held with all General Secretaries of UEFA’s member associations, with the aim to draw special attention to the operational challenges of the coming months including an outlook of the Men’s national teams competitions in the month of November of 2020. UAF’s General Secretary attended this online meeting.
13. On 5 November 2020, the UEFA Administration sent a letter to the General Secretaries of all UEFA member associations, including UAF, to emphasise, and in some instances reiterate, several important issues regarding the implementation of the Protocol, including that:

“The November windows are absolutely critical as we must complete such competitions with no calendar buffer available, despite the increasingly challenging epidemiological situation in Europe”.

2. *The events prior to the arrival in Switzerland of UAF's Delegation*

a. Events around the friendly match in Poland on 11 November 2020

14. On 9 November 2020, the players of the Ukrainian men's national team met in a designated hotel in Kiev, Ukraine, to prepare for i) a friendly match to be played in and against Poland on 11 November 2020; ii) a friendly match to be played in and against Germany on 14 November 2020; and iii) the ultimate fixture for the group phase of the 2020/2021 UEFA Nations League in and against Switzerland on 17 November 2020. Upon arrival at the designated hotel, the players were tested for COVID-19.
 15. On 9 November 2020, UEFA was informed by SYNLAB, the UEFA Laboratory Diagnostics Provider for UEFA competitions 2020/2021, that one member of the UAF's team delegation returned a positive COVID-19 test result for testing undergone the same day. The player who tested positive was still in Ukraine and was supposed to join the UAF Delegation in Germany for the match scheduled to take place against the German national team on 14 November 2020 in Germany.
 16. On the same day, UEFA wrote to UAF enquiring as follows:

"May we please ask you to urgently inform us of any measures taken by the relevant local authorities concerning your team, as this may have an impact on the match taking place on Wednesday (11 November)?"
 17. UAF informed UEFA as follows:

"Yes, unfortunately we tested one player as positive.

He was not in contact with other team. So no risk for others.

No impact for the match. Team will be in Poland tomorrow and will be tested again"
 18. On 10 November 2020, the Ukrainian players who were supposed to play the friendly match in Poland left on a charter flight to Poland.
 19. On 11 November 2020, the UEFA friendly match between the Ukrainian and Polish national teams took place as scheduled in Chorzow, Poland.
 20. On 12 November 2020, the UAF Delegation travelled from Poland to Leipzig in Germany.
- b. Events around the official match in Germany on 14 November 2020*
21. On 12 November 2020, the German Football Association wrote to the UEFA Administration as follows:

“We are in contact with the Ukrainian team and they told us that their last PCR-test was on November 10th (MD-1 for their Poland-Game). This was MD-4 for our match on Saturday.

They arrived today in Germany and tomorrow morning they have scheduled their MD-1 test for our match.

According to 7.5.1 RTPP from our understanding the Ukrainian team had to do another test on MD-3 the latest for our match”.

22. On 13 November 2020, one day prior to the scheduled match against the German national team, the UAF Delegation underwent new COVID-19 testing. SYNLAB informed UEFA that five additional persons of the UAF Delegation - four players and one official - returned positive COVID-19 tests. The concerned persons were isolated and additional sanitary measures were implemented for the rest of the team.
23. On the same day, the UAF Delegation called three players from the UAF’s U-21 national team to join the UAF Delegation in Luzern, Switzerland, from 16 November 2020 until 18 November 2020.
24. On 14 November 2020, *i.e.*, the match day, the UAF Delegation underwent an additional rapid test, which resulted in no new positive COVID-19 cases. The local authorities permitted the match between the German and Ukrainian national teams to take place as scheduled.

3. *The arrival of the UAF Delegation in Switzerland and the Decision to Quarantine the UAF Delegation*

25. On 15 November 2020, the UAF Delegation travelled from Germany to Switzerland. However, prior to its departure, the UAF Delegation underwent additional COVID-19 testing.
26. On the same day at 17:51, the laboratory notified the UEFA Administration that three additional members of the UAF Delegation returned positive COVID-19 tests. The UEFA Administration notified this information to UAF at 18:58 that same day, as follows:

“Dear Maksym,

We have been informed by SYNLAB that three (3) members of your Team’s delegation have returned a positive COVID-19 test result from your most recent sample collection.

Match ID: 2030114

*May we please ask you to **urgently** inform us of any measures taken by the relevant local authorities concerning your team, as this may have an impact on the match taking place **Tuesday** [sic] (17 November)?*

Further, we kindly ask that you confirm whether the positive individuals are staff members or players.

Thank you very much in advance”.

27. Upon receipt of the testing results, the UAF Delegation was already in Switzerland. The concerned players were isolated.
28. On 16 November 2020, three players from the UAF's U-21 national team arrived in Switzerland.
29. On 16 November 2020 at 11:00 am, the UEFA Administration organised an urgent conference call with the Official Doctor of the canton of Luzern (the "Cantonal Doctor"), the UAF medical liaison officer and members of the UAF Delegation in order to address the situation.
30. On the same day at 12:43, the Cantonal Doctor wrote to the UAF Delegation and UEFA Administration as follows:

"Regarding the game of tomorrow the whole Ukrainian team has to be tested on COVID-19 by PCR tonight at the earliest.

For your information referring to the question from (...):

We once again discussed the situation in our epidemiology team.

If another player apart from the three ones recently tested positive, we probably will be forced to quarantine the whole Ukrainian team.

Under these circumstances it will be difficult to play the game tomorrow.

Let's hope the tests will all be negative".

31. In the evening of 16 November 2020, as per the request of the Cantonal Doctor, an additional testing procedure was undertaken.
32. On 17 November 2020, the Parties were informed that four more members of the UAF Delegation returned positive COVID-19 tests. These were the three individuals who had tested positive already a few weeks earlier and one additional positive case.
33. On the same day, the Swiss public health authorities decided to quarantine the whole team (the "Quarantine Decision"), which states in its relevant parts as follows:

"Am letzten Samstag, 14. November 2020, wurden vor dem Nations League Spiel Deutschland - Ukraine vier Spieler und ein Staffmitglied der Ukrainischen Fussball-Nationalmannschaft positiv auf das neue Coronavirus (2019-nCoV) getestet. Die Tests der übrigen Spieler und Staffmitglieder fielen negativ aus. Vor Einreise in die Schweiz wurde das gesamte Ukrainische Team nochmals in Deutschland getestet. Die Testresultate lagen erst nach Einreise in die Schweiz vor. Drei weitere Spieler wurden dabei neu positiv auf 2019-nCoV getestet. Diese wurden unmittelbar isoliert und eine neue Testreihe bei den verbleibenden Spielern angeordnet. Vier Teammitglieder zeigten dabei am 17. November 2020 ein positives Testergebnis,

drei davon waren bereits Anfang Oktober positiv (prolonged positivity), und gelten somit als nichtansteckend, ein Spieler wurde neu positiv auf 2019-nCoV getestet.

Somit wurden innerhalb von nur vier Tagen neun Mitglieder der Ukrainischen Fussball-Nationalmannschaft positiv getestet. Unter der Annahme, dass die Ukrainische Fussball-Nationalmannschaft die Schutzkonzepte der UEFA eingehalten hat, ist es dennoch zu Übertragungen innerhalb des Teams gekommen. Die Übertragungsketten sind nicht offensichtlich nachvollziehbar, so dass davon auszugehen ist, dass ungeachtet der negativen Testergebnisse eine unbekannte Anzahl

Mitglieder der Ukrainischen Fussball-Nationalmannschaft mit 2019-nCoV-positiv getesteten Teammitgliedern in Kontakt gekommen ist und sich angesteckt haben könnte.

Um eine unkontrollierte Weiterverbreitung von 2019-nCoV aus der Fussball-Nationalmannschaft der Ukraine hinaus auf weitere Personen, insbesondere Teamspieler und Staffmitglieder der Schweizerischen Fussball-Nationalmannschaft, und auf die weitere Bevölkerung zu verhindern, erlässt die Dienststelle Gesundheit und Sport als zuständige Fachbehörde folgende Anordnung: (...).

