



Arbitration CAS 2012/A/2821 Bursaspor Kulübü Derneği v. Union des Associations Européennes de Football (UEFA), award of 10 July 2012 (operative part of 22 June 2012)

Panel: Mr Manfred Nan (The Netherlands), President; Prof. Ulrich Haas (Germany); Mr Stuart McInnes (United Kingdom)

Football

Disciplinary sanction due to violation of the UEFA Club Licensing and Financial Fair Play Regulations

Mistakes in the interpretation of the events and/or the law by the first-instance body and CAS' power of review

Aim of the UEFA CL&FFP Regulations

Monitoring process and requirements

Notion of "payables"

Disclosure obligations for clubs under the UEFA CL&FFP Regulations

Assessment of the sanctions under the UEFA CL&FFP Regulations

1. Pursuant to Article R57 CAS Code, which grants a CAS panel power to review the facts and the law, and CAS jurisprudence, any prejudice suffered by a party before the first-instance body has been cured by virtue of this appeal, in which the party has been able to present its case afresh. Therefore, the CAS panel does not need to examine whether the alleged mistakes and errors in the interpretation of the events and/or the law have been established.
2. The UEFA CL&FFP Regulations have been enacted by the UEFA Executive Committee on the basis of Article 50 par. 1 bis of the UEFA Statutes, which empowers the UEFA Executive Committee to draw up regulations governing the conditions of participation in and the staging of UEFA competitions. Compliance with these rules is a condition of entry into club competitions such as the UEFA Champions League and UEFA Europa League. The UEFA CL&FFP Regulations – in particular – aim at promoting fair play in UEFA club competitions by improving the economic and financial capability of the clubs, increasing their transparency and credibility and by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually.
3. The UEFA CL&FFP Regulations set up a monitoring process for all licensees that have qualified for a UEFA club competition. They set up a Club Financial Control Panel which *inter alia* governs the monitoring process and describe the monitoring requirements which must be observed by all licensees that have qualified for a UEFA club competitions. These monitoring requirements are the break-even requirement and the other monitoring requirements. Among the other monitoring requirements, the licensee must prove that it has no overdue payables towards other clubs as a result of transfer activities undertaken up to 30 June.

4. Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions. The absence or existence of overdue payables towards employees and social/tax authorities must be confirmed by the licensee within the deadline and in the form communicated by the UEFA administration.
5. The disclosure obligations are essential for UEFA to assess the financial situation of the clubs that are participating in its competitions and for this reason, the disclosure must be correct and accurate. The aim of the duty of disclosure is to ensure that the clubs participating in a UEFA competition *inter alia* have adequate level of management and organization, improve their economic and financial capability and promote financial fair play in UEFA club competitions. All transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court must be disclosed. Such obligation is respected even if the information provided is incomplete, as long as it is not misleading.
6. In assessing the sanctions for breaching Article 65 UEFA CL&FFP Regulations, reference must be made to Article 72 thereof, which, in order to ensure the protection of clubs as creditors, states that *“any breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations”*. However, although, according to Article 17 UEFA Disciplinary Regulations, a deciding body of UEFA has a wide discretion when it comes to sanctioning, and account must be taken of any aggravating or mitigating circumstances, as a result of Article 17.2 UEFA Disciplinary Regulations read *a contrario*, the UEFA CL&FFP Regulations do not provide for a standard sanction of a non-suspended exclusion for one season as a minimum to be imposed regarding a violation of Article 65. Therefore, if the circumstances of the case so warrant, the sanction can be suspended for a probationary period.

I. THE PARTIES

1. Bursaspor Kulübü Derneği (hereinafter referred to as the “Appellant” or “Bursaspor”) is a Turkish professional football club, currently playing in the Turkish 1st division “*Spor Toto Super Lig*”, and a member of the Turkish Football Federation (hereinafter referred to as the “TFF”). The latter is a member of the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) and the Union des Associations Européennes de Football.
2. The Union des Associations Européennes de Football (hereinafter referred to as the “Respondent” or “UEFA”) is the Confederation in charge of football in Europe, working with and acting on behalf of Europe's national football associations.

II. THE FACTS

3. This appeal was filed by Bursaspor against the decision rendered by the UEFA Appeals Body on 30 May 2012 (hereinafter referred to as the “UEFA Appeal Decision”). The grounds of the Appeal Decision were notified to the Parties on 8 June 2012.
4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the Parties’ submissions and the evidence adduced during the hearing. Additional factual background may also be mentioned in the legal considerations of the present award. In this award, the Panel only refers to the submissions and evidence it considers necessary to explain its reasoning.

II.1 The contractual relationship between the Appellant and Portsmouth FC

5. On 31 July 2007, the Appellant entered into an agreement with the English club Portsmouth FC (hereinafter referred to as “Portsmouth”) for the transfer of the player C. (hereinafter referred to as the “Player”) from Portsmouth to the Appellant (hereinafter referred to as the “Transfer Agreement”).
6. In this Transfer Agreement, Portsmouth agreed to transfer the Player to the Appellant in exchange for a fee (hereinafter referred to as the “Transfer Fee”) of EUR 500’000 to be paid in four instalments:
 - € 100.000 on 31st August 2007;
 - € 100.000 on 31st October 2007;
 - € 150.000 on 30th April 2008;
 - € 150.000 on 31th August 2008.

All the above payments to be paid within 14 days of the due dates”.
7. On 21 August 2007, Portsmouth received from the Appellant the amount of EUR 100’000, and on 31 October 2007 the amount of EUR 100’000, corresponding to the first two agreed instalments, in total EUR 200’000.
8. In 2008 Portsmouth and/or the English Football Association (hereinafter referred to as “FA”) on behalf of Portsmouth, filed a claim before FIFA alleging that the Appellant had failed to pay part of the transfer compensation. By letter dated 13 June 2008 the FA submitted to FIFA that “*as of today’s date 350,000 GBP remains unpaid with a further 150,000 GBP due on 31st August*”, followed by a letter dated 21 April 2009 in which the FA stated that “*The Turkish club have made one payment of 100’000 Euro but our club are still owed payments totalling 400’000 Euro: 100’000 Euro due on 31st October 2007, 150’000 Euro due on 30th April*

2008, 150'000 Euro due on 31st August 2008". On 25 August 2009 FIFA informed the TFF regarding the claim of Portsmouth, amounting to a total of EUR 400'000.

9. By letter dated 5 May 2010, FIFA informed the parties that FIFA's competent decision making bodies could not deal with the case because Portsmouth appeared to be in administration.
10. By letter dated 31 January 2011, FIFA informed the parties that the case had been submitted to the Players' Status Committee for consideration and a formal decision as Portsmouth was no longer in administration.
11. On 25 March 2011, the Appellant applied for a license to the TFF, as the delegated UEFA Licensor, to participate in the UEFA 2011/2012 season.
12. Article 49 of the UEFA Club Licensing and Financial Fair Play Regulations, edition 2010 (hereinafter referred to as "UEFA CL&FFP Regulations") requires clubs to prepare and submit to the licensor a transfer payables table disclosing all transfer activities, including loans, which have occurred prior to the previous 31 December.
13. In the Transfer Payables Form, the Appellant disclosed there was a pending dispute with Portsmouth at FIFA regarding an overdue payment of EUR 400'000.
14. On 14 April 2011, the Appellant requested information from FIFA regarding the status of the proceedings, in order to present it to the TFF for licensing purposes. By letter dated 18 April 2011 FIFA replied that *"no formal decision has been passed until this date (...)"*.
15. On 1 June 2011, Articles 53 to 56 and 64 to 68 of the UEFA CL&FFP Regulations came into force in which the Respondent introduced a monitoring process.
16. On 9 June 2011, the TFF granted the Appellant the license for the 2011/2012 season and the Appellant took part in the UEFA Europa League club competition for the 2011-2012 season, receiving EUR 180'000 from UEFA as participation fees plus EUR 70'000 from certain event rights.
17. On 15 July 2011, the TFF submitted the payables information from the Appellant on its monitoring process to the UEFA Club Financial Control Panel (hereinafter referred to as "UEFA CFCP").
18. By letter dated 23 September 2011, the UEFA CFCP confirmed the identification of the overdue payment as on 30 June 2011, characterized it legally as a breach of indicator 4 as defined in Article 62(3) of the UEFA CL&FFP Regulations and requested the Appellant – inter alia – to provide within the deadline of 17 October 2011 *"an update of the overdue payable tables in order to prove that as at 30 September 2011 the Appellant has no overdue payables towards other football clubs (...)"* and also *"to provide clear explanations/arguments concerning the grounds of the dispute in order to demonstrate to the reasonable satisfaction of the CFC Panel that it is a founded dispute"*.

