



**Arbitration CAS 2013/A/3297 Public Joint-Stock Company “Football Club Metalist” v. Union des Associations Européennes de Football (UEFA) & PAOK FC, award of 29 November 2013**

Panel: Mr Lars Hilliger (Denmark), President; Mr Patrick Lafranchi (Switzerland); Mr Mark Hovell (United Kingdom)

*Football*

*Match-fixing*

*Type of admissible evidence to declare a club involved in match-fixing*

*Admissibility of inappropriately secured evidence in match-fixing cases*

*Strict liability of clubs in match-fixing cases*

*Prescription period under Article 2.05 RCL*

*Principle of proportionality*

*Principle of equal treatment*

- 1. Article 2.05 of the Regulations of the UEFA Champions League 2012-15 Cycle (RCL) defines how UEFA has to establish the factual basis of a decision to declare a club ineligible for having been directly and/or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level. It lists possible and admissible pieces of evidence in a non-exclusive way and assigns UEFA full discretion to assess the pieces of evidence chosen. As one type of evidence mentioned in Article 2.05 RCL is a decision of an arbitral body, UEFA can rely on, but is not bound by, the assessment of evidence taken in a decision of an arbitral body.**
- 2. It is consistent CAS jurisprudence that even if evidence might not be admissible in a civil or criminal court in Switzerland, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account in its deliberations. In regard to the public interest in finding the truth in match-fixing cases and also in regard to the limited means of sport federations and arbitration tribunals to secure evidence, steps must be taken to open up the possibility of including evidence even though such evidence could potentially have been secured in an inappropriate manner. However, this is applicable only so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy.**
- 3. Football clubs may be held liable for the behaviour of their players or officials involved in match-fixing conduct under the principle of strict liability.**
- 4. Article 2.05 RCL brought an aggravation to the prescription regulations contained in the UEFA Disciplinary Regulations. It is a *lex specialis* to the time-barring regulations found in the UEFA DR 2006 and UEFA DR 2013 because it contains in itself a time-barring rule. Hence, Article 2.05 of the RCL declares all violations committed after 27**

**April 2007 as imprescriptible.**

5. **It is a recognised principle in CAS jurisprudence that a sanction must comply with the principle of proportionality in the sense that there must be a reasonable balance between the kind of misconduct and the sanction. Put differently, the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed what is reasonably required in the search of the justifiable aim. Any party alleging disproportionality of a sanction bears the burden of proof for its allegation.**
6. **The principle of equal treatment is mandatory under Swiss association law. It is however only violated when two similar situations are treated differently. Any party alleging the discriminatory nature of a sanction bears the burden of proof for its allegation.**

## **1. THE PARTIES**

- 1.1 Public Joint-Stock Company “Football Club Metalist” (“FC Metalist” or the “Appellant”) is a professional Ukrainian football club based in the city of Kharkiv, Ukraine, and affiliated with the Football Federation of Ukraine (“FFU”).
- 1.2 The Union of European Football Associations (“UEFA”) is an international association of European football federations and the governing body of European football, dealing with all matters relating thereto and exercising regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players affiliated with UEFA or participating in its competitions. UEFA is the organising authority of all UEFA football competitions for clubs at the European level, among which are the UEFA Champions League and the Europa League. UEFA has its headquarters in Nyon, Switzerland, and is a legal entity registered under Swiss law.
- 1.3 PAOK FC is a professional Greek football club based in the city of Thessaloniki, Greece, and affiliated with the Football Federation of Greece.

## **2. FACTUAL BACKGROUND**

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decisions rendered by the UEFA Appeals Body (“the Decision”) on 13 August 2013 and by the UEFA Emergency Panel (“the EM Decision”) rendered on 14 August 2013, the written submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

- 2.2 According to the findings of the FFU, a football match played on 19 April 2008 between the Ukrainian football clubs FC Karpaty and FC Metalist (“the Football Match”) was fixed. According to the decisions of the Disciplinary Committee of the FFU dated 9 August 2010 and of the Appellate Committee of the FFU dated 19 October 2010, the FC Metalist official, Mr Krasnikov, was, among others, sanctioned for being involved in the manipulation of the Football Match. Furthermore, the two clubs, FC Karpaty and FC Metalist, were held liable for the behaviour of their players or officials under the principle of strict liability.
- 2.3 In April 2011, FC Metalist submitted an entry form to take part in the 2011/2012 UEFA Europa League. FC Metalist failed, however, to mention on its entry form that disciplinary proceedings were at that point in time in progress against the FC Metalist official, Mr Krasnikov, among others.
- 2.4 When dealing with the entry form from another Ukrainian football club, UEFA discovered that FC Metalist had been sanctioned by the competent disciplinary body of the FFU for its involvement in a case of bribery in connection with the Football Match. FC Metalist had appealed against the decision of the FFU before the CAS and this case (CAS 2010/A/2267, 2278, 2279, 2280, 2281 – “Football Club Metalist”) was still pending at the time UEFA had to decide on the admission of FC Metalist to the 2011/2012 UEFA Europa League.
- 2.5 Following the UEFA General Secretary’s letter dated 25 May 2011, the UEFA Control and Disciplinary Body decided on 6 June 2011 to await the outcome of the CAS decision and to allow FC Metalist to take part in the UEFA Europa League in the meantime. However, FC Metalist was instructed that *“In order to allow the Control and Disciplinary Body to re-evaluate the situation after the CAS has issued its decision on the club’s appeal, it considers it necessary to order FC Metalist Kharkiv to inform UEFA without delay of this CAS decision”*.
- 2.6 Subsequently, on its entry form for the 2013/2014 UEFA club competitions, FC Metalist stated that the above-mentioned CAS procedure was still pending. By signing this entry form, the Appellant also agreed to be bound by and observe the Regulations of the UEFA Champions League 2012-15 Cycle (“the RCL”).
- 2.7 On 2 August 2013, the CAS rendered an award in the case CAS 2010/A/2267, 2278, 2279, 2280, 2281 – “Football Club Metalist” et al. v. FFU (the “CAS Award”), by which the Appellant, among others, was found liable for match-fixing. The appeal filed by FC Metalist against the decision issued by the Appellate Committee of the FFU on 19 October 2010 was partially upheld. The decision issued by the Appellate Committee of the FFU on 19 October 2010 in the sections relating to FC Metalist was confirmed, except for the part concerning the deprivation of 9 (nine) points in the standings of the 2011/2012 sporting season of the Ukrainian Football Championship, which was set aside.
- 2.8 On 6 August 2013, the UEFA disciplinary inspector submitted his report on the admissibility of FC Metalist for the 2013/2014 UEFA Champions League competition. On the same date, the chairman of the UEFA Control and Disciplinary Body informed the parties involved that he had decided to submit the case directly to the UEFA Appeals Body for decision in accordance with the provisions of the UEFA Disciplinary Regulations and the UEFA Statutes.