- 1. Teamspielern und Staffmitgliedern der Fussball-Nationalmannschaft der Ukraine, die positiv auf 2019-nCoV getestet wurden, oder die mit Personen, die positiv auf 2019-nCoV getestet wurden, in engen Kontakt gekommen sind (Kontaktpersonen), ist es untersagt, am Fussball-Länderspiel zwischen der Schweiz und der Ukraine vom 17. November 2020 in der Swisspor Arena in Luzern teilzunehmen (Art. 38 Abs. 1. Epidemiengesetz (...)).*

Die von der Einschränkung betroffenen Personen sind aus der diesem Entscheid beiliegenden Liste ersichtlich.

- 2. Bis zu ihrer Ausreise aus der Schweiz haben sich die betroffenen Teamspieler und Staffmitglieder der Fussball-Nationalmannschaft der Ukraine mit positivem 2019-nCoV-Test bis 48 Stunden nach Abklingen der Symptome, sofern seit Symptombeginn mindestens 10 Tage verstrichen sind, in Isolation zu begeben (...).*
- 3. Verstösse gegen diese Anordnungen sind strafbar und werden im Einzelfall mit Freiheitsstrafe bis zu drei Jahren oder Geldstrafe (Art. 82 Abs. 1d EpG) sowie mit Busse bis zu 10'000 Franken bestraft (Art. 83 Abs. 1 lit. b EpG).*
- 4. Um eine weitere Verbreitung von 2019-nCoV zu verhindern, müssen die angeordneten Massnahmen umgehend sichergestellt werden. Einer allfälligen Verwaltungsgerichtsbeschwerde gegen diesen Entscheid wird deshalb die aufschiebende Wirkung entzogen”.*

Free translation:

“Last Saturday, 14 November 2020, four players and one staff member of the Ukrainian national football team tested positive for the new coronavirus (2019-nCoV) before the Nations League match between Germany and Ukraine. The tests of the other players and staff members were negative. Before entering Switzerland, the entire Ukrainian team was tested again in Germany. The test results were only available after entering Switzerland. Three additional players tested positive for 2019-nCoV and were immediately

isolated and a new series of tests was ordered for the remaining players. Four team members tested positive on 17 November 2020, three of whom had already tested positive (prolonged positivity) at the beginning of October and were therefore considered to be non-contagious, while one player tested positive for 2019-nCoV.

This means that nine members of the Ukrainian national football team have tested positive in just four days. Assuming that the Ukrainian national football team has complied with UEFA's protection policy, transmission has nevertheless occurred within the team. The chains of transmission are not obviously traceable, so it must be assumed that, despite the negative test results, an unknown number of members of the Ukrainian national football team came into contact with team members who had tested positive for 2019-nCoV and could have become infected.

In order to prevent the uncontrolled spread of 2019-nCoV from the Ukrainian national football team to other persons, in particular team players and staff members of the Swiss national football team, and to the wider population, the Health and Sport Service, as the competent authority, issues the following order:

- 1. The players and the staff members of the Ukrainian national men football team who tested positive for 2019-nCoV or who were in close contact with the persons who tested positive for 2019-nCoV (Contact Persons), are prohibited from participating to the football match between Switzerland and Ukraine on 17 November 2020 in the Swisspor Arena in Luzern (Art. 38 par. 1 Law on the Epidemics (...)).*

The persons concerned with the restriction are listed in the attached List.

- 2. Until they leave Switzerland, the players and staff members of the Ukrainian men national football team with positive 2019-nCoV test have to remain in isolation until 48 hours after the symptoms have ceased provided that at least 10 days have elapsed since the onset of the symptoms (...).*
- 3. Violations to the present order are punishable and in individual cases are punishable by imprisonment of up to three years or a fine (Art. 82 para. 1d Law on the Epidemics) as well as a fine of up to CHF 10,000 (Art. 83 para. 1 lit. b Law on the Epidemics).*
- 4. In order to prevent the further spread of 2019-nCoV, the measures ordered must be ensured immediately. Any administrative appeal against this decision will therefore have the suspensive effect withdrawn”.*

- 34. On 17 November 2020 in the afternoon, the Quarantine Decision was notified in person to the Secretary General of the UAF Delegation. On the same day at 12:41, it was also notified per email to the Protocol Compliance Officer at UAF. In addition, on the same day, the UEFA Administration, informed the Secretary General of the UAF Delegation per text message that the “[w]hole team [is] in quarantine!”. Finally, on the same day at 14:05, the UEFA Administration notified the Quarantine Decision to the UAF Secretary General by email.*

4. *The attempts to reschedule the Match*

35. On 17 November 2020 at 11:50 am, the UEFA Administration, wrote to the Secretary General of UAF in the following terms:

“Dear Yuri,

Following the decision of the competent Swiss health authority to quarantine the whole delegation of your national team, it seems obvious that the UEFA Nations League match Switzerland v Ukraine can’t take place today.

Since the match can still be rescheduled to tomorrow Wednesday 18 November, we kindly request you confirm if you will make a new team of eligible players available to play that match. The delegation will have to be in possession of negative test certificates.

We are looking forward to your urgent confirmation.

Best regards (...).”

36. On the same day at 13:23, Mr Yuriy Zapisotskiy, Secretary General of UAF, replied to the UEFA Administration in the following terms:

“Dear (...),

Thank you for your letter.

First of all we would like to refer to the existing UEFA RTPP, where it is stated that we can play the match in question having 13 eligible players including goalkeeper and having their negative COVID test results. We certainly meet that criteria and are ready to play the match with the A team currently staying in Lucerne, Switzerland.

Secondly, it is impossible to gather the new team in 24 hours taking into account all the requirements set up. We also can’t bring in the Ukrainian U-21 team as they play today against Northern Ireland.

We will accept any of your decisions but we count on your support and understanding in this sensitive matter.

Regards

Yuriy Zapisotskiy”.

37. On the same day at 14:05, the UEFA Administration sent an email enclosing the Quarantine Decision to the UAF Delegation in the following terms:

“Dear Yuriy,

Please find attached the decision of the competent health authorities placing your delegation in quarantine, in case you haven’t yet seen it.

Your team is not authorised to play the match. Consequently, the players in cannot be considered as available for the match.

Without further notice from your part, we would consider your below confirmation as definitive.

Kind regards (...).”

38. On the same day, at 18:21, the UEFA Administration, wrote to the Secretary General of UAF, Mr Yuriy Zapisotskiy, and the Secretary General of SFA, Mr Robert Breiter, in the following terms:

“Dear general secretaries,

Dear colleagues,

Further to various communications with the two federations involved, please be informed that the UEFA Nations League match Switzerland v Ukraine cannot take place as scheduled tonight following the decision of the local Swiss authorities to quarantine the whole Ukrainian national team delegation due to positive COVID-19 tested persons in the delegation. Furthermore, the match cannot be postponed to tomorrow, as the Ukrainian FA is not in the position to register the minimum number of eligible players needed to be fielded in the match concerned.

Consequently the case will be submitted to the UEFA Control, Ethics and Disciplinary Body to take a decision on the matter, in accordance with the special rules approved by the UEFA Executive Committee on 29 August 2020 (see Circular Letter 66/2020 of 31 August 2020).

UEFA has issued a media statement on UEFA.com [here](#).

Best regards (...).”

39. On the same day at 22:04, Mr Yuriy Zapisotskiy, UAF General Secretary, replied to the UEFA Administration in the following terms:

“Dear (...),

In our turn we would like to confirm once more our willingness to play the match Switzerland-Ukraine tomorrow with the current squad we possess in Switzerland now. We consider the players and staff with negative Covid tests as eligible for the game in accordance with the UEFA Return to play protocol. We have more than 13 players (including at least 1 goalkeeper) in the sheet list to play the game. In this regard we kindly ask UEFA for cooperation in the question of making an exception by Swiss local authorities in this

matter (as it was recommended in numerous of UEFA documents during Covid pandemic) and possible release of negative tested players from quarantine.