19. By letter dated 14 October 2011, the Appellant informed the UEFA CFCP that it would not be in *“compliance with the regulations and the law or equity to apply a sanction for not making a payment with an ongoing case at FIFA which still awaiting for a formal decision (...)”* and added that *“if FIFA Dispute Resolution Chamber give any decision about the subject, we are ready to fulfil requirements of the decision immediately”*.
20. On 23 November 2011, the Appellant paid to Portsmouth the amount of EUR 350’979,45 corresponding to the outstanding instalments plus interest. As a result of the settlement between the Appellant and Portsmouth, FIFA closed the case by letter dated 30 November 2011.
21. On 25 November 2011, the UEFA CFCP issued its report in relation to the licence granted by the TFF to the Appellant (hereinafter the “CFCP Report”).
22. The CFCP Report found that the Appellant had failed to meet a number of criteria laid down in the UEFA CL&FFP Regulations.
23. As a result, the CFCP and the UEFA Control and Disciplinary Body opened disciplinary proceedings, which were notified to the Appellant by letters dated 6 and 8 December 2011.

II.2 The UEFA Control and Disciplinary Body Decision

24. On 24 February 2012, the UEFA Control and Disciplinary Body (hereinafter referred to as the “UEFA CDB”) issued its decision, (hereinafter referred to as the “UEFA Disciplinary Decision”). It found the Appellant guilty of violating the UEFA CL&FFP Regulations and issued the following decision:
 - a. The Appellant was fined EUR 200’000.
 - b. The Appellant was excluded from one UEFA club competition for which it qualifies in the next 4 seasons, which exclusion was suspended for a probationary period of 3 years.
 - c. The UEFA Disciplinary Decision was based on the following grounds:
 - i. The Appellant had failed to meet the requirements set out in Article 65 UEFA CL&FFP Regulations because as of 30 June 2011 it had an overdue payable in favour of Portsmouth as a result of a transfer undertaken up to 30 June 2011.
 - ii. The Appellant had failed to meet the requirements set out in Article 49 UEFA CL&FFP Regulations because it did not mention the overdue payment in favour of Portsmouth in its licensing process.
 - iii. The Appellant *“has not complied with an essential obligation, which is to mention all overdue payables within the licensing process. Taking into account the fact that the monitoring system*

is one of the pillars of the club licensing and financial fair play system and any breach in this regard constitutes a serious offence, with the absence of any previous record not a decisive factor, the CDB considers it to be proportionate and appropriate to fine the club EUR 200.000 (approximately the amount of what the club gained during the 2011/12 UEFA competition) and to exclude the club from the next UEFA club competition for which it qualifies in the next three seasons. It would be disproportionate for this exclusion not to be suspended for a probationary period, in comparison with other cases. The club is apparently strong in its finances; it paid the amount to Portsmouth FC as soon as it appeared that it had to face disciplinary proceedings. The CDB considers that it must give Bursaspor a chance”.

II.3 The UEFA Appeals Body Decision

25. On 28 February 2012 the Respondent, through its disciplinary inspector, appealed against the UEFA Disciplinary Decision.
26. In its appeal, the Respondent argued that the facts and the offences committed by the Appellant were too serious for its whole exclusion from UEFA competitions to be suspended for a probationary period. The Respondent concluded that the UEFA Appeals Body should confirm the EUR 200'000 fine and should exclude the Appellant from one UEFA club competition for which it qualifies in the next four seasons.
27. On 2 April 2012, the Appellant submitted its reply to the appeal and lodged a cross-appeal on several grounds. The Appellant concluded that the UEFA Appeals Body should annul the sanctions imposed or subsidiary should scale down the sanctions imposed by the UEFA CDB.
28. On 30 May 2012, the UEFA Appeals Body rendered the following judgement (as relevant):
 - a. *“The appeal lodged by UEFA is partially admitted. Therefore, Bursaspor is excluded from one UEFA club competition for which it qualifies in the next three seasons.*
 - b. *Bursaspor is fined EUR 50.000, with payment of the fine suspended for a probationary period of three years.*
 - c. *The cross-appeal of Bursaspor is partially admitted as explained in the full written decision (...).”*
29. The Appeal Decision of the UEFA Appeals Body was based on the following grounds, which were notified to the Parties on 8 June 2012:
 - a. The UEFA CL&FFP Regulations (edition 2010) apply even if the dispute between Bursaspor and Portsmouth began in 2008.
 - b. Contrary to Articles 49, 65 and Annex VIII UEFA CL&FFP Regulations, Bursaspor had failed to provide the information required with regard to the debt relating to the payment due from the Transfer Agreement with Portsmouth.

- c. Bursaspor grossly violated the applicable regulations and undermined the whole licensing system by creating the false impression that it had no overdue payables on 31 March 2011, despite the fact that there has never been any question of a debt of less than EUR 300'000.
- d. The exclusion of Bursaspor from UEFA competitions should not be suspended for a probationary period. *“The first instance body showed unjustified leniency. Not only did Bursaspor announce wrongly, during the monitoring procedure covering 30 June and 30 September 2011, that the amount owed to Portsmouth FC was a contested debt; in order to obtain its licence for 2011/12 it also failed to indicate the existence of this overdue payable, as defined in Annex VII, as at 31 March 2011. For lesser overdue payables and even though the club in question had also already been awarded a licence, the Appeals Body has already ruled in a decision upheld by CAS, that an immediate exclusion from a UEFA competition (with no suspension for a probationary period) should be imposed (see CAS 2012/A/2707 Gyori ETO v. UEFA, para. 158 et seq.). Moreover, the fact that a club pays its debt only after a disciplinary procedure has been opened against it cannot be considered a mitigating circumstance. In the present case, there is nothing in the case file or the arguments of the club to justify the Control and Disciplinary Body breaking with the precedent set, and by doing so it risks violating not only the principle of proportionality but also that of equality of treatment”.*
- e. A fine of EUR 200'000 *“does seem disproportionate and to a certain extent contrary to the objectives of the CL&FFP Regulations, which aim to improve the economic and financial capability of the clubs (Article 2(2)(a)). The fine will therefore be reduced from EUR 200.000 to EUR 50.000, with payment suspended for a probationary period of three years”.*

III. THE ARBITRAL PROCEEDINGS BEFORE THE CAS

30. On 8 June 2012, the Appellant filed its Statement of Appeal at the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) and requested the CAS Court Office to treat the matter expeditiously, stating that the operative part of the award ought to be rendered by 22 June 2012 so that both parties would know whether the Appellant was eligible to take part in the draw for the next UEFA club competition on 25 June 2012. The Appellant nominated Mr Ulrich Haas as arbitrator.
31. On 11 June 2012, the Respondent agreed with the Appellant’s request that the matter be treated in an expedited manner and nominated Mr. Stuart McInnes as arbitrator.
32. On 13 June 2012, the Parties were informed that the Panel appointed to decide the above-referenced case was constituted as follows:
 - Mr. Manfred Peter Nan, Attorney-at-law in Arnhem, Netherlands, as President.
 - Mr. Ulrich Haas, Professor in Zurich, Switzerland, appointed by the Appellant;
 - Mr. Stuart McInnes, Solicitor in London, England, appointed by the Respondent.