- 2.9 After having defeated PAOK FC in the third qualifying round of the 2013/2014 UEFA Champions League played on 30 July and 7 August 2013, and following the draw which took place on 9 August 2013, the Appellant was scheduled to play the next play-off matches against Schalke 04 on 21 and 27 August 2013. The winner of these play-off matches would enter the UEFA Champions League group stage while the loser would play the UEFA Europa League.
- 2.10 On 12 August 2013, the Appellant filed an appeal with the Swiss Federal Court Tribunal against the CAS Award and requested a stay of the execution of the award. On the same date, the FFU consented to this request.
- 2.11 In the Decision passed on 13 August 2013 and notified to the Appellant on 14 August 2013, the UEFA Appeals Body disqualified the Appellant from the 2013/2014 UEFA competitions. The UEFA Appeals Body found that one of the Appellant’s employees, Mr Krasnikov, was involved in an “activity aimed at arranging or influencing the outcome of a match at national or international level” within the meaning of para 2.04(g) of the RCL. Pursuant to the principle of strict liability, the UEFA Appeals Body found that the Appellant was ultimately responsible for the behaviour of its employee and should be sanctioned: *“Given the facts as established by the UEFA Appeals Body, it is now deemed necessary and appropriate to disqualify the club from the 2013/14 UEFA competitions in accordance with Paragraph 2.05 of the Regulations of the UEFA Champions League, for failing to fulfil an extremely important admission criterion, without prejudice to any possible disciplinary measures”*.
- 2.12 On 14 August 2013, and following the Decision, the UEFA Emergency Panel in the EM Decision decided as follows:
- “1. FC Metalist Kharkiv is replaced in the 2013/14 UEFA Champions League play-offs by its opponent in the third qualifying round, i.e. by PAOK FC, who will therefore play the 2013/14 UEFA Champions League play-offs against FC Schalke 04 on 21 August (in Gelsenkirchen) and 27 August 2013 (in Thessaloniki).*
- 2. The club which was drawn to play PAOK FC in the 2013/14 UEFA Europa League play-offs on 22 and 29 August 2013, i.e. Maccabi Tel-Aviv FC, qualifies directly for the group stage of the 2013/14 UEFA Europa League without needing to contest the play-offs.*
- 3. [...].*
- 4. These decisions are final”*.
- 2.13 On 15 August 2013, the Swiss Federal Tribunal (the “first SFT decision”) upheld the request for a stay of execution of the CAS Award in the case CAS 2010/A/2267, 2278, 2279, 2280, 2281 – “Football Club Metalist” with regard to the Appellant.
- 2.14 On 16 August 2013, the Swiss Federal Tribunal (the “second SFT decision”) upheld the request for a stay of execution of the CAS Award in the case CAS 2010/A/2267, 2278, 2279, 2280, 2281 – “Football Club Metalist” with regard to the employee of the Appellant, Mr Krasnikov.

### 3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

- 3.1 On 14 August 2013, the Appellant filed an Application for provisional and conservatory measures (the “first Application for a Stay”) with the CAS pursuant to Article R37 of the Code of Sports-related Arbitration, 2013 edition (the “CAS Code”) requesting that the Decision be stayed.
- 3.2 On 15 August 2013, the Appellant wrote to the CAS requesting that PAOK FC be joined in the procedure in view of the decision of the UEFA Emergency Panel dated 14 August 2013 to replace FC Metalist with PAOK FC. Furthermore, in addition to its first Application for a Stay, the Appellant amended its prayers for relief and requested in addition that *“PAOK FC is replaced by FC Metalist in the 2013/14 UEFA Champions League play-offs against FC Schalke 04 on 21 August and 27 August 2013”*.
- 3.3 By letter dated 15 August from the CAS Court Office, PAOK FC was joined as a Respondent and was granted a deadline until 15 August 2013, at 3pm CET, to comment on the Appellant’s request.
- 3.4 On 15 August 2013, at 3pm CET, UEFA and PAOK FC filed their respective answers to the Appellant’s request.
- 3.5 By Order on Request for provisional and conservatory measures, dated 16 August 2013, the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant’s first Application for a Stay, concluding that the Appellant *“had not met the criteria of irreparable harm and balance of interest”* in accordance with the CAS jurisprudence.
- 3.6 Also on 16 August 2013, FC Metalist filed its Statement of Appeal with the CAS with respect to the Decision and included both UEFA and PAOK FC as Respondents.
- 3.7 Furthermore, also on 16 August 2013, the Appellant filed another Application for provisional and conservatory measures (the “second Application for a Stay”) with the CAS pursuant to Article R37 of the CAS Code, requesting that the Decision be stayed.
- 3.8 On 19 August 2013, UEFA and PAOK FC filed their respective answers to the Appellant’s second Application for a Stay.
- 3.9 On 20 August 2013, FC Metalist filed its Appeal Brief with the CAS with respect to the Decision and included the EM Decision in the Appeal. FC Metalist stressed that the Appeal Brief, if necessary, was to be considered as both the Statement of Appeal and Appeal Brief in respect of the EM Decision.
- 3.10 Also on 20 August 2013, by Order on Request for provisional and conservatory measures, the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant’s second Application for a Stay concluding once again that the Appellant *“had not met the criteria of irreparable harm and balance of interest”* in accordance with the CAS jurisprudence.