Regarding your propose to form a new national team until tomorrow's evening we would like to emphasize that we are doing our best to be in time but anyway its look quite impossible due to objective reasons. Taking into consideration the above, UAF has formed the emergency working group to solve the problem. Please find below its conclusions.

Firstly, our U21 Team has just finished their U21 qualifying match. If UEFA could make an exception from FIFA regulations and let the players to participate more than one game during 48 hours we will do our best to organise their trip to Switzerland to play the game. This team is the only possible option, because any other youth national teams did not gather during this international window due the UEFA desicion to postpone all the youth matches, except U21 games.

Another players who could be theoretically called to the national team are located in different cities of Ukraine and abroad. Additionally, according to the UEFA protocol the players should be tested in the UEFA cetificated labatory prior to the match. We have been in contact with UEFA accredited laboratory in Ukraine and if players make a test tomorrow morning at 9am, the result will be at 5pm. The relevanf document is attached. Due to medical requirements of UEFA the players could not be permitted to fly without first having a negative test before the departure.

Also not all the Ukrainian players have biometric passports to enter EU countries. In particular, Smyrnyi Venhenii, Bilyk Oleh, Baboglo Vladyslav. Our communication with the foreing affairs services of Ukraine confirmed we can face difficulties with organising the direct charter flight to Switzerland and crossing its border due to the above. All the above mentioned issues reaffirm the existance of objective reasons that exclude the guilt of Ukrainian side and confirms the match could be postponed in order to maintain all needed steps to form the new team (as stipulated in the UEFA circullar letter 66). At the moment we once more confirm our confidence that the march shoud be played and the result should be determined in the football pitch in accordance with the Fair Play principles.

Additionally, we emphasize that the possibility of organising the match during current international window depends on the position of UEFA in this question due to the above described reasons and existing UEFA and FIFA requirements due Covid-19.

Kind regards,

Yuriy Zapisotskiy" [sic].

40. The Match was neither played on 17 November 2020, nor on 18 November 2020, as had been proposed by the UEFA Administration.

B. The UEFA disciplinary proceedings

41. On 18 November 2020, UAF was informed of the opening of disciplinary proceedings against it because of the alleged “*Responsibility for the match not taking place*” and was given a deadline until 20 November 2020 at 10:00 CET to submit its statements regarding the present case.
42. On the same day, the Chairman of the UEFA Control, Ethics and Disciplinary Body referred the case to the Appeals Body due to its urgent nature.
43. In its submissions, UAF requested the UEFA Appeals Body to determine that the Match could have been rescheduled for a date other than 18 November 2020, thereby dismissing the disciplinary proceedings and ordering the prompt rescheduling of the Match; alternatively, taking into consideration that this case encompasses truly exceptional circumstances, UAF requested the UEFA Appeals Body to decide that UAF bears no responsibility for the Match not taking place.
44. In its submissions, the UEFA Ethics and Disciplinary Inspector requested the UEFA Appeals Body to declare the 2020/21 UEFA Nations League match between the representative teams of the Swiss Football Association and the Ukrainian Association of Football, that was to be played on 17 November 2020, as forfeited by the Ukrainian Association of Football, which was therefore deemed to have lost the Match 3-0, for being responsible for the Match not taking place.
45. On 25 November 2020, the UEFA Appeals Body issued the Appealed Decision, which provides as follows:

“To declare the 2020/21 UEFA Nations League match between the Swiss Football Association and the Ukrainian Association of Football, that was scheduled to be played on 17 November 2020, as forfeited by the Ukrainian Association of Football (who is therefore deemed to have lost the match 3-0) for being responsible for the match not taking place (as provided for in [the Circular] establishing special rules applicable to the league phase of the 2020/21 UEFA Nations League)”.

46. On 30 November 2020, the Appealed Decision with grounds was notified to UAF. The pertinent grounds of the Appealed Decision are as follows:

*“[T]he Appeals Body refers to paragraph 2 of the Rules, which provides that a “[m]atch will, if possible (i.e. subject to viable rescheduling options being available), be rescheduled at a date to be fixed by the UEFA administration (emphasis added)” in circumstances where the national association is not in a position to field a team. (...) [T]he Appeals Body recalls the UAF’s submission and request contained therein that the Match be rescheduled to a date in one of the 2021 FIFA International Football Windows. Further, the Appeals Body notes the UAF’s reference to Article 25.02 of the Regulations of the 2020/21 UEFA Nations League (“UNL Regulations”) and the general principles applicable to the rescheduling of matches, which it submits should be read in conjunction with the Rules provided for in [the Circular], thereby suggesting that the Match could be rescheduled to one of the 2021 FIFA International Football Windows. (...) To such argument however, the Appeals Body emphasises that the special rules applicable to the league phase of the 2020/21 UEFA Nations League are *lex specialis* to those provided for in Article 25.02 of*

the UNL Regulations. This is of particular relevance for the staging of international football matches during the global COVID-19 pandemic, meaning that Article 25.02 of the UNL Regulations is, in essence, not applicable to the league phase of the 2020/21 UEFA Nations League in the case at hand. (...) Furthermore, the Appeals Body recalls that the league phase of the 2020/21 UEFA Nations League must be completed by the end of November 2020 due to the detrimental impact that any delays would have on the final ranking of the 2020/21 UEFA Nations League competition, as well as on the draw for the European Qualifiers for the 2022 FIFA World Cup on 7 December 2020. (...) Against this background, the Appeals Body concurs with the position of the EDI and finds that, in the present circumstances, no “[v]iable rescheduling options (emphasis added)” are available for the UEFA administration to reschedule the Match. The Appeals Body stresses that the “viability” of rescheduling the Match is the relevant threshold in the present case, and not, as submitted by the UAF, the fact that it may be theoretically possible to reschedule the Match in the future. (...) Such distinction is vital and, in this respect, the Appeals Body concludes that the only viable option that existed for the UEFA administration to reschedule the Match was for the following day, i.e. 18 November 2020, being the last recognised international matchday in the 2020 FIFA International Football Window. It logically follows that any potential rescheduling option in the 2021 FIFA International Window is, in the present circumstances, not viable. (...) [T]he Appeals Body emphasises that UEFA do not, nor do its disciplinary bodies, have the ability to overrule any laws or regulations of the competent local authorities with respect to national COVID-19 legislation, i.e. Swiss laws and the competent health authorities in Lucerne in the present case. Furthermore, the Appeals Body emphasises that the Protocol is “[s]ubject to legal provisions and other orders issued by the competent authorities in the various countries”. (...) [T]he Appeals Body concurs with the position of the EDI and emphasises that the UAF ought to have been more proactive and adequately prepared to send an alternative list of players to Switzerland for the Match from as early as 13 November 2020. This, in turn, would have more appropriately facilitated the Match taking place as scheduled, as well as on the rescheduled date proposed by UEFA, as opposed to the UAF reacting after its delegation was placed into mandatory quarantine by the competent health authorities in Lucerne on 17 November 2020. (...) Therefore, given that the match cannot be rescheduled, in application of the special rules applicable to the league phase of the 2020/21 UEFA Nations League provided for in [the Circular], the Appeals Body is comfortably satisfied that the UAF shall be held responsible for the Match not taking place. (...) [T]he Appeals Body finds that when assessing a member association’s responsibility in such cases, it has no scope or margin to apply any discretion when determining the consequences of such responsibility, which means – in other words – that the latter has no choice but to declare the Match to be forfeited by the responsible association concerned. (...) Therefore, in light of the above, the Appeals Body decides that the Match will be declared to be forfeited by the UAF, who shall be considered to have lost the Match 3-0”.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

47. On 9 December 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (2020 edition) (the “CAS Code”), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against UEFA and SFA with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested that the present matter be expedited in accordance with Article R52 of the CAS Code in order to have this case heard by mid-February and to obtain a reasoned decision by 21 March 2021 at the latest. The Appellant also requested the proceedings to be in English and informed the CAS Court Office that it nominated Mr Jeffrey Benz, Attorney-at-Law and Barrister in London, United Kingdom, as an arbitrator.