33. On 13 June 2012, the CAS Court Office informed the Parties that the Panel, pursuant to Article R57 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”), has decided to hold a hearing on 21 June 2012. The Parties were invited to state whether they intended to call any witness.
34. On 14 June 2012, the Appellant filed its Appeal Brief.
35. On 19 June 2012, the Respondent filed its Answer. The Respondent exhibited the UEFA file to its Answer.
36. On 19 June 2012, the Order of Procedure was sent to the Parties, which both signed it.
37. On 21 June 2012, the hearing was held at the CAS headquarters in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. William Sternheimer, Counsel to the CAS. During the hearing, the Appellant was represented by Counsel Mr. Andreas Zagklis and Mr. Christian Keidel. The Respondent was represented by Counsel Mr. Ivan Cherpillod and Mr. Jean-Samuel Leuba.
38. Also in attendance for the Appellant were:
 - Mr. Ibrahim Yaziki – President
 - Mr. Irfan Koc – Member of the Board
 - Mr. Ozturk Yazici – Alternate Board Member
 - Mr. Nihat Guman – Asst Prof. Dr. University of Istanbul
39. In attendance for the Respondent were also:
 - Mr. Veron Mosengo-Omba – Legal Counsel UEFA’s Disciplinary Services
 - Mr. Pdraig Smith – UEFA Manager Financial Analysis.
40. At the hearing, the Appellant supplemented a subsidiary request for relief by explicitly authorising the Panel to increase the amount of any fine which would be imposed and expressly submitted that it gained EUR 250’000 by playing in the UEFA Europa League 2011-2012 club competition.
41. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect to the manner in which the hearing had been conducted, in particular the principles of the right to be heard and to be treated equally in the arbitration proceedings.

IV. SUMMARY OF THE PARTIES' POSITIONS

42. The following summary reflects the claims of the Parties, but is only illustrative of their arguments and does not purport to include every contention put forward by them. The Panel carefully considered all submissions, even if no specific reference is made, in what follows, to each of them.

IV.1. The Appellant's position

a. Jurisdiction with regard to Article 49 UEFA CL&FFP Regulations

43. The Appellant argues that the Respondent had no jurisdiction over violations of Article 49 UEFA CL&FFP Regulations because according to Articles 1 – 52 UEFA CL&FFP Regulations, the Respondent has delegated to the TFF not only its right to operate the entire licensing process, which right includes the power to issue licences based on the assessment of the documents submitted, but also the right to sanction.

44. The Appellant submits that, “according to the CL&FFP, violations of the licensing regulations by licence applicants are sanctioned at national level and not by the Respondent. According to Article 72 CL&FFP, the Respondent kept the right to sanction the licensor for violating its obligation, e.g. for failure to sanction a licence applicant”. Therefore, “the conclusion of the Appeals Body in the Decision that the power to sanction the Appellant derived from Article 72 and 16 CL&FFP (...) is erroneous”. The Appellant adds that Articles 8 and 16 UEFA CL&FFP Regulations are *lex specialis* to Article 72 UEFA CL&FFP Regulations and that the jurisdiction of the UEFA CDB and Appeals Body to sanction a violation of Article 49 UEFA CL&FFP Regulations does not derive from Article 27.1 UEFA Disciplinary Regulations.

b. Ne bis in idem

45. The Appellant alleges that a parallel sanctioning power of the TFF (acting on behalf of the Respondent) and of the Respondent itself would violate the *ne bis in idem* principle and refers to CAS case law (CAS 2007/A/1396 & 1402).

c. No charge regarding Article 49 UEFA CL&FFP Regulations

46. The Appellant asserts that no charge was brought against it for a violation of Article 49 UEFA CL&FFP Regulations, and therefore the disciplinary bodies of the Respondent wrongly mixed the monitoring regulations with the licensing regulations.

d. No violation of Article 49 UEFA CL&FFP Regulations

47. The Appellant submits that the burden of proof of any violation lies with the Respondent and that the applicable standard of proof is the comfortable satisfaction of the CAS Panel. The Appellant refers to CAS case law (CAS 2009/A/1920, paras. 84-85).

48. The Appellant further argues that it did not violate Article 49 para. 1 UEFA CL&FFP Regulations and emphasizes that “by issuing the licence under full knowledge of the pending case before FIFA, the TFF obviously found that the Appellant had met the requirements of Article 49 par. 1 and Annex VIII 2) of the CL&FFP. It is important to note that TFF had issued the license also in the previous seasons (2009/2010 and 2010/2011) having the same information in its hands regarding the transfer fee due to Portsmouth FC. UEFA did not challenge at any stage the license issued to the Appellant, who participated in UEFA competitions. Thus the Appellant was bona fide and for a period of at least 3 years under the impression that the Portsmouth matter was not a violation of the licensing requirements”.
49. In continuation, the Appellant points out that it also did not violate Article 49 para. 5 and/or 6 UEFA CL&FFP Regulations because it declared its overdue payments to the body in charge, the TFF acting as licensor, “on 25 March 2011 within its transfer table”.
- e. *No violation of Article 65 UEFA CL&FFP Regulations*
50. The Appellant asserts that imposing a sanction on the Appellant for a violation of Article 65 UEFA CL&FFP Regulations violates the principle *venire contra factum proprium*. The Appellant argues that the sanctioning of the Appellant for failing to prove by 30 June 2011 and 30 September 2011 that the requirements of Annex VIII UEFA CL&FFP Regulations were met, comes in clear contrast with the TFF’s and UEFA’s actions (or non-actions) towards the Appellant.
51. Furthermore, the Appellant argues that Annex VIII 2. UEFA CL&FFP Regulations has to be interpreted in the light of the principle of legal certainty in the favour of the club facing a sanction. “Therefore, the Appellant could only have violated Articles 65 (1) or (8) CL&FFP if the CFC Panel would have announced its assessment regarding the requirements of Annex VIII 2. before the time limits ending on 30 June and 30 September 2011 had elapsed. Any announcement after the deadline requires the Respondent to grant a deadline to the Appellant to cure the violation and obliges the Respondent to refrain from sanctioning if the Appellant complies with such decision. In view of the above, since the Appellant paid the entire amount on 22 November 2011, i.e. even before the CFC Panel convened and assessed the applicability or not of Annex VIII 2, there were no grounds to sanction the Appellant on the basis of Article 65”.
- f. *Mitigation and disproportionality of the sanction*
52. Finally and “eventualiter”, the Appellant submits that the sanctioning by the UEFA Appeals Body is based on a wrong set of facts and therefore disproportionate. The Appellant requests the Panel to decide the issue *de novo*.
53. The Appellant submits that “even if the Appellant is found to have violated Articles 65 par. 1 and/or 8 CL&FFP the Panel shall set aside the sanctions imposed in the Decision and decide the issue *de novo*, since the Appeals Body based its exercise of discretion regarding the severity of the sanction on several incorrect assumptions”. The Appellant refers to the following errors:

- a. The Appeal Decision bases its conclusions erroneously on a violation of Article 49 par. 1, 5 and 6 UEFA CL&FFP Regulations for the reason that the Respondent does not have jurisdiction to sanction the Appellant for a violation of this article.
- b. The Appeal Decision wrongly justifies the measurement of the sanction using an alleged similarity of the case at hand with Gyori ETO v. UEFA (CAS 2012/A/2702). The Appellant asserts that in contrast to the Gyori case, it did disclose in its transfer payables tables submitted to the TFF the existence of a transfer compensation dispute with Portsmouth and has been registering since 2008 the amount claimed by Portsmouth.
- c. The Appeal Decision bases its discretion on the false assumption that the Appellant paid the outstanding transfer fee only after disciplinary proceedings had been opened. The Appellant stresses that it paid the outstanding transfer fee on 23 November 2011, two and a half months before the disciplinary procedure was opened on 8 February 2012.
- d. The Appellant adds that the conclusions of the UEFA Disciplinary Inspector and of the Appeals Body with respect to the intentions of the Appellant to delay the payment are erroneous. The Appellant emphasizes that it had no intention at all to “buy time” or “obtain low-cost credit”, and argues that it acted in good faith, not only because Portsmouth was in administration, but also by requesting FIFA to provide information regarding the status of the case for licensing purposes and informing the Respondent about the amount in dispute before FIFA. The Appellant submits that it paid in the last 5 years over USD 18 million to other clubs for transfer fees, so that one single (and partial) non payment of a transfer fee in the amount of EUR 300’000 does not constitute a pattern of delaying tactics or an attempt to benefit from credit. These circumstances do not justify an exclusion of the Appellant from UEFA club competitions.
- e. The Appellant asserts that it has managed not only to pay off all its debts from the previous management since 2007 in accordance with FIFA decisions and not to create new debts, but also to succeed on the sporting field with a financial strong position.
- f. The Appellant submits that Article 65 and 66 and Annex VIII UEFA CL&FFP Regulations entered into force on 1 June 2011, i.e. just 29 days prior to the first alleged violation attributed to the Appellant. The Appellant argues that *“the requirements of Annex VIII establish in reality a cultural change, where clubs have to pay all claims pending against them, unless they believe (and can prove to UEFA) that these claims are manifestly unfounded. In the case of the Appellant this constitutes a serious mitigating factor for the following two reasons:*
 - *The Appellant had in all previous cases during the last 5 years paid all its disputed debts following a FIFA DRC/PSC decision. (...);*
 - *The management of the Appellant had to overcome the threat of criminal liability under Turkish law. (...).”*