- 3.11 By letter of 21 August 2013, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr Patrick Lafranchi, attorney-at-law, Bern, Switzerland (appointed by the Appellant), and Mr Mark Hovell, Solicitor, Manchester, United Kingdom, (appointed by the Respondents).
- 3.12 On 23 August 2013, UEFA and PAOK FC filed their respective Answers to the Appellant’s Appeal Brief.
- 3.13 The Parties all agreed to have the case dealt with as an expedited procedure.

#### **4. HEARING**

- 4.1 A hearing was held on 27 August 2013 at the CAS premises in Lausanne. All members of the Panel were present. The Parties did not raise any objections to the constitution of the Panel.
- 4.2 The Appellant was represented at the hearing by its counsel, Dr Francois Carrard, Mr Brian Kennelly, Mr Markiyani Kliuchkovsky, Mr Leonid Sedov, and by Mr Konstantin Pivovarov, First Vice-President of FC Metalist. UEFA was represented by its counsel, Mr Jean-Marc Reymond and Ms Delphine Rochat, and by Dr Emilio García Silvero, Head of Disciplinary and Integrity. PAOK FC was represented by its counsel, Mr Antonio Rigozzi and Ms Brianna Quinn, and by Mr Achilleas Mavromatis as a representative of PAOK FC.
- 4.3 No witnesses were called to testify. The Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the Parties’ final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present award. Upon closure, the Parties expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

#### **5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

- 5.1 Article R47 of the CAS Code states as follows: *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
- 5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 62 of the UEFA Statutes and Article 28 of the RCL. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS.
- 5.3 The Decision was notified to the Appellant on 14 August 2013, and the Appellant’s Statement of Appeal was lodged on 16 August 2013, i.e. within the statutory time limit set forth by the

UEFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

- 5.4 It follows that the CAS has jurisdiction to decide on the appeal of the Decision and that the appeal of the Decision is admissible.
- 5.5 With respect to the EM Decision, the jurisdiction of the CAS derives from Article 62 of the UEFA Statutes and Article 28 of the RCL.
- 5.6 The EM Decision was notified to the Appellant on 16 August 2013 and was included in the Appellant’s Appeal Brief dated 20 August 2013, i.e. within the statutory time limit set forth by the UEFA Statutes, which is not disputed. Furthermore, the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
- 5.7 However, with regard to the admissibility of the appeal of the EM Decision, UEFA and PAOK FC both submit that the Appeal should be declared inadmissible.
- 5.8 According to UEFA and PAOK FC, the Appeal is not admissible because of lack of legal interest of the Appellant and because the Appellant failed to include Maccabi Tel-Aviv FC despite the fact that the latter is expressly effected by the EM Decision.
- 5.9 The Panel initially notes that the Appeal of the EM Decision fulfils the formal requirements with regard to the timely filing of the appeal. However, the question regarding possible inadmissibility based on lack of legal interest and/or failure to include the right parties will be dealt with later on in this Award.
- 5.10 Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

## **6. APPLICABLE LAW**

- 6.1 Article R58 of the CAS Code states as follows: *“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”*.
- 6.2 The Panel notes that in the present matter the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the regulations of UEFA and, additionally, Swiss law, due to the fact that the UEFA, that issued the challenged decision, is domiciled in Switzerland.

## 7. THE PARTIES’ REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties’ requests for reliefs and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### 7.2 *The Appellant:*

7.2.1 In its Appeal Brief of 20 August 2013, the Appellant requested the following from the CAS:

A. *“On the provisional and conservatory measures*

I. *The decision rendered on 14 August 2013 by the UEFA Appeals Body against FC Metalist is stayed until the Swiss Federal Court issues a decision in the case 4A\_362/2013 further to the appeals filed by FC Metalist and Mr Krasnikov against the CAS award rendered on 2 August 2013 in the case CAS 2010/A/2267,2278,2279, 2280, 2281.*

II. *UEFA shall immediately undertake all necessary arrangements – for example, rescheduling the play-offs games between MC Metalist and FC Schalke 04 and, if necessary, rescheduling the relevant matches of the group phase of the UEFA Champions League or UEFA League and/or modifying the draw for the relevant UEFA club competition – to ensure that FC Metalist can be reintegrated into the relevant UEFA club competition for 2013/2014 without suffering sporting prejudice.*

B. *On the merits*

I. *The appeal filed by FC Metalist against the decision rendered on 14 August 2013 by the UEFA Appeals Body and the decision rendered on 16 August 2013 by the Emergency Panel is admissible.*

II. *The decision rendered on 14 August 2013 by the UEFA Appeals Body against FC Metalist and the decision rendered on 16 August 2013 by the Emergency Panel are annulled.*

III. *Alternatively, the decision rendered on 14 August 2013 by the UEFA Appeals Body against FC Metalist is set aside and replaced with the following:*

*FC Metalist is not eligible to participate in one UEFA club competition for which the club would otherwise qualify; this sanction is deferred for a probationary period of one year.*