48. On 10 December 2020, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited the Respondents to confirm their agreement with the expedited procedure, the language of the proceedings as well as to jointly nominate an arbitrator.
49. On 15 December 2020, UEFA confirmed that it had no objection to the language of the proceedings nor to the expedited calendar proposed by the Appellant.
50. On the same day, SFA confirmed that it had no objection to this matter being expedited and the request that a motivated award be rendered no later than 21 March 2020, *“provided however, that (i) the SFA is granted sufficient time for the filing of the Answer to the Appeal Brief, and (ii) the hearing, if any, shall not be scheduled before calendar week 7/2021, i.e. the week of 15 February 2021. On the assumption that the UAF’s Appeal Brief is filed by 21 December 2020, i.e. immediately before the start of the holiday season, the SFA shall be granted a reasonable extension of the standard 20-day time-limit for the Answer by 2.5 weeks, i.e. until 27 January 2021”*. Moreover, SFA confirmed that it was not opposed to the Appellant’s request for English as the language of the arbitration but requested that the Parties be permitted to file both factual and legal exhibits in German or French with no need to provide translations into English.
51. On 16 December 2020, the CAS Court Office invited the Appellant and UEFA to comment on SFA’s latest letter.
52. On 17 December 2020, the Appellant informed the CAS Court Office that it agreed with the modalities to the procedural calendar that were proposed by SFA but that it could not agree with SFA’s request to be authorised to file exhibits in French and/or German without translation into English.
53. On 18 December 2020, UEFA informed the CAS Court Office that it had no objection to SFA’s proposed modalities as to the procedural calendar nor as to the language of the exhibits to be submitted in the proceedings. UEFA also informed the CAS Court Office, that after discussion with SFA, the Respondents nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator in this matter.
54. On 18 December 2020, the CAS Court Office invited SFA to confirm the nomination of Prof. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator in this matter. The CAS Court Office further informed the Parties that, in light of the Appellant’s objection to SFA’s request to be authorised to file exhibits in French and/or German without translation into English, the President of the Appeals Arbitration Division would decide on this request.
55. On 21 December 2020, SFA confirmed that, in agreement with UEFA, SFA nominated Prof. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator in this matter.
56. On 21 December 2020, *i.e.*, within the prescribed time limit, the Appellant filed its Appeal Brief with the CAS Court Office in accordance with Article R51 of the CAS Code.

57. On the same day, the CAS Court Office invited the Respondents to file their Answers within the prescribed time limit.
58. On 23 December 2020, the CAS Court Office informed the Parties that the Deputy President of the Appeals Arbitration Division had decided that all documents be filed in the language selected by the Appellant and agreed upon by the Respondents, *i.e.*, English and that, as a result, SFA's request is denied.
59. On 4 January 2021, the CAS Court Office informed the Parties that the Panel appointed to decide in the present matter will be constituted as follows:

President: Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands.

Arbitrators: Mr Jeffrey Benz, Attorney-at-Law and Barrister in London, United Kingdom;
Prof. Ulrich Haas, Professor in Zurich, Switzerland.
60. On 12 January 2021, the CAS Court Office informed the Parties that Mrs Stéphanie De Dycker, in-house Clerk with the CAS, had been appointed as Clerk in this matter.
61. On 14 January 2021, the CAS Court Office informed the Parties that a hearing would take place in this matter on 16 February 2021 and invited the Parties to communicate the lists of their hearing attendees.
62. On 29 January 2021, UEFA and SFA filed their Answers with the CAS Court Office in accordance with Article R55 of the CAS Code.
63. On 1 and 2 February 2021, the Parties communicated the names and contact details of their hearing attendees.
64. On 2 February 2021, the CAS Court Office issued an order of procedure in the present matter (the "Order of Procedure") and requested the Parties to return a signed copy of it, which the Parties did on 3 and 9 February 2021.
65. On 15 February 2021, the CAS Court Office informed the Parties that, due to illness, Mr Hendrik Willem Kesler would not be able to chair the hearing and that Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, would be ready to replace him. The CAS Court Office therefore invited the Parties to comment on the appointment of Mr Manfred Nan as president of the Panel in the present proceedings. On the same day, the Parties confirmed their agreement with the appointment of Mr Manfred Nan as President of the Panel.
66. On 16 February 2020, the CAS Court Office informed the Parties that, following the resignation of Mr Hendrik Willem Kesler for health reasons, the Panel appointed to decide in the present matter was constituted as follows:

President: Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands.

Arbitrators: Mr Jeffrey Benz, Attorney-at-Law and Barrister in London, United Kingdom;
Prof. Ulrich Haas, Professor in Zurich, Switzerland.

67. On 16 February 2021, in accordance with the Order of Procedure and the Parties' agreement, a hearing by videoconference was held in the present matter. In addition to the Panel, Mr Fabien Cagneux, Counsel with the CAS, and Mrs Stéphanie De Dycker, Clerk with the CAS, the following persons attended the hearing, by video-conference:
- For the Appellant: Mr Lucas Ferrer, Counsel; Mr Serge Vittoz, Counsel; Mrs Nicole Santiago, Counsel; Mr Maryan Martynyuk, Counsel; Mr Andriy Pavelko, President of UAF; Mr Yuriy Zapisotskiy, Secretary General of UAF.
 - For the First Respondent: Dr Jan Kleiner, Counsel; Mr Sebastian Permain, UEFA Disciplinary Lawyer; Mr Toni Garcia, UEFA Ethics and Disciplinary Inspector.
 - For the Second Respondent: Mrs Melanie Schärer, Counsel; Mr Dominique Schaub, Legal Counsel of SFA.
68. No objection was made at the outset of the hearing to the composition of the Panel. During the hearing, the Panel heard the testimony of Mr Yuriy Zapisotskiy, Secretary General of UAF, who was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The testimony of Mr Yuriy Zapisotskiy can be summarized as follows:

Mr Yuriy Zapisotskiy: Mr Yuriy Zapisotskiy is Secretary General of UAF. In this capacity, he is responsible for the administrative, financial and sporting matters of UAF, including for the Ukrainian national teams. He was part of the UAF Delegation travelling from Germany to Switzerland for the Match together with the players, staff as well as the President of UAF and UAF's Vice-President. With respect to the Protocol, Mr Zapisotskiy was supervising the medical staff who is in charge of the compliance with the Protocol and other sanitary measures. Several measures were implemented such as travels with charter flights, hotels booked for the team, testing procedures, masks, lunch in separated groups, *etc.* Mr Zapisotskiy considers that UAF fully complied with the obligations set out in the Protocol. He confirmed that there was no disciplinary procedure taken against UAF for non-compliance with the Protocol. During the trip, Mr Zapisotskiy was in permanent and regular contact with UEFA and the cooperation with UEFA was good. Until 16 November 2020, nobody from UEFA alerted him on the need to bring a new alternative team but only to call some additional players, which he did. When in Germany, the local health authorities did not threaten UAF to quarantine the entire team in case of one additional positive test result. Upon receiving the information that the entire team was put into quarantine by the Luzern cantonal doctor on 17 November around noon, Mr Zapisotskiy set up a working group comprised of persons in charge of health, border control, medical staff and travel issues in order to examine the possibility to bring an alternative team for the rescheduled match on

the next day. After due examination it was however impossible. In particular, the U21 team was playing on 17 November 2020 and was at the time of the Quarantine Decision already on its way to the venue of its match. Moreover, there were 3 COVID-19 positive cases within the U21 team and the U21 team was not allowed to play another match within such a short time limit.

69. The Parties thereafter were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Members of the Panel, over the course of several hours. The Panel notes and is thankful for the high quality of the presentations and submissions, both written and oral, of the highly experienced and effective counsel representing each of the Parties.
70. At the end of the hearing, the Parties confirmed that their procedural rights, in particular their right to be heard, had been fully respected. Before closing the hearing, the President of the Panel invited the Parties to conciliate their dispute in the present matter, which attempt was ultimately unsuccessful.