- g. The Appeal Decision wrongly intends to correct an alleged mistake by the TFF.
- h. The UEFA Appeals Body grossly misapplied the principles of proportionality and equal treatment. The Appellant submits that the violation was not of such gravity to lead to an exclusion from UEFA club competitions and compares the sanctions imposed in the Appeal Decision to previous sanctions issued by UEFA against other clubs such as Gyori for breaching the UEFA Club Licensing Regulations, edition 2008, and Besiktas for breaching the UEFA CL&FFP Regulations. It says that despite the fact that Gyori committed multiple violations and submitted misleading information, UEFA and CAS only excluded Gyori for one year from the UEFA club competitions. According to the Appellant the *“club Besiktas was also excluded for one year from the UEFA Club Competitions for not having paid five different overdue payables for a total amount of ca. 4,2 million Euros in addition to outstanding taxes, while benefiting with 6 million Euros from its participation in UEFA Club Competitions”*.

g. Requests for relief

54. The Appellant requests the CAS to issue the following relief:

“Subject to supplementing or otherwise amending the present prayer for relief at a later stage of the proceedings, the Appellant hereby requests CAS

- 1. To declare that the Appellant has not violated the UEFA Club Licensing and Financial Fair Play Regulations;*
- 2. To annul the decision of the UEFA Appeals Body dated 30 May 2012;*
- 3. To order the Respondent to pay the entire costs of the present arbitration, if any;*
- 4. To order the Respondent to pay the entire costs for Claimant’s legal representation and assistance as well as other costs incurred by the Claimant in connection with this arbitration”*.

55. At the hearing the Appellant supplemented a subsidiary request for relief by explicitly authorising the Panel to increase the amount of any fine which would be imposed.

IV.2. The Respondent’s position

a. Applicable law

56. The applicable law is the UEFA CL&FFP Regulations (edition 2010) supplemented by Swiss law.
57. The UEFA CL&FFP Regulations were specifically enacted to ensure fair play in UEFA club competitions by improving the economic and financial capability of clubs and ensuring clubs punctually settle their liabilities with players and other clubs.

b. The Appellant had overdue payables unduly presented as being in dispute

58. The Respondent submits that the information provided by the Appellant on its monitoring process to the UEFA CFCP revealed overdue payables on 30 June 2011 relating to transfer activities that occurred prior to 31 December 2010. More precisely, the Appellant had an overdue payable of at least EUR 300'000 (plus interests) towards Portsmouth, relating to transfer activities that occurred in 2007. The disciplinary proceedings revealed that the Appellant also had this overdue payable when it applied for a license at the TFF.

59. In continuation, the Respondent argues that the Appellant never disputed the amount which was due as per the Transfer Agreement, but simply did not pay the last two instalments without putting forward any ground for this, and left it to Portsmouth to initiate proceedings before FIFA to recover the debt. As the Appellant gave misleading information both in the documentation as a license applicant and in the transfer payables table handed to the TFF in the course of the monitoring process, the Appellant breached Articles 49 and 65 UEFA CL&FFP Regulations, by falsely indicating that the amount due to Portsmouth was in dispute.

c. Jurisdiction of UEFA with regard to Article 49 UEFA CL&FFP Regulations

60. The Respondent submits that it has jurisdiction over Article 49 CL&FFP Regulations and refers inter alia to Article 72 UEFA CL&FFP Regulations, which article provides that “any breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations”. The Respondent also refers to Articles 19 and 20 of the UEFA Organisational Regulations and adds that CAS in the Gyori case (CAS 2012/A/2702) has recognized UEFA’s power to sanction clubs for non-compliance with the provisions relating to club licensing.

d. Ne bis in idem

61. The Respondent contests the Appellant’s view that a parallel sanctioning power of the TFF and of the Respondent would violate the principle *ne bis in idem*, as there is no sanction which has been pronounced by the TFF.

e. No charge regarding Article 49 UEFA CL&FFP Regulations

62. The Respondent submits that the disciplinary proceedings had been opened for breaches of Articles 65 (and 67) of the UEFA CL&FFP Regulations, but that during such proceedings the UEFA CDB also noticed that the incorrect information could also be found in the transfer payables tables previously submitted to the TFF within the course of the licensing process, which constitutes a breach of Article 49 UEFA CL&FFP Regulations.

f. Breach of Article 49 UEFA CL&FFP Regulations

63. The Respondent points out that Article 49 and Annex VIII UEFA CL&FFP Regulations provide clear guidance as regards the definition of overdue payables. In particular, if the contest of a debt is manifestly ill-founded, it is not sufficient for the debt to be considered as being in dispute. The Respondent reiterates that the Appellant – as a license applicant – provided misleading information to the TFF by falsely indicating that the amount due to Portsmouth was in dispute. This behaviour constitutes a breach of Article 49 UEFA CL&FFP Regulations. As a result the license was wrongly granted to the Appellant.

g. Breach of Article 65 UEFA CL&FFP Regulations

64. The Respondent emphasizes that by submitting an incorrect transfer payables table in the course of the monitoring process, the Appellant breached Article 65 UEFA CL&FFP Regulations without justification: *“it gave the impression that it had no overdue payables, although it owed a significant amount to Portsmouth (EUR 300.000 plus late interest)”*.

h. Proportionality of the sanction

65. The Respondent argues that the Appellant committed a major offence by providing misleading information, more specifically trying to hide an overdue payable by describing it as a disputed amount although there was no dispute, both as a licence applicant and in the course of the monitoring process. *“As set out by CAS in the Gyori case (CAS 2012/A/2702 at par. 136), the disclosure obligations are essential for UEFA to assess the financial situation of the clubs that are participating in its competitions and for this reason, as the Panel can confirm from the above quoted regulations, the disclosure must be correct and accurate”*.
66. The respondent stresses that *“It is clearly against the principle of financial fair-play to withhold payment of an important transfer fee, amounting to hundreds of thousands of Euros, which is due to another club. A club in good financial standing, which owes an important transfer fee to another club and withholds payment for a long period of time (around 3 years in the present case), obviously causes financial difficulties to the creditor club. Under these circumstances, it is quite apparent that Bursaspor helped to create Portsmouth financial problems (which prevented Portsmouth from being granted a licence to participate in the 2010/11 UEFA Europa League)”*.
67. The Respondent submits that the Appellant *“did not pay towards Portsmouth without putting any ground for this. Bursaspor refused payment, waited until Portsmouth asked FIFA’s intervention, learned that Portsmouth could go bankrupt (...) and hoped that it could escape liability by just playing time”*, and adds that the Appellant settled the case by a simple exchange of correspondence between the clubs once it became aware that disciplinary proceedings would be opened.
68. The Respondent submits that against this background UEFA did not exercise its discretion unfairly or in a grossly disproportionate matter, and refers to CAS case law (CAS 2009/A/1870; CAS 2012/A/2702 par. 160) by quoting that *“the measure of the sanction imposed*

by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence". Therefore, the Respondent maintains that the contested decision is proportionate and fully justified and adds that the objectives and underlined principles of the UEFA CL&FFP Regulations prescribe an exclusion of (minimum) one year (without suspension on probation) with regard to clubs with overdue payables.