IV. *UEFA shall immediately undertake all necessary arrangements – for example rescheduling the play-offs games between FC Metalist and FC Schalke 04 and, if necessary, rescheduling the relevant matches of the group phase of the UEFA Champions League or UEFA Europa League and/or modifying the draw for the relevant UEFA club competition – to ensure that FC Metalist can be reintegrated into the relevant UEFA club competition for 2013/2014 without suffering sporting prejudice.*

V. *FC Metalist is granted an award on costs”.*



7.2.2 In support of its request for relief, FC Metalist submitted as follows:

- a) UEFA had no valid grounds to sanction the Appellant, in particular to exclude the club from the UEFA club competitions 2013/14 and to have it replaced by PAOK FC.
- b) UEFA based its decisions and sanctions against the Appellant on the CAS Award which has, however, not entered into force.
- c) The Appellant has filed an appeal against the CAS Award with the Swiss Federal Court submitting that the CAS Award breaches Swiss public order by imposing sanctions on the basis of illegally obtained evidence.
- d) Should the Swiss Federal Court accept this submission, all charges against Mr Krasnikov, and, therefore, against the Appellant would fall away.
- e) The Swiss Federal Court has granted suspensive effect to the Appeal in respect to both the Appellant and Mr Krasnikov.
- f) Such suspensive effect must be accepted and complied with by any party in Switzerland, in particular the CAS and UEFA, and the CAS Award has therefore not entered into force and is not enforceable. By not complying with the suspension, UEFA is undermining the power of the Swiss Federal Court.
- g) This means that the conclusions drawn by the CAS in the CAS Award have no legal validity and effect and, as a consequence, the conclusions drawn by UEFA on the basis of the CAS Award are currently groundless.
- h) Even if, *arguendo*, the CAS Award is not to be considered as suspended and the Appellant could then in principle be sanctioned, the Appellant submits that any alleged violation would be time-barred.
- i) The alleged violation took place on 19 April 2008, while UEFA only commenced disciplinary proceedings against the Appellant on 6 August 2013.
- j) According to the UEFA Disciplinary Regulations 2006 (“DR 2006”), match-fixing falls under the category “*any other act likely to exert an improper influence in the progress and/or the result of a match*”.
- k) As such match-fixing is time-barred after five years while for example bribery and/or corruption is only time-barred after twenty years.
- l) The disciplinary regulations of sports bodies must be construed on a *contra proferentem* basis, i.e. against UEFA. Thus, even if the CAS considers there is an ambiguity or uncertainty with respect to whether match-fixing is to be considered as

bribery/corruption or as “*any other act likely to exert an improper influence in the progress and/or the result of a match*”, such an uncertainty must be resolved in favour of the Appellant.

- m) Furthermore, and even if, also *arguendo*, the alleged violation is not considered time-barred, the sanctions imposed by UEFA are disproportionate and, thus, not permissible.
- n) The decision to disqualify FC Metalist from the 2013/2014 UEFA Competitions was taken pursuant to Article 2.05 of the RCL with reference to Article 2.10 since the competition had already started.
- o) This provision is derived from Article 50 of the UEFA Statutes, which states that the admission of a club involved in match-fixing can be refused.
- p) Whilst Article 2.05 states that such a club will be declared ineligible, there is no provision within this Article stating that the UEFA disciplinary bodies may not suspend such ineligibility for a probationary period.
- q) Even though Article 2.05 refers to ineligibility, the measure must be construed as a disciplinary measure aimed at punishing a prior behavior. An exclusion from a competition can certainly not be seen as a condition of eligibility.
- r) The case has to be conducted by UEFA as a disciplinary case rather than as an administrative matter and was actually decided on by the UEFA Appeals Body in accordance with the UEFA Disciplinary Regulations.
- s) As the measure imposed on the Appellant is a sanction, UEFA is required to undertake a proportionality analysis in determining the level of sanction and to take into consideration any mitigating circumstances of the case.
- t) According to both the 2006 and 2013 editions of the UEFA Disciplinary Regulations (“the DR”), all disciplinary measures may be suspended for a minimum of one year and a maximum of five years, with the exception of warnings, reprimands and bans.
- u) According to UEFA practice, this also applies to measures provided for under Article 2.05, which can be imposed with a probation.
- v) FC Metalist supports UEFA in its pursuit of legitimate aims in taking adequate disciplinary action in cases of match-fixing, however, in any case, the sanction to exclude the Appellant from participating in the 2013/2014 UEFA Competitions goes further than necessary, is manifestly disproportionate and should therefore not have been imposed.
- w) The UEFA Appeals Body failed to carry out a proper proportionality analysis, failing to take into consideration the particular circumstances of the case; e.g. the lack of evidence against Mr Krasnikov, no evidence against FC Metalist, the arguable injustice (in these circumstances) of strict liability, the passage of time since the alleged activities, the lack

of sporting reason for the alleged match-fixing, the disproportionate effect of sanctions on FC Metalist.

- x) Based on these circumstances, the sanction is not proportionate and should at least have been handed out with a probationary period.
- y) In addition, the sanction against FC Metalist is discriminatory and violates the principle of equal treatment, which is mandatory under Swiss association law.
- z) UEFA is a private Swiss association, which is required to treat its members equally and without discrimination under Swiss law. This is not the case when comparing this case to other cases involving match-fixing.
- aa) In order not to be discriminatory, the sanction should at least have been handed out with a probationary period.