V. SUBMISSIONS OF THE PARTIES

A. The position of the Appellant

71. In its Appeal Brief, the Appellant sought the following relief:
- a. Set aside the decision of the UEFA Appeals Body dated 25 November 2020 with reference number 34076-UNL-2020/21 in its entirety;*
 - b. Determine that the Match could have been rescheduled for a date other than 18 November 2020 and order the prompt rescheduling of the Match at any other possible date.*
 - c. Subsidiarily, recognize that the UAF bears no responsibility for the Match not taking place and, therefore, that the Match cannot be called as forfeited and the outcome of the Match should be decided by drawing of lots carried out by the UEFA Administration, as per the applicable regulations.*
 - d. In any case, order a contribution towards the costs and expenses incurred by the UAF in connection with the present proceedings”.*
72. The Appellant’s submissions, in essence, may be summarized as follows:
- In the present matter, there were “viable” options to reschedule the Match, in particular UEFA could and should have accepted to reschedule the Match after 18 November 2020:
 - In the interpretation of the “viable rescheduling options” in the Circular, the UEFA Appeals Body should have taken into account Article 25.02 of the UEFA Nations League 2020/2021 Regulations, which expressly provides for the possibility that rescheduling may entail exceptions to the regular match scheduling pattern.

- The Circular is not a *lex specialis* to the UEFA Nations League 2020/2021 Regulations, since (i) the latter was amended several times after the adoption of the Circular in order to address the exceptional situation of the pandemic, and (ii) the UEFA Nations League 2020/2021 Regulations completes the potential gaps or loopholes left by the Circular in particular the fact that the Circular does not regulate the circumstances surrounding the rescheduling of a match.
- UEFA's aim was to interpret the rescheduling of matches in UEFA Nations League in a broad manner. Had it preferred it to be otherwise, it would have provided for express limitations, as it did in other regulations. Moreover, by expressly envisaging the rescheduling of matches in a neutral country, it is evident that the authors of Rule 2 of the Circular contemplated rescheduling options that demand more than 24 hours' notice.
- In any case, the ambiguity left as to the rescheduling of matches in the UEFA Nations League shall be interpreted in favour of the Appellant, in accordance with the *contra proferentem* principle and the *in dubio pro competitioe* principle.
- UEFA's reaction in the present matter differs drastically from UEFA's reaction in several other cases where teams were not in a position to field 13 free-COVID-19 players including at least one goalkeeper. In these other cases, UEFA indeed accepted to reschedule the concerned match to a much later than 24 hours after the initial matchday.
- Finally, the Appellant submits that - contrary to what was adduced in the Appealed Decision - the Match could have been rescheduled with no detrimental effect on the final ranking of the 2020/2021 UEFA Nations League competition since neither the Swiss nor the Ukrainian team will play any play-off's or the finals. Mr Jaime Yarza, Director of FIFA Tournaments further confirmed that there would be no detrimental effect on the draw for the European Qualifiers for the 2022 FIFA World Cup either since according to FIFA rules, both teams would be part of Pot 2 in the next UEFA preliminary draw for the FIFA World Cup in 2022.
- In any case, the Appellant is not responsible for the Match not taking place, as it did not commit a fault nor was it negligent:
 - The Appellant's duty of care in the context of the COVID-19 pandemic is to be compliant with the Protocol as well as to take any additional measure that a prudent and diligent person would take. The evidence on file demonstrates that the Appellant fulfilled the requirements provided for in the Protocol.
 - UAF provided its utmost efforts to form and deliver an alternative team for the Match to take place on 18 November 2020 but the only other Ukrainian national team that had gathered during the international window was the Youth National

Team U-21, and by participating in the Match on 18 November, those players would have played twice in a period of 48 hours and the requirement of additional testing procedure prior to departure of the alternative team would not have been met.

- Finally, what caused the Match not to take place as scheduled was not UAF's actions and alleged lack of diligence but rather the Quarantine Decision which was adopted less than 8 hours before the Match.

B. The position of UEFA

73. In its Answer, UEFA sought the following relief:

“

- “1. To dismiss the Appeal and to confirm the Appealed Decision;*
- 2. To order the Ukraine Association of Football to pay an amount of CHF 50'000 as contribution to the costs and expenses incurred by UEFA”.*

74. UEFA's submissions, in essence, may be summarized as follows:

- It is up to UEFA to assess, on the spot and with the relevant information available at that time, whether or not there are viable rescheduling options. The decision not to reschedule after 18 November 2020 was taken in light of various factors:
 - (i) the fact that the last possible match day was 18 November 2020 as the last day of the respective International Match calendar window;
 - (ii) the conclusion of the UEFA Nations League with the November 2020 international Match calendar window had already long ago been requested by FIFA and the evidence provided by the Appellant re-confirms the clear and express request by FIFA that all results of the UEFA Nations League be delivered to FIFA immediately after the November 2020 window;
 - (iii) the President of UAF unreservedly approved the decision of the UEFA Executive Committee setting out the timeframe for the completion of the League phase of the UEFA Nations League;
 - (iv) rescheduling a match outside an international match calendar window is practically impossible; and
 - (v) the decision falls within the ambit of UEFA's discretion and margin of appreciation and shall not be interfered with as long as the decision is taken in good faith and lays within the range of rational constructions of the rule in question, which cannot reasonably be challenged.

- (vi) On 17 November 2020 and within the very short deadline UEFA had at its disposal, it was completely impossible for UEFA to know beforehand that the Match would not have any impact on the FIFA ranking.
- Like in several other UEFA regulations, the word “*responsible*” does not at all indicate that a *fault* would be the requirement to apply a rule. To the contrary, when a fault is required for the application of a specific UEFA rule, it is expressly so provided in the UEFA regulations concerned. The purpose of Rule 3 of the Circular is to enable UEFA to decide on the sporting consequences of the impossibility for a match to take place - no fault is required. Moreover, the practice of UEFA confirms that whenever UEFA applies Rule 3 of the Circular, fault is no requirement. In any case, UAF was highly negligent since despite the growing number of positive tests, it did not prepare any fall-back scenario.
 - UEFA must abide by its own rules and has no discretion to grant a special treatment or an exception to the Appellant in this matter.
 - UAF was not caught by surprise: the Quarantine Decision was handed over directly to the Appellant by the cantonal doctor as well as notified by email by the UEFA Administration. Besides, UAF had repeatedly confirmed that it was not in a position to field sufficient players and UEFA warned UAF that unless it would inform UEFA otherwise, UEFA would consider UAF’s position about UAF’s impossibility to field sufficient players as its final position.
 - Article 25.02 of the UEFA Nations League 2020/2021 Regulations is irrelevant since the Circular was enacted as a *lex specialis* to the otherwise applicable rules on rescheduling matches. In addition, the further cases on the Circular are irrelevant since they are not even remotely comparable to the present matter. Finally, the *contra proferentem* principle applies only where the terms of rule are unclear and ambiguous, which is however not the case in the present matter.

C. The position of SFA

75. In its Answer, SFA sought the following relief:

“to reject the UAF’s Appeal and to confirm the decision of the UEFA Appeals Body”.

76. SFA’s submissions, in essence, may be summarized as follows:

- SFA has standing to be involved in the present appeal proceedings since a non-confirmation of the present decision could affect SFA’s sporting and financial position and violate the principle of Fair Play and of equal treatment.
- UEFA carefully examined in good faith the options of “*viable*” rescheduling dates for the match that was scheduled on 17 November 2020 and correctly concluded that the date of 18 November 2020 was the only “*viable*” date available in this regard. “*Viable*” as

provided for in the Circular must be interpreted literally and Article 25.02 of the UEFA Nations League 2020/2021 is irrelevant since the Circular is a *lex specialis*.