69. The Respondent argues that there are no mitigating circumstances whatsoever.
70. The Respondent contests the Appellant's assertions that the sanctions imposed by the Appeal Decision are contrary to the principles of equal treatment, comparing the sanctioning to the Gyori and Besiktas cases. The Respondent emphasizes that the circumstances in both mentioned cases are different from the present appeal.
- i. Request for relief*
71. UEFA concludes by requesting the CAS to "(...) *dismiss the appeal and to order payment by the Appellant of all costs of the arbitration as well as legal costs suffered by UEFA*".

V. LEGAL ANALYSIS

V.1 Jurisdiction of the CAS

72. The jurisdiction of the CAS, which is not disputed, derives from Article 62.1 of the UEFA Statutes 2010 and Article R47 of the CAS Code.
73. Moreover, the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.
74. It follows that the CAS has jurisdiction to decide this dispute.

V.2 Admissibility

75. In accordance with Article 62.3 of the UEFA Statutes 2010, "[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question".
76. The grounds of the Appeal Decision dated 30 May 2012 were notified on 8 June 2012 and the Statement of Appeal was filed on 8 June 2012. This was within the required 10 days.
77. It follows that the appeal is admissible.

V.3 Scope of the Panel's review

78. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

V.4 Law applicable to the merits

79. The Appeal Decision was issued by UEFA, an association domiciled in Switzerland. Article 63.3 of the UEFA Statutes 2010 states that "(...) *proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS*".

80. Article R58 of the CAS Code 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".

81. The subject matter of the appeal relates to whether or not the Appellant violated the UEFA CL&FFP Regulations. It therefore follows that the specific UEFA laws applicable to this matter are the UEFA CL&FFP Regulations (edition 2010) and UEFA Disciplinary Regulations (edition 2011), which were applicable at the time of the alleged breaches. Furthermore, reference may also be made to Swiss law subsidiarily, given the fact that UEFA is an association domiciled in Switzerland.

V.5 The Merits of the Appeal

82. Based on the Parties' submissions, the issues for determination are the following:

1. On a procedural basis:

- i. **Whether the Appeal Decision made a mistake in its interpretation of the events and/or the law.**
- ii. **Whether the UEFA Appeals Body lacked jurisdiction with regard to Article 49 UEFA CL&FFP Regulations.**

2. On a substantive basis:

- iii. **Did the Appellant breach the UEFA CL&FFP Regulations?**

iv. In case of the affirmative, are the sanctions imposed in the Appeal Decision proportional?

V.5.I The alleged mistakes in the interpretation of the events and/or the law committed by the UEFA Appeals Body

83. The Appellant avers that the UEFA Appeals Body made several errors as mentioned in Chapter IV.1 of this award.
84. In relation to the above, the Panel refers to the fact that under these proceedings the Appellant had the opportunity to present its case in the way to address and cure all the above mentioned irregularities as raised.
85. Therefore, pursuant to Article R57 of the CAS Code, which grants the Panel power to review the facts and the law, and CAS jurisprudence, any prejudice suffered by the Appellant before the UEFA Appeals Body has been cured by virtue of this appeal, in which the Appellant has been able to present its case afresh (CAS 2008/A/1574; CAS 2009/A/1840 & CAS 2009/A/1851; CAS 2008/A/1545; CAS 2012/A/2702). Therefore, the Panel does not need to examine whether the alleged mistakes and errors in the interpretation of the events and/or the law have indeed been established.

V.5.II Did the UEFA Appeals Body lack jurisdiction with regard to Article 49 UEFA CL&FFP Regulations?

86. It is the Appellant's assertion that the Respondent had no jurisdiction over violations of Article 49 UEFA CL&FFP Regulations because according to Articles 1 – 52 UEFA CL&FFP Regulations the Respondent has delegated to the TFF not only its right to operate the entire licensing process, which right includes the power to issue licences based on the assessment of the documents submitted, but also the right to sanction.
87. The Respondent underlines that it has jurisdiction in relation to Article 49 CL&FFP Regulations and refers inter alia to Article 72 CL&FFP Regulations, which article provides that "*any breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations*". The Respondent refers also to Articles 19 and 20 of the UEFA Organisational Regulations and adds that CAS in the Gyori case (CAS 2012/A/2702) has recognized UEFA's power to sanction clubs for non-compliance with the provisions relating to club licensing.

The UEFA Club Licensing system

88. The Panel examined the structure of the UEFA CL&FFP Regulations as described by the Respondent in its submissions and not disputed by the Appellant.
89. The Panel establishes that the UEFA CL&FFP Regulations have been enacted by the UEFA Executive Committee on the basis of Article 50 par. 1bis of the UEFA Statutes, which empowers the UEFA Executive Committee to draw up regulations governing the conditions

of participation in and the staging of UEFA competitions. Compliance with these rules is a condition of entry into club competitions such as the UEFA Champions League and UEFA Europa League (Article 2.04/c of the Regulations of the UEFA Champions League 2012/13 and Article 2.07/c of the Regulations of the UEFA Europa League).

90. It is obvious that the UEFA CL&FFP Regulations – in particular – aim at promoting fair play in UEFA club competitions by improving the economic and financial capability of the clubs, increasing their transparency and credibility and by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually. The precise objectives of these regulations are defined in Article 2 UEFA CL&FFP Regulations.
91. According to these Regulations, clubs need a licence to participate in UEFA competitions. The criteria (sporting, infrastructure, personnel and administrative, legal and finance) are defined by the Regulations.
92. The licence is granted by the national association, which is therefore referred to as the “licensor” (Article 5 UEFA CL&FFP Regulations). As per this provision, each national association, as licensor, must integrate the rules of the UEFA CL&FFP Regulations into its national club licensing regulation.
93. The licence applicant is the legal entity fully responsible for the football team participating in national and international club competitions which applies for a licence (Article 12 UEFA CL&FFP Regulations). Such licence applicant is either a registered member of a UEFA member association and/or its affiliated league (Article 12 par. 1 lit. a) or has a contractual relationship with a registered member (Article 12 par. 1 lit. b). The license applicant that has been granted a license is the “licensee”.
94. Among the licensing criteria set forth by the UEFA CL&FFP Regulations, financial requirements are described in Articles 46 and following of the UEFA CL&FFP Regulations. One of these requirements consists in the absence of overdue payables towards other clubs (Article 49 UEFA CL&FFP Regulations). As to the information to be given by a license applicant, Article 49 of the UEFA CL&FFP Regulations provides that:
 - (1) *The licence applicant must prove that as at 31 March preceding the licence season it has no overdue payables (as defined in Annex VIII) that refer to transfer activities that occurred prior to the previous 31 December.*
 - (2) *Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.*
 - (3) *The licence applicant must prepare and submit to the licensor a transfer payables table, unless the information has already been disclosed to the licensor under existing national transfer requirements (e.g. national clearing house system). It must be prepared even if there have been no transfers/loans during the relevant period.*