### 7.3 **UEFA**

7.3.1 In its Answer of 23 August 2013, UEFA presented the following requests for relief:

- A. *“As to the appeal filed against the decision of the UEFA Appeals Body of 13 August 2013:*
  - 1) *To dismiss the appeal;*
  - 2) *To confirm the decision of the UEFA Appeals Body of 13 August 2013.*
- B. *As to appeal filed against the decision of the UEFA Emergency Panel of 16 August 2013:*
  - 1) *To declare the appeal inadmissible;*  
*Eventualiter: To dismiss the appeal;*
  - 2) *To confirm the decision of the UEFA Emergency Panel of 16 August 2013.*
- C. *In any event:*
  - 1) *To award UEFA a contribution to its expenses;*
  - 2) *To charge any arbitration costs and expenses to FC Metalist;*
  - 3) *To reject any and all prayers for relief sought by FC Metalist”.*

7.3.2 In support of its requests for relief, UEFA submitted as follows:

- a) On a preliminary issue, the appeal filed by the Appellant against the EM Decision is not admissible because of the lack of interest of the Appellant, in view of the two decisions of the Deputy President of the CAS Appeals Arbitration Division refusing the provisional measures requested by the Appellant.

- b) Furthermore, in the EM Decision, the Appellant was replaced by PAOK FC and, according to the same decision, the club Maccabi Tel-Aviv FC, which was to play against PAOK FC in the UEFA Europa League, was then qualified directly to the group stage of the UEFA Europa League 2013/14 without needing to contest the play-offs.
- c) According to CAS jurisprudence, the Appellant should have included Maccabi Tel-Aviv in this procedure as a co-respondent in order to give this club an opportunity to protect its interests.
- d) Since the Appellant failed to do so, the CAS is precluded from taking a decision on the merits on this matter and the appeal against the EM Decision should therefore be rejected.
- e) With regard to the submissions by the Appellant, UEFA rejects the submission that UEFA had no valid grounds to sanction the Appellant since the Swiss Federal Court is yet to decide on the admissibility of the evidence of the CAS Award and since the CAS Award has been stayed upon request of the Appellant.
- f) First of all, and as already established in CAS jurisprudence, even if evidence might not be admissible in a civil or criminal court, this does not prevent a sport federation nor an arbitral tribunal from taking such evidence into account in its deliberations.
- g) Furthermore, the admissibility of the evidence in question has already been carefully considered by the Panel in the CAS Award.
- h) Even if the Swiss Federal Tribunal should rule that the evidence was inadmissible, this would not prevent the UEFA Appeals Body from considering this material (the Lviv video) as relevant for the purposes of applying UEFA’s own disciplinary rules.
- i) The “Lviv video” was in any event not the only evidence on which the Decision was based.
- j) As regards the stay of execution of the CAS Award granted by the Swiss Federal Court, this has no bearing on the legality of the Decision.
- k) According to the applicable rules, the UEFA Appeals Body has the right and duty to consider all evidence available, including information provided in the Disciplinary report, the information contained in the CAS Award, and the information submitted by the parties.
- l) The stay of execution was granted as a result of the consent given by the FFU as a “counter-party”.
- m) However, in any event the Decision is not a decision to enforce the CAS Award, and the stay of execution has therefore no direct legal effect on the Decision.

- n) According to the applicable regulations, the UEFA Appeals Body “...*can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court*”.
- o) Whether the CAS Award is final or not is, as a matter of Swiss law and for the application of Article 2.05 of the RCL, completely irrelevant, since the rules give the UEFA disciplinary bodies the task to consider all relevant evidence.
- p) In addition, the Appellant explicitly agreed to the RCL when it submitted its signed entry form.
- q) Thus, the legal validity of the Decision is unaffected by any on-going procedure before the Swiss Federal Tribunal, nor does the fact that a stay of execution has been granted have any bearing on this case.
- r) With regard to the allegation put forward by the Appellant that the case is allegedly time-barred, UEFA rejects this as simply not correct.
- s) The event that led to the sanction of the Appellant took place on 19 April 2008.
- t) When signing the entry form for the UEFA competition, the Appellant specifically agreed to the term that clubs which are found to have been involved since 27 April 2007 in activities aimed at arranging or influencing the outcome of a match at national or international level will be declared ineligible to participate in any of the UEFA competitions. Thus, such a declaration of ineligibility is not limited by any prescription rules.
- u) Even if the time-prescription rules of the DR would apply, the Decision is not time-barred, neither according to the 2006 or 2013 edition, since match-fixing in any case is to be considered as a form of “*bribery or corruption*”.
- v) Furthermore, in any event, any time-prescription was interrupted by i) the disciplinary proceedings by the FFU between May 2010 and July 2011, ii) the CAS procedure between November 2010 and August 2013, and iii) the opening of disciplinary proceedings by UEFA and the decision of the UEFA Control and Disciplinary Body of June 2011.
- w) With regard to the alleged disproportionality of the sanction, it is first of all submitted that the fight against match-fixing calls for strong measures and the CAS must not be seen as a “*distributor of discounts*”.
- x) Since the Appellant has agreed to the applicability of the RCL and noting that the sanction issued by the UEFA Appeals Body is explicitly foreseen in the regulations and noting that, in the opinion of the UEFA Appeals Body, the measure of one-year

ineligibility was correct, proportionate and just, there are no elements whatsoever to review such sanction.

- y) UEFA has an absolute legal right, as an organiser of the most important European football competitions, to protect the image and the integrity of its competitions. The one-year ineligibility measure foreseen in Article 2.05 of the RCL is a perfectly legitimate, proportionate and necessary measure to protect this interest.
- z) To wait a season before declaring the Appellant ineligible to play in the competitions would be in total contradiction with the values and interests of UEFA.
- aa) Finally, and with regard to the alleged discriminatory nature of the sanction imposed on the Appellant, this submission is also rejected.
- bb) There is no different treatment or “discrimination” as between the Appellant and other clubs with regard to the admission criteria in cases involving match-fixing activities.