- Since the introduction of the Nations League it had been agreed among the member associations that the group stage would end with the November International Football Window, *i.e.*, 18 November 2020, and that space should be left for friendlies at the discretion of the member associations in order to have equal chances to prepare for the EURO and the FIFA World Cup qualifiers. In addition, any information that was not available to UEFA at the time of the rescheduling of the match, *i.e.* on 17 November 2020, is irrelevant. UEFA therefore correctly determined 18 November 2020 as the only available viable rescheduling option in the sense of the Circular.
- For the sake of completeness, SFA submits that the rescheduling options proposed by the Appellant - besides being obsolete because occurring after the deadline of 18 November 2020 - are incompatible with the RSTP or with the legal principle of equal treatment of UEFA members.
- UAF was responsible for the Match not taking place neither on 17 nor on 18 November 2020 since it did not have 13 COVID-19 free players including one goalkeeper available to play the Match while the other team, *i.e.*, SFA, was ready and eager to play. As a result, the consequence of declaring the Match as forfeited by UAF was correctly applied by the UEFA Appeals Body, in accordance with the Circular.
- The recent cases of rescheduling of matches by the UEFA Administration are not relevant since they concern different competitions, different rules and different circumstances. Such past cases however demonstrate that when confronted with teams under quarantine, UEFA always declared the relevant match as forfeited by the quarantined team, which corresponds to what happened in the present matter.
- Finally, the number of people who tested positive for COVID-19 within the UAF Delegation during the previous weeks is proof enough to corroborate that UAF acted negligently when dealing with their COVID-19 issues.

VI. JURISDICTION

77. The jurisdiction of the CAS in the present matter arises from Article 47 of the CAS Code, which states:

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

78. In addition, Article 62 of the UEFA Statutes provides as follows:

“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”.

79. It is clear and undisputed that the Appealed Decision qualifies as a *“decision taken by a UEFA organ”*, and that, as a result, it can be appealed against before CAS. In addition, the Panel notes that the Parties do not dispute the jurisdiction of the CAS in the present matter, and even confirmed it by signing the Order of Procedure, and the Parties fully participated in the proceedings without any objection.
80. Accordingly, the Panel finds that it has jurisdiction.

VII. ADMISSIBILITY

81. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

82. Article 62 of the UEFA Statutes provides that the *“[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”*.
83. The Panel notes that the Appealed Decision was notified to the Appellant on 30 November 2020 and that the Statement of Appeal was filed with the CAS on 9 December 2020, so that the appeal was filed within the prescribed time limit. The Panel further notes that the other requirements provided for under Article R48 of the CAS Code and Article 62 of the UEFA Statutes are also fulfilled.
84. Accordingly, the Panel finds that the appeal is admissible.

VIII. APPLICABLE LAW

85. 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 absence of such 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”.

86. In addition, Article 63 of the UEFA Statutes provides that *“proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”*.

87. The Panel is satisfied that primarily the various regulations of UEFA apply to the merits of this appeal, in particular the Protocol and the Circular, and that on a subsidiary basis Swiss law will apply.

IX. MERITS

88. In light of the Parties' submissions, the Panel identified the following issues to be decided upon:

- Was 18 November 2020 the only viable rescheduling option within the meaning of Rule 2 of the Circular?
- Is the Appellant responsible for the Match not taking place within the meaning of Rule 3 of the Circular?

89. However, as a preliminary matter, the Panel considers it appropriate to briefly state the legal framework applicable to the present dispute.

A. The legal framework: the Protocol and the Circular

90. The Panel notes that the legal framework in the present matter consists essentially of the Protocol and the Circular.

91. The Panel first notes that the Protocol sets out a detailed regime as to how clubs and national teams must organize themselves and which testing and hygienic requirements they must undergo in order for them to continue to participate in UEFA competitions in the context of the COVID-19 pandemic.

92. The Protocol however expressly acknowledges that decisions from local authorities in particular national or regional health authorities will always overrule the provisions contained in the Protocol. Under Section 2 entitled "*Objectives*", the Protocol provides that "[it] is subject to legal provisions and other orders issued by the competent local authorities in the various countries". Hence, the Panel notes that the aim of the Protocol is to ensure that UEFA competitions can go ahead despite the context of the COVID-19 pandemic by imposing a series of medical, sanitary and hygiene measures aiming at reducing the risks as far as possible.

93. The Panel also notes that the Appellant does not dispute the Quarantine Decision as such. In fact, the Appellant acknowledges "*the need to abide by the decisions of local health authorities when participating in international competitions during this worldwide pandemic, which can affect the competition*".

94. The Circular implements the rules of the Protocol for the National Teams Competitions. Like the Protocol, the Circular provides that "*the implementation of the [Protocol] (...) which includes a rigorous testing programme, is aimed at ensuring that matches can go ahead as planned*".

95. The Circular addresses the situation where mandatory COVID-19 tests, as provided for in the Protocol, would result in groups of players and entire teams being quarantined, and therefore

“sets out the consequences of national associations being unable to field a team for a specific match, following a decision of the relevant competent national/local authority”.

96. The Circular essentially provides for three rules:

“[Rule 1:] Should a group of players of a team be placed into mandatory quarantine or self-isolation following a decision of a competent national/local authority, the match will go ahead as scheduled as long as the team has at least 13 players available (including at least one goalkeeper), irrespective of any other provision of the respective competition’s regulations (including the deadline for the submission of the list of players), provided that all players are eligible to represent the Under-21 or the relevant national team in accordance with the applicable FIFA regulations and have been tested negative as required by the UEFA Protocol.

[Rule 2:] If a national association is not in a position to field a team with the above-mentioned minimum number of players (i.e. 13 including at least one goalkeeper), the match will, if possible (i.e. subject to viable rescheduling options being available), be rescheduled at a date to be fixed by the UEFA administration, which shall also have the power to assign the rescheduled match to a venue which may be in a neutral country (within the territory of a UEFA member association) if deemed appropriate; in any event, the home team will remain responsible for the organisation of the match and all related costs.

[Rule 3:] If the match cannot be rescheduled, the UEFA Control, Ethics and Disciplinary Body (CEDB) will take a decision on the matter. The national association that is responsible for the match not taking place or not being played in full will be declared to have forfeited the match by the UEFA CEDB unless the latter comes to the conclusion that both or none of the teams is/are responsible for the match not taking place or not being played in full, meaning the match cannot be declared as forfeited. If the match cannot be declared as forfeited, the outcome of the match will be decided by drawing of lots (i.e. win 1-0, loss 0-1 or draw 0-0) carried out by the UEFA administration”.

97. The Panel proceeds with the analysis of the merits of the present dispute in light of the above-mentioned legal framework. In doing so, the Panel will focus its analysis on the meaning of Rules 2 and 3 of the Circular, since the Parties agree that, as a result of the Quarantine Decision on the day of the Match, the UAF Delegation was not in a position to field 13 players including at least one goalkeeper for the Match, whereas SFA had a representative team available.

B. Was 18 November 2020 the only viable rescheduling option within the meaning of Rule 2 of the Circular?

98. As a preliminary remark, the Panel notes that according to Article R57 of the CAS Code, the 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”.*

99. In reviewing the Appealed Decision, the Panel shall apply the standard of comfortable satisfaction in line with Article 24 (2) of the UEFA Disciplinary Regulations, which provision provides expressly that, *“[t]he standard of proof to be applied in UEFA disciplinary proceedings is the comfortable satisfaction of the competent disciplinary body”.* Therefore, the Panel determines that

comfortable satisfaction is the applicable standard of proof for all conduct under review in the present appeal.

1. *The obligation to reschedule a match subject to “viable rescheduling options”*

100. The Panel now turns to the analysis of Rule 2 of the Circular, which provides as follows:

“If a national association is not in a position to field a team with the above-mentioned minimum number of players (i.e. 13 including at least one goalkeeper), the match will, if possible (i.e. subject to viable rescheduling options being available), be rescheduled at a date to be fixed by the UEFA administration, which shall also have the power to assign the rescheduled match to a venue which may be in a neutral country (within the territory of a UEFA member association) if deemed appropriate; in any event, the home team will remain responsible for the organisation of the match and all related costs” (emphasis added).