- (4) *The licence applicant must disclose all transfer activities (including loans) undertaken up to 31 December, irrespective of whether there is an amount outstanding to be paid at 31 December. In addition, the licence applicant must disclose all transfers subject to a claim pending before the competent authority under national law or proceedings pending before a national or international football authority or relevant arbitration tribunal.*
- (5) *The transfer payables table must contain the following information as a minimum (in respect of each player transfer, including loans):*
- a) *Player (identification by name or number);*
 - b) *Date of transfer/ loan agreement;*
 - c) *The name of the football club that formerly held the registration;*
 - d) *Transfer (or loan) fee paid and/ or payable (including training compensation and solidarity contribution);*
 - e) *Other direct costs of acquiring the registration paid and/ or payable;*
 - f) *Amount settled and payment date;*
 - g) *The balance payable at 31 December in respect of each player transfer including the due date for each unpaid element;*
 - h) *Any payable as at 31 March (rolled forward from 31 December) including the due date for each unpaid element, together with explanatory comment; and*
 - i) *Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 31 December.*
- (6) *The licence applicant must reconcile the total liability as per the transfer payables table to the figure in the financial statements balance sheet for 'Accounts payable relating to player transfers' (if applicable) or to the underlying accounting records. The licence applicant is required to report in this table all payables even if payment has not been requested by the creditor.*
- (7) *The transfer payables table must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licence applicant.*
95. Licences are issued on a yearly basis (Article 14 par. 2 UEFA CL&FFP Regulations). They are granted in spring. As regards financial information, this is done on the basis of financial statements of December of the previous year or measures taken until 31 March of the then current year (Annex VIII par. 2 of the UEFA CL&FFP Regulations).
96. Further, the UEFA CL&FFP Regulations set up a monitoring process for all licensees that have qualified for a UEFA club competition (Article 53 and following of the UEFA CL&FFP Regulations). More precisely, Article 53 UEFA CL&FFP Regulations sets up a Club Financial Control Panel which *inter alia* governs the monitoring process, while Articles 57 and following UEFA CL&FFP Regulations describe the monitoring requirements which must be observed by all licensees that have qualified for a UEFA club competitions. These

monitoring requirements are the break-even requirement (as set out in Articles 58 to 63 UEFA CL&FFP Regulations) and the other monitoring requirements (as set out in Articles 64 to 68 UEFA CL&FFP Regulations).

97. Among the other monitoring requirements, the licensee must prove that it has no overdue payables (as specified in Annex VIII of the UEFA CL&FFP Regulations) towards other clubs as a result of transfer activities undertaken up to 30 June (Article 65 par. 1 UEFA CL&FFP Regulations). Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions (Article 65 par. 2 UEFA CL&FFP Regulations). The absence or existence of overdue payables towards employees and social/tax authorities must be confirmed by the licensee within the deadline and in the form communicated by the UEFA administration (Article 66 par. 2 UEFA CL&FFP Regulations). As to the information to be given by a licensee within the course of the monitoring process, Article 65 UEFA CL&FFP Regulations provides that:

- (1) *The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards other football clubs as a result of transfer activities undertaken up to 30 June.*
- (2) *Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.*
- (3) *By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit an transfer payables table, even if there have been no transfers/ loans during the relevant period.*
- (4) *The licensee must disclose all transfer activities (including loans) undertaken up to 30 June, irrespective of whether there is an amount outstanding at 30 June. In addition, the licensee must disclose all transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court.*
- (5) *The transfer payables table must contain the following information as a minimum (in respect of each player transfer, including loans):*
 - a) *Player (identification by name or number);*
 - b) *Date of transfer/ loan agreement;*
 - c) *The name of the football club that formerly held the registration;*
 - d) *Transfer (or loan) fee paid and/ or payable (including training compensation and solidarity contribution);*
 - e) *Other direct costs of acquiring the registration paid and/ or payable;*

- f) *Amount settled and payment date;*
 - g) *Balance payable at 30 June in respect of each player transfer;*
 - h) *Due date(s) for each unpaid element of the transfer payable; and*
 - i) *Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 30 June.*
- (6) *The licensee must reconcile the total liability as per the transfer payables table to the figure in the financial statements balance sheet for 'Accounts payable relating to players transfers' (if applicable) or to underlying accounting records. The licensee is required to report in this table all payables even if payment has not been requested by the creditor.*
- (7) *The transfer payables table must be approved by management and thus must be evidenced by way of a brief statement and signature on behalf of the executive body of the licensee.*
- (8) *If the licensee is in breach of indicator 4 as defined in Article 62(3) [The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence], then it must also prove that, as at the following 30 September, it has no overdue payables towards other football clubs as a result of transfer activities undertaken up to 30 September. Paragraphs 2 to 7 above apply accordingly.*
98. Annex VIII of the UEFA CL&FFP Regulations defines the notion of “overdue payables” as follows:
- (1) *Payables are considered as overdue if they are not paid according to the agreed terms.*
 - (2) *Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/ licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49 and 50) and by 30 June and 30 September (in respect of Articles 65 and 66) respectively that:*
 - a) *It has paid the relevant amount in full; or*
 - b) *It has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
 - c) *It has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision-making bodies (licensor and/or Club Financial Control Panel) consider that such claim has been brought or such proceedings have been opened for the sole purpose of avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*
 - d) *It has contested a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or Club Financial Control*

Panel) that the claim which has been brought or the proceedings which have been opened are manifestly unfounded.

99. As already established by the Panel, the UEFA CL&FFP Regulations (edition 2010) are applicable in the present case, which edition replaced the UEFA Club Licensing Regulations (edition 2008) and came into force on 1 June 2010. However, pursuant to Article 74 UEFA CL&FFP Regulations, the rules on the monitoring process, more specifically Articles 53 to 56 and 64 to 68 entered into force on 1 June 2011.
100. The Panel observes that both Articles 49 and 65 UEFA CL&FFP Regulations have the same objectives. The difference is that Article 49 refers to obligations of a license applicant with regard to the – domestic – license procedure and Article 65 refers to obligations of a licensee within the course of the monitoring process at UEFA.
101. With regard to the issue of UEFA’s lack of jurisdiction on Article 49 UEFA CL&FFP Regulations as alleged by the Appellant, the Panel acknowledges that the Respondent by letter dated 8 February 2012 instigated disciplinary proceedings with regard to the requirements of the monitoring process and notified the Appellant of an alleged violation of Articles 65 and 66 UEFA CL&FFP Regulations.
102. Further, the Panel observes that during the disciplinary proceedings the UEFA Disciplinary Bodies also noticed that the Appellant violated Article 49 UEFA CL&FFP Regulations, but the Appellant was never charged explicitly with such violation.
103. Pursuant to Article 72 UEFA CL&FFP Regulations “*any breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations*”.
104. Under Article 27.1 of the UEFA Disciplinary regulations, “[*t*]he Control and Disciplinary Body handles disciplinary cases arising from breaches of the statutes, regulations, directives and decisions of UEFA. It decides on cases relating to player and club eligibility for UEFA competitions”.
105. Article 27.2 of the UEFA Disciplinary regulations adds that “[*t*]he Appeals Body is competent to hear appeals against decisions of the Control and Disciplinary Body in accordance with Article 49 of the present regulations”.
106. The subject matter of this appeal, together with the disputes before the UEFA CDB and the UEFA Appeals Body relate to the charge that Appellant breached Articles 65 and 66 of the UEFA CL&FFP Regulations.
107. UEFA was therefore competent to assert its jurisdiction on the basis of Article 72 UEFA CL&FFP Regulations in connection with Article 27 of the UEFA Disciplinary Regulations.
108. It therefore follows that the Appellant’s arguments on UEFA’s lack of competence with respect to Article 49 UEFA CL&FFP Regulations are dismissed. In this respect, the Panel

adds that no violation of the principle *ne bis in idem* has occurred, as there is no sanction pronounced by the TFF regarding the subject matter of this appeal.

V.5.III Did the Appellant breach the UEFA CL&FFP Regulations?

a) Did the Appellant have an overdue payable?