#### 7.4 **PAOK FC:**

7.4.1 In its Answer of 23 August 2013, PAOK FC requested the Panel to issue an award:

- 1) *“Dismissing the appeal filed by Public Joint-Stock Company “Football Club Metalist”;*
- 2) *Condemning Public Joint-Stock Company “Football Club Metalist” to bear the costs of the proceedings; and*
- 3) *Condemning Public Joint-Stock Company “Football Club Metalist” to pay a substantial contribution towards PAOK FC’s legal fees and any other arbitration-related costs”.*

7.4.2 In support of its requests for relief, PAOK FC submitted as follows:

- a) The Appeal against the EM Decision is, because of lack of interest, not admissible.
- b) Under Swiss law an appealing party against a decision of an association must have a valid, concrete and actual interest to do so. Such interest must be there not only when the appeal is filed, but also at the moment when the decision is rendered.
- c) The Appeal against the EM Decision was not filed with the CAS until 20 August 2013, one day before the first leg of the match PAOK FC against Schalke 04 at a time when the Appellant’s request for provisional matters had already been rejected twice, and it is therefore deprived of any legal interest and, accordingly, not admissible.
- d) Not only is the appeal inadmissible because of lack of interest but it must also be dismissed since the club Maccabi Tel-Aviv is not included as a party despite the fact that

the latter is expressly included in the EM Decision and thus inevitably effected by the Appellant’s appeal.

- e) With regard to UEFA’s stance on match-fixing, it is very clear from the different applicable regulations that the integrity of the UEFA competitions is extremely important for UEFA and is a key factor in the admission of a club to such competitions.
- f) PAOK FC notes that the Appellant in its appeal before the CAS does not dispute the violation itself, but rather disputes the admissibility of the factual basis for the Decision regarding Mr Krasnikov and the Appellant.
- g) PAOK FC rejects entirely the submissions made by the Appellant regarding this.
- h) First of all, the stay of execution of the Decision, granted by the Swiss Federal Tribunal, was not granted on the basis of any consideration of the Appellant’s likelihood of success in the appeal or the factual background of the CAS Award.
- i) In any event, the stay of execution is immaterial to the present proceedings and has no effect on the legitimacy of the Decision since the Decision did not involve, nor require, the CAS Award to be enforceable, or even to enter into force.
- j) The stay of execution granted by the Swiss Federal Tribunal does mean that the CAS Award is not enforceable, however, it does not mean that the findings of the CAS should be disregarded or ignored.
- k) Thus, UEFA was allowed to rely on the finding of the CAS Award and on all other evidence produced within or outside the CAS proceedings.
- l) Even in the unlikely event that the Swiss Federal Tribunal should declare the “Lviv video” inadmissible for the purpose of disciplinary proceedings, this would not mean that it cannot be relied upon by UEFA for the purposes of its own proceedings based on the RCL.
- m) PAOK FC further rejects the submission from the Appellant suggesting that the Appellant, in any event, cannot be sanctioned for match-fixing since the violation would be time-barred on the basis of the DR 2006.
- n) Even if the time-prescription rules of the DR would apply, the Decision is not time-barred, neither according to the 2006 or 2013 edition, since match-fixing in any case is to be considered as a form of *“bribery or corruption”*.
- o) However, even if the five-year limit, arguendo, was deemed to be applicable, UEFA in any case complied with this by commencing proceedings in June 2011 to determine whether the Appellant complied with the equivalent present rule, thereby, interrupting the time limitation.

- p) Moreover, the ineligibility of the Appellant pursuant to Article 2.05 is solely based on the RCL.
- q) The fact that a specific limitation period is provided for in RCL Article 2.05 (i.e. “*that a club has been directly and/or indirectly involved, since entry into force of Article 50(3) of the UEFA Statutes, i.e. 27. April 2007*”) demonstrates that Article 2.05 is, in any event, clearly not subject to the limitation periods contained in the DR 2006.
- r) With regard to the alleged disproportionality of the sanction and even if it could be said to have an inherent disciplinary nature, on the basis of Article 50(3) of the UEFA Statutes and Article 2.05 of the RCL, the latter cannot properly be categorised as a specific disciplinary sanction commensurate with those under the respective UEFA Disciplinary Regulations.
- s) PAOK FC submits that the principle of proportionality does not apply in relation to Article 2.05 of the RCL, which must be distinguished from Article 2.06 of the RCL. The essential question for ineligibility under RCL is whether or not the violation has been committed, and if it has, the club is ineligible.
- t) In any event, a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed by the CAS only when the sanction is evidently and grossly disproportionate to the offence.
- u) The standard default period of ineligibility of one season cannot seriously be disputed by the Appellant.
- v) None of the Appellant’s submissions regarding the alleged lack of proportionality of the Decision carries any legal weight.
- w) Finally, and with regard to the alleged discriminatory nature of the sanction imposed on the Appellant, PAOK FC does not see any legitimate basis to conclude that the Appellant has not been afforded equal treatment in the mere application of an automatic ineligibility for proven match-fixing violations.
- x) Even if the circumstances of this case are different from the circumstances of other match-fixing cases, which is not accepted, this would rightly only concern the possible imposition of additional sanction under Article 2.06 of the RCL (and the relevant Disciplinary Regulations of UEFA).
- y) In any case, the principle of equal treatment is violated only when the authority treats differently two situations that are so analogous that they require identical treatment.



## 8. DISCUSSION ON THE MERITS

8.1 Initially, the Panel notes that the admissibility of the appeal of the Decision is not disputed between the Parties, but that UEFA and PAOK object to the admissibility of the appeal of the EM Decision.

8.2 Considering the fact that the appeal of the EM Decision will solely be of relevance for the Parties in terms of substance if the appeal of the Decision is upheld, the Panel will not consider the question of the admissibility of the EM Decision until the consideration of the appeal of the Decision has been completed.