101. The Parties disagree as to the meaning of the phrase “*viable rescheduling options*” and its application as provided under Rule 2 of the Circular. The Appellant contends that the existence or not of a viable rescheduling option shall be established taking into account the interests of all stakeholders, *i.e.*, UEFA, both teams and possibly FIFA. UEFA and SFA submit to the contrary that the existence or not of viable rescheduling options is an exclusive prerogative of UEFA which shall decide at its discretion. Moreover, the Appellant contends that in the present matter, UEFA should have considered other possible rescheduling options in addition to 18 November 2020, including after the end of the international match calendar window, specifying three international match calendar windows in 2021. UEFA and SFA submit to the contrary that the decision to reschedule the Match had to be taken based on the elements known at the time of the Quarantine Decision, *i.e.*, on 17 November 2020, and that any *ex post* re-assessment is misconceived and irrelevant.
102. The Panel first notes that by providing that “*the match will (...) be rescheduled*” (emphasis added), Rule 2 clearly sets an obligation for UEFA to reschedule the match in case there is at least one viable rescheduling option. Therefore, UEFA would in any event not be allowed to refuse to reschedule the match if there is at least one viable rescheduling option.
103. The Panel now turns to the meaning of the phrase “*viable rescheduling options*”.
104. First, the Panel notes that according to a literal interpretation, a “*viable*” option means an option that is “*able to work as intended or able to succeed*” (Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/viable> (accessed 2 March 2021)). It is not simply that the option is possible, but it is at a slightly higher level of requirement; the option has to be “*able to work as intended or able to succeed*”, not merely be possible. This is a fine, but important, distinction that goes to the heart of the argument in this case. The UEFA-drafted phrase was directed at outcomes that would work within the context of the competition and the relevant rules, not simply that UEFA had to accept any option that was possible outside such context.

105. Secondly, the Parties disagree as to the issue of for whom the rescheduling option needs to work successfully. The Appellant submits that the rescheduling option needs to be fixed after due consideration of the interests of all stakeholders, *i.e.*, UEFA, both teams and possibly FIFA. UEFA argues to the contrary that the only interest at stake is that of UEFA as event organizer. SFA contends that the rescheduling option must be viable for all parties involved (UEFA, SFA and UAF) as well as for the competition as such.
106. The Panel first notes that UEFA, as the event organizer, is primarily competent to decide whether or not viable rescheduling options exist in a specific case. Moreover, when deciding on the existence or not of a viable rescheduling option in a specific case, UEFA benefits of a wide margin of discretion. Indeed, Rule 2 of the Circular expressly provides that UEFA shall fix the date as well as the venue of the rescheduled match. The Panel notes that the applicable provisions do not foresee that UEFA is required to consult other stakeholders prior to taking any decision as to the existence of a viable rescheduling option. Nevertheless, the Panel notes that UEFA nonetheless contacted UAF to discuss whether 18 November 2020 would be a viable rescheduling option. The Panel considers it relevant that UEFA undertook this initiative as it shows that it made efforts to try and find a viable rescheduling option so as to avoid having to take a decision on the basis of Rule 3 of the Circular, even though its attempt finally turned out to be unsuccessful.
107. Thirdly, the Parties disagree as to whether Rule 2 of the Circular must be interpreted in line with the UEFA Nations League Regulations 2020/2021, which provides, under Article 25.02, that the “*rescheduling may entail exceptions to the regular match scheduling patterns*”. Respondents argue that the Circular shall be considered as *lex specialis* to the UEFA Nations League Regulations 2020/2021, which is therefore irrelevant. According to the Appellant, such provision shows the intention of UEFA to give as many options as possible for the rescheduling of a match in the UEFA Nations League. In addition, according to the Appellant, the Circular is not *lex specialis* to Article 25.02 of the UEFA Nations League Regulations 2020/2021, but a rule that must be read in conjunction with the Circular and complete potential gaps or loopholes left by the Circular.
108. In the Panel’s view, the rules provided for in the Circular, which apply to the League phase of the UEFA Nations League 2020/2021, shall be considered as *lex specialis* to Article 25.02 of the UEFA Nations League Regulations 2020/2021. As a result, the Panel finds that Article 25.02 of the UEFA Nations League Regulations 2020/2021 is not applicable. However, the Panel agrees with the Appellant that the UEFA Nations League Regulations 2020/2021 may assist the Panel in its interpretation of the Circular, in particular in view of completing a gap or loophole, if any, left by the Circular (which by its terms was extraordinary in dealing with the extraordinary times caused by the pandemic).
109. Finally, the Panel notes that the assessment of the existence of a viable rescheduling option must be made on the basis of criteria and factors known to UEFA at the time it is requested to take a decision. Whether in a specific case, UEFA may postpone its decision to a few days depends on the circumstances of each case.

2. *Application to the present case*

110. The Appellant contends that the Match could have been, and still can be rescheduled, since the Match would have no detrimental effect on the final ranking of the 2020/2021 UEFA Nations League competition as well as on the draw for the European Qualifiers for the 2022 FIFA World Cup on 7 December 2020. The Appellant also contends that UEFA's approach in the present case differs drastically to the one it has adopted so far in other cases (discussed below).
111. The Respondents submit to the contrary that none of the cases referred to by the Appellant are comparable to the present case. In addition, the Respondents contend that the competition rules provided clearly that the Group phase of the UEFA Nations League had to be concluded by the end of November 2020. UEFA had a duty to take this legal framework into due consideration when assessing the existence of viable rescheduling options on 17 November 2020. Any other *ex post* arguments are irrelevant.
112. Having closely considered the evidence on file, the Panel notes that an essential interest of UEFA, as an event organizer, is that the calendar of the UEFA Nations League 2020/2021 is fully respected. According to the competition calendar, the group phase of the UEFA Nations League 2020/2021 had to be completed by 22 November 2020, with the last official day of the last window being on 18 November 2020. This deadline was set in order to comply with the time limit fixed by FIFA for the release of all final match results in view of the preparation of the preliminary draw for the FIFA World Cup 2022 on 7 December 2020.
113. Such calendar was not a surprise to the UEFA member associations, in particular to the Appellant. Indeed, the evidence on file shows that it was fixed following a consultation with the UEFA member associations and their expressed wish to replace some of the international friendly matches played between September and November 2020 with matches involving national teams. Furthermore, the time limits of the group phase of the UEFA Nations League 2020/2021 were expressly reiterated to the UEFA Executive Committee (of which the President of UAF is a member) at its meeting on 29 August 2020, upon discussion and approval of the Circular and again during a videoconference presentation for all General Secretaries of national member associations on 28 October 2020.
114. Also, on 5 November 2020, the UEFA Administration sent a letter to the General Secretaries of all UEFA member associations, including UAF, stating *inter alia* that "[t]he November windows are absolutely critical as we must complete such competitions with no calendar buffer available, despite the increasingly challenging epidemiological situation in Europe".
115. The Panel considers UEFA's communication dated 5 November 2020 very important as it was issued before the situation with the UAF Delegation arose and therefore, in the Panel's view, clearly and objectively sets out the understanding on UEFA's side that there were no 'viable rescheduling options' available after 18 November 2020.
116. The Panel therefore finds that it was clear for the Appellant and other member associations that the group phase of the UEFA Nations League 2020/2021 had to be completed by 18 November 2020, being the last day of the international match calendar window. Hence, any

viable rescheduling option had to be considered taking into account the said calendar and the absence of any ‘calendar buffer’. Allowing for a rescheduling of the Match after the end of such calendar would have been inconsistent to what was communicated to all UEFA member associations on 5 November 2020.

117. The fact that *in casu* the Match had no detrimental effect on the final ranking of the 2020/2021 UEFA Nations League competition as well as on the preliminary draw for the 2022 FIFA World Cup on 7 December 2020 is, in the Panel’s view, irrelevant. Indeed, as already stated, UEFA had made clear that no matches of the group phase of the UEFA National League 2020/2021 would be played after 18 November 2020. No viable alternative was available that would allow for the Match to take place before 7 December 2020, the date the preliminary draw for the FIFA World Cup 2022 was set to take place.
118. The Appellant further referred to three cases, in which UEFA allegedly adopted a more flexible approach than in the present matter:

- a. The 2020/2021 UEFA Champions League first qualifying round match between KÍ Klaksvík and ŠK Slovan Bratislava which was scheduled to take place on 19 August 2020 was, as a result of a COVID-19 positive test result within the team, postponed for 48 hours in order to allow for the Bratislava delegation to bring a back-up team over for the rescheduled match. Similarly, the UEFA Europa League match between Villarreal CF and Qarabag FK, which was supposed to take place on 10 December 2020, was, following a COVID-19 outbreak within the Qarabag FC team, postponed and rescheduled at a later date.