109. Article 65 par. 1 UEFA CL&FFP Regulations obliges the Appellant to prove that “*as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards other football clubs as a result of transfer activities undertaken up to 30 June*” and if the Appellant is in breach of indicator 4 as defined in Article 62(3), it must also prove that, “*as at the following 30 September, it has no overdue payables towards other football clubs as a result of transfer activities undertaken up to 30 September*”.
110. The Panel observes that on 15 July 2011 the Appellant provided the Respondent through its Transfer Payables Table with information that it had an overdue payable to Portsmouth which was in dispute at FIFA. As a consequence thereof, the UEFA CFCP (by letter dated 23 September 2011) confirmed the identification of the overdue payment, characterized it legally as a breach of indicator 4 as defined in Article 62(3) of the UEFA CL&FFP Regulations and requested the Appellant to provide within the deadline of 17 October 2011 “*an update of the overdue payable tables in order to prove that as at 30 September 2011 the Appellant has no overdue payables towards other football clubs (...)*” and also “*to provide clear explanations/arguments concerning the grounds of the dispute in order to demonstrate to the reasonable satisfaction of the CFC Panel that it is a founded dispute*”.
111. By letter dated 14 October 2011, the Appellant informed UEFA CFCP that it would not be in “*compliance with the regulations and the law or equity to apply a sanction for not making a payment with an ongoing case at FIFA which still awaiting for a formal decision (...)*” and added that “*if FIFA Dispute Resolution Chamber give any decision about the subject, we are ready to fulfil requirements of the decision immediately*”.
112. The Panel observes that it is undisputed that the Appellant did not pay Portsmouth on the agreed terms, that the relevant amount was paid in full by the Appellant only on 23 November 2011, hence after 30 June and/or 30 September 2011, that no agreement was concluded between the Appellant and Portsmouth to extend the deadline for payment, that the Appellant did not bring forward a legal claim against Portsmouth contesting its liability in relation to the overdue payable and/or that the Appellant did contest Portsmouth’s claim at FIFA.
113. As a result, the Panel has no hesitation to conclude that the Appellant had an overdue payable on 30 June and 30 September 2011 and therefore breached Article 65 par. 1 and 8 UEFA CL&FFP Regulations. The Panel concludes that during the monitoring process no violation has occurred regarding the principle *venire contra factum proprium* or the principle of legal certainty, as alleged by the Appellant.

- b) Did the Appellant fail to disclose correct information?
114. In continuation, the Panel turns its attention to the allegation of the Respondent to the effect that the Appellant has provided misleading information, more specifically has tried to hide the overdue payable by describing it as a disputed amount although there was no dispute.
115. The Panel concurs with the CAS Panel in the Gyori case that *“the disclosure obligations are essential for UEFA to assess the financial situation of the clubs that are participating in its competitions and for this reason, as the Panel can confirm from the above quoted regulations, the disclosure must be correct and accurate”* (CAS 2012/A/2702 at par. 136). The Panel underlines that providing misleading information to UEFA to obtain a licence ought to be strongly opposed.
116. Pursuant to Article 2 UEFA CL&FFP Regulations, the aim of the duty of disclosure is to ensure that the clubs participating in a UEFA competition *inter alia*:
- a) Have adequate level of management and organization;
 - b) Improve their economic and financial capability, by increasing their transparency and credibility, and placing the necessary importance on the protection of creditors; and
 - c) Promote financial fair play in UEFA club competitions.
117. Articles 65.3, 65.4 and 65.5 UEFA CL&FFP Regulations provide that as a licensee, the Appellant was required to do the following:
- “65.3. By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit a transfer payables table, even if there have been no transfers/loans during the relevant period.*
- 65.4. The licensee must disclose all transfer activities (including loans) undertaken up to 30 June, irrespective of whether there is an amount outstanding at 30 June. In addition, the licensee must disclose all transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court.*
- 65.5. The transfer payables table must contain the following information as a minimum (in respect of each player transfer, including loans):*
- a) Player (identification by name or number);*
 - b) Date of the transfer/loan agreement;*
 - c) The name of the football club that formerly held the registration;*
 - d) Transfer (or loan) fee paid and/or payable (including training compensation and solidarity contribution);*
 - e) Other direct costs of acquiring the registration paid and/or payable;*

f) Amount settled and payment date;

g) The balance payable at 30 June in respect of each player transfer;

h) Due date(s) for each unpaid element of the transfer payables; and

i) Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 30 June”.

118. It is manifest that the Appellant was required to ensure the correct and accurate disclosure in its monitoring process to UEFA of all financial information.
119. The Panel establishes that the Appellant by submitting the Transfer Payable Tables on its monitoring process to UEFA CFCP by the deadline and in the form communicated by UEFA, the Appellant complied with the obligations set out in Article 65 par. 3 UEFA CL&FFP Regulations.
120. From the information disclosed in the Transfer Payables Forms submitted to UEFA during the monitoring process, the Appellant indicated that an amount of EUR 400'000 was overdue in relation to the Transfer Agreement. The Panel observes that the overdue amount was in reality EUR 300'000 plus late interest. Therefore, the Panel concludes that the Appellant by supplying this information, did not hide the overdue payables, but complied with the minimum requirements as set out in Article 65 par. 5 UEFA CL&FFP Regulations.
121. The Respondent argues that the Appellant provided clearly misleading information by filing that there was a pending dispute regarding the overdue payables to Portsmouth, although there never was a real dispute. The Respondent states that the Appellant never contested the obligation to pay the last two instalments to Portsmouth and only tried to delay its obligation to pay.
122. On the other hand, the Appellant argues that since 2008 it has received a licence from the TFF every year although it disclosed in its transfer payables tables the amount due to Portsmouth and the existence of the dispute with Portsmouth regarding this overdue payable. The Appellant emphasizes that it had no intention at all to “buy time” or “obtain low-cost credit”, and argues that it acted in good faith, not only because Portsmouth was in administration, but also by requesting FIFA to provide information regarding the status of the case for licensing purposes and informing the Respondent about the amount in dispute before FIFA. The Appellant submits that it paid in the last 5 years over USD 18 million to other clubs for transfer fees, so that one single (and partial) non payment of a transfer fee in the amount of EUR 300'000 does not constitute a pattern of delaying tactics or an attempt to benefit from credit. The Appellant asserts that it has managed not only to pay off all its debts from the previous management since 2007 in accordance with FIFA decisions and to not create new debts, but also to succeed on the sporting field with a financial strong position. The Appellant submits that Articles 65 and 66 and Annex VIII UEFA CL&FFP Regulations entered into force on 1 June 2011, i.e. just 29 days prior to the first alleged violation attributed to the Appellant. The Appellant argues that “*the requirements of Annex VIII*

establish in reality a cultural change, where clubs have to pay all claims pending against them, unless they believe (and can prove to UEFA) that these claims are manifestly unfounded. In the case of the Appellant this constitutes a serious mitigating factor for the following two reasons:

- *The Appellant had in all previous cases during the last 5 years paid all its disputed debts following a FIFA DRC/PSC decision. (...);*
- *The management of the Appellant had to overcome the threat of criminal liability under Turkish law. (...)*”.

123. The Panel observes that Article 65 par. 4 UEFA CL&FFP Regulations obliges the Appellant to disclose all transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court. Indeed, the Appellant in its Transfer Payables Form submitted that the amount was in dispute with the following explanation: *“Contractual Dispute/ Case is ongoing at FIFA”*.
124. In continuation, the Panel observes that in 2008 Portsmouth filed a claim at FIFA, that in May 2010 FIFA suspended the case because Portsmouth was in administration, that on 31 January 2011 FIFA submitted the case to the Players’ Status Committee for consideration and a formal decision considering Portsmouth was no longer in administration, and that since 2008 the Appellant was given a licence by the TFF although it disclosed yearly in its transfer payables tables submitted to the TFF the existence of the dispute with Portsmouth with regard to the overdue payable.
125. Further the Panel notes that on the issue of (the grounds of) the dispute even at the hearing the Respondent could not convince the Panel how the Appellant should have completed the Transfer Payables Form in a manner prescribed by the UEFA CL&FFP Regulations to comply with the obligations of disclosure as set out in Article 65.
126. The Panel observes that the Appellant disclosed the true facts, i.e. the overdue amount and the pending case at FIFA regarding this amount. Although the Panel identifies that the information provided by the Appellant was incomplete and could have been more accurate, the Panel does not believe that the Appellant submitted misleading information. The Panel takes into account that apparently since 2008 the TFF – wrongly – did not request the Appellant to provide clear explanations concerning the grounds of the dispute and granted the Appellant the licence yearly. Moreover, the Panel takes into consideration that the proceedings at FIFA arose before the obligations set out in Article 65 UEFA CL&FFP Regulations came into force (on 1 June 2011), and that the new rules of administrative nature broke – for that matter justifiably – with a – in fact reprehensible – standing practise of the Appellant to pay its debts following a FIFA decision only. The Panel adds that it is undisputed that the Appellant paid its debt – although far too late – on 23 November 2011, but still before the disciplinary proceedings were opened in February 2012.
127. In view of the foregoing, the Panel finds that the Appellant did disclose the information required under the UEFA CL&FFP Regulations, in particular Article 65 par. 3, 4 and 5. This

finding by the Panel is further backed by the contents of the Gyori decision. In the latter it was the Respondent itself that distinguished the breach committed in the Gyori case from the one being at stake here by pointing out that the case at hand – contrary to the Gyori case – was not about concealing information.