8.3 Thus, the main issues to be resolved by the Panel are:

- a) Did the UEFA Appeals Body have sufficient legal grounds to render the Decision?
- b) In the event that a) is answered in the affirmative, was the alleged violation time-barred with the effect that the UEFA Appeals Body had no grounds to render the Decision?
- c) In the event that b) is answered in the negative, is the sanction imposed by the Decision disproportionate and, if so, what consequences will this have for the Decision?
- d) In the event that c) is answered in the negative, is the sanction then discriminatory and, accordingly, contrary to the principle of equal treatment?
- e) Finally, in the event that the appeal of the Decision is upheld, is the appeal of the EM Decision admissible and, in the affirmative, should the appeal against the EM Decision be deemed upheld? Furthermore, should the request for provisional and conservatory measures also be upheld?

### a. Did the UEFA Appeals Body have sufficient legal grounds to render the Decision?

8.4 The Panel notes initially that the UEFA Appeals Body deemed it necessary and appropriate to disqualify the Appellant from the 2013/2014 UEFA competitions in accordance with Article 2.05 of the RCL for failing to fulfil important admission criteria, without prejudice to any possible disciplinary measures.

8.5 Article 2.05 of the RCL provides as follows:

*“If, on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level, UEFA will declare such club ineligible to participate in the competition. Such ineligibility is effective only for one football season. When taking its decision, UEFA can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court. UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of the decision taken in connection with the same factual circumstances by a national or*

*international sporting body, arbitral tribunal or state court has already had the effect to prevent that club from participating in a UEFA club competition”.*

8.6 In the Decision, the UEFA Appeals Body concluded, inter alia:

*“After evaluating all the evidence provided by the parties and included in the case file the Appeals Body considers it established to its comfortable satisfaction, on the basis of both the FFU and the CAS decisions, that FC Metalist Kharkiv was involved in match fixing.*

*Regardless of the outcome of the aforementioned pending Federal Supreme Court of Switzerland proceedings, there is sufficient evidence in the view of the UEFA Appeals Body to establish that the club was involved in a match-fixing activity and to disqualify it from the ongoing 2013/2014 UEFA competition”.*

8.7 In support of its submission that UEFA had no valid grounds to sanction the Appellant, the Appellant states, inter alia, that the CAS Award on which the Decision was allegedly based has not yet entered into force as the Swiss Federal Tribunal has granted suspensive effect to the appeal of the CAS Award. As such suspensive effect must be accepted and complied with by any party in Switzerland, the CAS Award has not entered into force and is not enforceable, and UEFA is consequently unable to take the CAS Award into account in rendering its Decision. This means that there are no valid grounds for UEFA to sanction the Appellant.

8.8 The Panel notes that the Decision is not a decision to enforce the CAS Award. The Decision is a first instance decision. Article 2.05 of the RCL defines how UEFA has to establish the factual basis of its decision. It in other words lists possible and admissible pieces of evidence in a non-exclusive way. Further, it assigns UEFA full discretion to assess the pieces of evidence chosen, as can be seen in the wording *“UEFA can rely on, but is not bound by”*. One type of evidence mentioned in Article 2.05 of the RCL is a decision of an arbitral body. Therefore UEFA can rely on but is not bound by the assessment of evidence taken in a decision of an arbitral body.

8.9 In the Decision, UEFA assessed the appraisal of evidence taken in the CAS Award. It came to the conclusion that it would rely on it in its Decision. However, UEFA was not bound by the CAS-award. It is therefore of no importance that the Swiss Federal Tribunal has granted suspensive effect to the appeal of the CAS Award. Besides, the Panel finds it irrelevant whether the aforementioned suspensive effect has been granted against the background of the FFU’s consent or against the background of the Swiss Federal Tribunal’s preliminary evaluation of the case and the Appellant’s likelihood of success.

8.10 It should further be noted, as a matter of form and as already established in consistency with CAS jurisprudence (for instance CAS 2009/A/1879), that even if evidence might not be admissible in a civil or criminal court in Switzerland, this does not automatically prevent a sport federation or an arbitration tribunal from taking such evidence into account in its deliberations.

8.11 Moreover, the Panel concurs that steps must be taken, in regard to the public interest in finding the truth in match-fixing cases and also in regard to the sport federations’ and arbitration

tribunals’ limited means to secure evidence, to open up the possibility of including evidence in the case although such evidence could potentially have been secured in an inappropriate manner so long as the inclusion of such evidence in the case does not infringe any fundamental values reflected in Swiss procedural public policy.

- 8.12 Given these circumstances, the Panel does not find that the UEFA Appeals Body was obliged to disregard the findings, the evidence and the conclusion in the CAS Award, as it should be noted that the UEFA Appeals Body was naturally obliged to make its own individual evaluation of the documents of the case, including, in particular, an evaluation of the findings, the evidence and the conclusion in the CAS Award.
- 8.13 It appears from the Decision that the UEFA Appeals Body *“after evaluating all the evidence provided by the parties and included in the case file the Appeals Body considers it established to its comfortable satisfaction, on the basis of both the FFU and the CAS decisions, that FC Metalist Kharkiv was involved in match fixing”*.
- 8.14 In the Panel’s view, the Appellant has during these proceedings been unable to rebut or otherwise refute UEFA’s opinion of the case to a material extent, including UEFA’s assessment that the Appellant, in accordance with the current strict liability rules and regulations, can properly be deemed to have been involved in match-fixing.
- 8.15 In these circumstances, and following a review of the CAS Award, the Decision and the other documents produced during the proceedings, the Panel finds no grounds to set aside UEFA’s evaluation.
- 8.16 The Panel therefore finds no grounds to conclude that the UEFA Appeals Body had no legal grounds to render the Decision.
- b. In the event that a) is answered in the affirmative, was the alleged violation time-barred with the effect that the UEFA Appeals Body had no grounds to render the Decision?**
- 8.17 As mentioned under para 7.2.2 above, the Appellant submits that the alleged violation in any case is time-barred. The alleged violation took place on 19 April 2008 while UEFA only commenced disciplinary proceedings against the Appellant on 6 August 2013.
- 8.18 As mentioned above, the Decision is based on Article 2.05 of the RCL, to which provision the Appellant specifically agreed when signing the entry form for the UEFA competitions.
- 8.19 According to these provisions, any club found to have been involved since 27 April 2007 in activities aimed at arranging or influencing the outcome of a match at national or international level will be declared ineligible to participate in any UEFA competitions for one year.
- 8.20 The Panel holds the point of view that Article 2.05 of the RCL brought an aggravation to the prescription regulations contained in the UEFA Disciplinary Regulations. It is in other words a *lex specialis* to the time-barring regulations found in the UEFA DR 2006 and UEFA DR 2013 because it contains in itself a time-barring rule. Hence, Article 2.05 of the RCL declares all

violations committed after 27 April 2007 as imprescriptible. In consequence, the violation at stake is not yet prescribed.