The Panel however finds that neither of these cases are comparable to the present matter since they do not concern a national teams’ competition but rather a club competition, which leaves to the clubs more flexibility to organize themselves for rescheduled match dates because they do not need to call up players from all over the world and are not bound by FIFA’s international match calendar as per Annex 1 to the FIFA RSTP. Moreover, the Panel notes that the Circular was not applicable, as those cases did not concern national teams’ competitions.

- b. The third case referred to by the Appellant is the UEFA European Under-21 Championship 2019-2021 qualifying phase match between Iceland U-21 and Italy U-21 (the “U-21 Italy” case). This match was originally scheduled to be played on 9 October 2020 but was, following a COVID-19 outbreak within the Italy U-21’s delegation, rescheduled for 12 November 2020.

The Panel notes that the U-21 Italy case concerns a national teams’ competition like in the present matter. However, the context of the case differs from the present one since the match was initially scheduled to be played early October 2020, and as a result it was still possible for UEFA to viably reschedule the match to a later date in November 2020. The Panel therefore finds that this case was not of assistance to UAF, or the Panel, with respect to the present matter.

119. The Panel now turns to the case referred to by UEFA, the 2020/21 UEFA Nations League group stage match between the Norwegian and Romanian national teams in Bucharest, scheduled to take place on 15 November 2020 (the “Norwegian case”). In this case, the Norwegian health authorities decided as a result of a COVID-19 outbreak within the Norwegian team, to quarantine the entire Norwegian delegation before its departure to Bucharest for the match. The UEFA Appeals Body decided that *“no further dates exist in the FIFA International Football Window between the scheduled date of the [m]atch and the date of the draw for the European Qualifiers for the 2022 FIFA World Cup, i.e. 7 December 2020, meaning that it is not possible for the UEFA administration to reschedule the [m]atch given the framework and parameters of the FIFA International Football Window”*. In the Panel’s view, the Norwegian case is relevant as it confirms the approach followed by the UEFA Appeals Body in the present case, namely that any viable rescheduling option had to be considered taking into account the said calendar and the absence of any ‘calendar buffer’.
120. In light of the above considerations, the Panel finds that 18 November 2020 was the *“only viable rescheduling option”* for the Match that was initially planned to take place on 17 November 2020 within the meaning of Rule 2 of the Circular.

C. Is the Appellant responsible for the Match not taking place within the meaning of Rule 3 of Circular No. 66/2020?

121. The Panel now turns to Rule 3 of the Circular, which provides as follows:

“If the match cannot be rescheduled, the UEFA Control, Ethics and Disciplinary Body (CEDB) will take a decision on the matter. The national association that is responsible for the match not taking place or not being played in full will be declared to have forfeited the match by the UEFA CEDB unless the latter comes to the conclusion that both or none of the teams is/ are responsible for the match not taking place or not being played in full, meaning the match cannot be declared as forfeited. If the match cannot be declared as forfeited, the outcome of the match will be decided by drawing of lots (i.e. win 1-0, loss 0-1 or draw 0-0) carried out by the UEFA administration”.

122. The Parties disagree as to the meaning of *“responsible”* in the above-mentioned rule. The Appellant submits that it is not responsible for the Match not taking place as initially scheduled since it was compliant with the Protocol and acted otherwise in a prudent and diligent manner. The Respondents submit that the term *“responsible”* within the meaning of Rule 3 of the Circular does not refer to the concept of fault but only aims at determining the sporting consequences of a national association being unable to field a team for a specific match following a decision of the relevant national or local authorities.
123. The Panel agrees with the position of the Respondents. The objective and scope of the Circular is detailed in an unambiguous manner in the introductory paragraphs of the Circular which state as follows:

“[P]ositive Covid-19 cases from tests conducted before the matches may result in groups of players or entire teams being placed into quarantine, which led the UEFA Executive Committee to take the following decision [i.e., the Circular] on the consequences of national associations being unable to field a team for a specific match following a decision of the relevant competent national/local authority”.

124. The wording of the Circular shows that its purpose is to examine the sporting consequences of the decision of health authorities to quarantine a group of players or entire teams without assessing whether one of the teams or both of them acted negligently. In the Panel’s view, there is no fault at stake in the Circular. As a result, whether or not the Appellant was compliant with the Protocol and whether or not it acted in a prudent or diligent manner was not of primary relevance for the UEFA Appeals Body - and now the Panel - in its determination on the liability for the Match not taking place.
125. More specifically, Rule 3 of the Circular clearly identifies three hypotheses in which a match cannot take place or cannot be played in full and draws the sporting consequences in each of these scenarios.
126. The first hypothesis is where both national associations are not able to field 13 players including at least one goalkeeper; this may be the case for instance if both teams are placed into quarantine by the national/local health authorities. This hypothesis does not apply because it is undisputed that SFA was able to field 13 players including at least one goalkeeper on 17 and 18 November 2020.
127. The second hypothesis is the one where the match cannot take place despite none of the national associations being prevented from fielding 13 players including one goalkeeper; this would be the case for instance where the national/local authorities prohibit the match to take place unrelated to specific circumstances pertaining to either of the two teams. This hypothesis does not apply because the Appellant was not able to field 13 players including one goalkeeper due to the Quarantine Decision.
128. The third and last hypothesis is the one where one of the national associations, as a result of a quarantine decision for example, is not able to field 13 players including at least one goalkeeper for the match but the other national association is. In this scenario, Rule 3 of the Circular provides that the team that cannot field the required number of players will be declared to have forfeited the match. The present case falls under the third hypothesis: the Match could not take place because the Appellant was not in a position to field the required number of players for the Match on either 17 or 18 November 2020, but SFA was.
129. The Panel further notes that similarly to the present case, in the Norwegian case examined above, the UEFA Appeals Body decided that the match did not take place as scheduled since the Norwegian team was placed under quarantine by the Norwegian health authorities, and that, as a result, the Norwegian football federation was responsible for the match not taking place within the meaning of Rule 3 of the Circular. The Panel finds that the situation in the Norwegian case is strikingly similar to the Appealed Decision and underpins the Panel’s conclusions in the matter at hand.

130. Finally, for the sake of completeness and should it be of any reassurance to UAF, the Panel finds that there is no concrete evidence on file establishing that the Appellant did not act in compliance with the Protocol or that it was otherwise negligent or imprudent in trying to prevent players from testing positive for COVID-19. There was simply no way for anyone to predict or foresee the actions of the local Swiss authorities in taking the action they did with the Quarantine Decision. Any national representative team could have faced a situation comparable to the one of UAF, as is also demonstrated by the Norwegian case. Accordingly, rather than being at fault, the Appellant is yet another unfortunate victim of the COVID-19 pandemic. This however does not take away the fact that UAF was not able to field a representative team while SFA was and that the Circular dictates that in such situation, without any viable rescheduling options being available, UAF is to be considered responsible for the Match not taking place.
131. The Panel finds that the rules set forth by means of the Circular are reasonable and appropriate, that the UEFA Appeals Body correctly applied the Circular by holding that the Appellant is responsible for the Match not taking place and that, in the absence of viable rescheduling options being available, as a result, the Match is to be considered forfeited by the Appellant.
132. The Panel further finds that the Appealed Decision does not violate any public policy rule, statutory provision or universally applicable principle such as objectivity, transparency, non-discrimination, or fairness, and that as a result, it shall be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces that:

1. The Appeal filed on 9 December 2020 by the Ukrainian Association of Football against the *Union des Associations Européennes de Football* and the Swiss Football Association with respect to the decision rendered by the UEFA Appeals Body on 25 November 2020, is dismissed.
2. The decision rendered by the UEFA Appeals Body rendered on 25 November 2020 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.