- c) Are the sanctions imposed in the Appeal Decision proportionate?
128. Having found the Appellant guilty of breaching Article 65 (par. 1 and 8) UEFA CL&FFP Regulations, because it had an overdue payable on 30 June and 30 September 2011, the Panel must now determine whether the sanctions imposed in the Appeal Decision are proportional.
129. The Appellant argues that the sanctions imposed in the Appeal Decision are harsh and have not followed past UEFA precedents, such as decisions in the Gyori case and Besiktas case.
130. In assessing the sanctions, reference must be made to Article 72 UEFA CL&FFP Regulations, which, in order to ensure the protection of clubs as creditors, states that “*any breach of these regulations may be penalised by UEFA in accordance with the UEFA Disciplinary Regulations*”.
131. Article 17 UEFA Disciplinary Regulations contains general principles with regard to the determination of sanctions. Article 17.1 UEFA Disciplinary Regulations states that “*the disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances. (...)*”.
132. Article 14 of the UEFA Disciplinary Regulations provides that the following disciplinary measures may be imposed on member associations and clubs:
- “1.
- a) *warning,*
 - b) *reprimand,*
 - c) *fine,*
 - d) *annulment of the result of a match,*
 - e) *order that a match be replayed,*
 - f) *deduction of points,*
 - g) *awarding of a match by default,*
 - h) *playing of a match behind closed doors,*

- i) stadium closure,*
 - j) playing of a match in a third country,*
 - k) disqualification from competitions in progress and/ or exclusion from future competitions,*
 - l) withdrawal of a title or award,*
 - m) withdrawal of a licence.*
2. *A fine shall be no less than EUR 100 and no more than EUR 1.000.000”.*

133. The Panel observes that Article 15bis of the UEFA Disciplinary Regulations deals with a suspended sanction and reads as follows:

“1 All disciplinary sanctions may be suspended except for:

- a) Warnings,*
- b) Reprimands,*
- c) Bans on all football-related activities;*

2 The probationary period shall be a minimum of one year and a maximum of five (...).

3. (...).”.

134. It is apparent from Articles 14 and 15bis of the UEFA Disciplinary Regulations, that a deciding body of UEFA has a wide discretion when it comes to sanctioning, and that account must be taken of any aggravating or mitigating circumstances.

135. The Panel notes that the UEFA Appeals Body Decision fined the Appellant with EUR 50’000 with payment suspended for a probationary period of three years, and excluded the Appellant from one UEFA club competition for which it qualifies in the next three seasons annulling the non suspended fine of EUR 200’000 and the initial exclusion for one year which was suspended for a probationary period of three years issued by the UEFA Disciplinary Decision.

136. The Panel observes that the decision of the UEFA CDB and the decision of the Appeals Body show wide discretion, as the decisions of these disciplinary bodies – both considering the behaviour of the Appellant a serious offence – significantly differ in opinion regarding the sanctioning of the established breach of the UEFA CL&FFP Regulations.

137. Furthermore, the Appellant argues that the Appeals Body grossly misapplied the principles of proportionality and equal treatment. The Appellant submits that the violation was not of such gravity to lead to an exclusion from UEFA club competitions and compares the

sanctions imposed in the Appeal Decision to previous sanctions issued by UEFA against other clubs such as Gyori for breaching the UEFA Club Licensing Regulations, edition 2008, and Besiktas for breaching the UEFA CL&FFP Regulations. It says that despite Gyori committed multiple violations and submitted misleading information, UEFA and CAS only excluded Gyori for one year from the UEFA club competition. According to the Appellant the “*club Besiktas was also excluded for one year from the UEFA Club Competitions for not having paid five different overdue payables for a total amount of ca. 4,2 million Euros in addition to outstanding taxes, while benefiting with 6 million Euros from its participation in UEFA Club Competitions*”.

138. The Panel observes that the CAS Panel in the Gyori case established that Gyori “*committed two breaches; the first being the fact that it had overdue payables, and the second being its failure to disclose the correct and accurate payables*”. As a consequence of these two breaches the CAS Panel in the Gyori case considered an effective exclusion for one season not disproportionate. In addition, it follows from the Gyori case that the issue of misleading UEFA, i.e. the failure to disclose the correct and accurate payables, is a decisive element to conclude that a non suspended exclusion is not disproportionate. The Panel concurs with this judgement.
139. The Panel acknowledges that although the Appellant committed one breach, i.e. the overdue payable to Portsmouth, the UEFA Appeals Body excluded the Appellant also for one season.
140. In continuation, the Panel observes that on 30 May 2012 the UEFA Appeals Body fined the Turkish club Besiktas EUR 200’000 of which EUR 100’000 suspended for a probationary period of five years, and excluded Besiktas from the next two UEFA club competitions for which it qualifies in the next five seasons with the exclusion for the second competition suspended for a probationary period of five years, for breaching the UEFA CL&FFP Regulations. Although five different overdue payables were involved for a total amount around 4 million Euros a practical exclusion for one season was imposed.
141. At the hearing, the Respondent stressed that one of the underlying principles of the UEFA CL&FFP Regulations is that no licence is supposed to be granted to a club with an overdue payment. The Respondent argues that just by breaching this issue the standard sanction must be a non suspended exclusion for one season as a minimum.
142. However, the Panel notes that the UEFA Disciplinary Regulations only provides for standard sanctions with regard to misconduct of players (Article 10 UEFA Disciplinary Regulations) and discrimination and similar conduct (Article 11bis UEFA Disciplinary Regulations) as Article 17.2 UEFA Disciplinary Regulations adds that “*the disciplinary measures enumerated in Articles 10 and 11bis of the present regulations are standard sanction. (...)*”.
143. Therefore, the Panel assesses that the current regulations do not provide for a standard sanction to be imposed regarding a violation of Article 65 UEFA CL&FFP Regulations.
144. In view of the foregoing facts, the specific circumstances of this case and given the fact that the breach of Article 65 UEFA CL&FFP Regulations occurred during a transitional period between old and new rules, the Panel is of the view that the Appellant has proved that the

sanction imposed in the Appeal Decision is disproportionate to the offence, and that the assessment of the UEFA Appeals Body diverted from previous and/or other decisions of similar facts and circumstances. The Panel has therefore justifiable grounds for modifying the sanctions imposed in the Appeal Decision.

145. The Panel concurs with the considerations of the UEFA CDB to give the Appellant a chance and to exclude the Appellant from one UEFA club competition for which it qualifies in the next four seasons, which exclusion is suspended for a probationary period of three years, because *“It would be disproportionate for this exclusion not to be suspended for a probationary period, in comparison with other cases”*.
146. In continuation, the Panel also concurs with the considerations of the UEFA CDB to impose a fine – at least – corresponding to approximately the amount of what the Appellant gained during the 2011/12 UEFA club competition. The Appellant benefited by playing in the UEFA Europa League 2011-2012 club competition although it had an overdue payable. At the hearing, the Appellant submitted that it gained EUR 250’000, which remains undisputed. Therefore, the Panel considers it to be proportionate and appropriate to fine the Appellant EUR 250’000.
- d) Conclusion
147. Considering all the facts, evidence and arguments adduced, the appeal is – partially – upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Bursaspor Kulubu Dernegi on 8 June 2012 against the UEFA Appeals Body decision of 30 May 2012 is upheld.
2. The UEFA Appeals Body decision dated 30 May 2012 is annulled.
3. Bursaspor Kulubu Denegi is excluded from one UEFA club competition for which it qualifies in the next four years. This exclusion is suspended for a probationary period of three years.
4. Bursaspor Kulubu Dernegi is fined EUR 250'000 (two hundred fifty thousand Euros).
- (...)
7. All other and further claims or prayers for relief are dismissed.