- 8.21 Even if the prescription rules of the UEFA Disciplinary Regulations 2006 and 2013 would be the only rules to apply to this matter, the Panel finds that the violation would in any case not be time-barred.
- 8.22 In this connection the Panel finds, firstly, that match-fixing in relation to the DR 2006 falls within the meaning of “bribery and/or corruption”, and prosecution according to these regulations would therefore only be time-barred after twenty years.
- 8.23 Secondly, the Panel finds that any possible time-prescription was – at the latest – interrupted in June 2011 by the opening of disciplinary proceedings by UEFA and the decision of the UEFA Control and Disciplinary Body, which allowed the Appellant to participate in the UEFA competitions in 2011/2012.
- 8.24 The Panel thus concludes that the violation was not time-barred when the Decision was issued by the UEFA Appeals Body in August 2013.

**c. In the event that b) is answered in the negative, is the sanction imposed by the Decision disproportionate and, if so, what consequences will this have for the Decision?**

- 8.25 With regard to the alleged disproportionality of the Decision, the Panel first of all wishes to stress that the fight against match-fixing is considered to be extremely important for the purpose of preserving confidence in and the integrity of sport. Against the background of these circumstances, it is essential that a possibility exists for imposing appropriate sanctions, sufficient to serve as an effective deterrent to those who might otherwise be tempted to consider involvement in such activity.
- 8.26 Moreover, the Panel recognises that a sanction must comply with the principle of proportionality in the sense that there must be a reasonable balance between the kind of misconduct and the sanction. This principle is recognised in CAS jurisprudence and provides that the severity of a sanction must be proportionate to the offence committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim.
- 8.27 The Panel further notes that the Appellant, by signing the entry form for the UEFA competitions, expressly accepted that any club found to have been involved since 27 April 2007 in activities aimed at arranging or influencing the outcome of a match at national or international level would be declared ineligible to participate in any UEFA competitions for one year.
- 8.28 The Panel wishes to point out that the Panel does not, *prima facie*, regard ineligibility to participate in the UEFA competition for one year as a disproportionate sanction for being directly or indirectly involved in match-fixing.

- 8.29 Notwithstanding the aforesaid, the Panel has given due and thorough consideration to the Appellant’s submission pertaining to the alleged particular circumstances of this case, the result of which is, according to the Appellant, that the sanction imposed must be regarded as disproportionate and, therefore, must be suspended for at least a one-year probationary period.
- 8.30 The question is, however, who carries the burden of proof convincing the Panel that the specific sanction imposed by the Appellant is proportionate/disproportionate and whether this specific burden of proof must be deemed to have been discharged in this case?
- 8.31 The Panel refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed.
- 8.32 The Panel notes that this is in line with Article 8 of the Swiss Civil Code (“Swiss CC”), which stipulates as follows:
- “Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”.*
- 8.33 As a result, the Panel reaffirms the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them .... The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).
- 8.34 In these circumstances, including the fact that the specific maximum sanction is set out in the relevant provision, the Panel finds it is up to the Appellant to prove/convince the Panel that the sanction is clearly disproportionate.
- 8.35 Against this background and considering, among other aspects, the importance of the fight against match-fixing combined with the ambition to preserve the integrity of the sport, the Panel does not find that the circumstances alleged by the Appellant imply that the sanction is not proportionate and should at least be handed out with a probationary period. The Panel emphasises, as a matter of form, that the Panel in this finding has not addressed itself to whether the Panel finds that the necessary regulatory authority is available, if occasion should arise, to hand out a sanction according to Article 2.05 of the RCL with a probationary period.
- 8.36 The Panel emphasises, as a matter of form, that neither the Decision nor this Award takes into account whether any additional sanctions, with reference to Article 2.06 of the RCL, should be imposed on the Appellant as a result of the Appellant’s involvement in match-fixing. Nor has the Panel addressed itself to whether such additional sanctions, as the case may be, will mean that the total punishment must be deemed to be disproportionate.

**d. In the event that c) is answered in the negative, is the sanction then discriminatory and, accordingly, contrary to the principle of equal treatment?**

8.37 The Appellant submits that the sanction against the Appellant is discriminatory and violates the principle of equal treatment. In order not to be discriminatory, the sanction should at least have been handed out with a probationary period.

8.38 The Panel recognises that the principle of equal treatment is mandatory under Swiss association law.

8.39 However, the principle of equal treatment is violated only when two similar situations are treated differently.

8.40 The Panel reiterates in this connection that the sanction imposed on the Appellant corresponds to the sanction prescribed in Article 2.05 of the RCL, resulting in ineligibility effective for one year.

8.41 As already mentioned above, the Panel has not yet addressed itself to whether additional sanctions should be imposed on the Appellant in accordance with Article 2.06 of the RCL.

8.42 Given the above-mentioned views and considerations relating to the burden of proof rules, and pointing out that the sanction in question corresponds to the sanction prescribed in the regulations, it is up to the Appellant to convince the Panel that the sanction imposed should be regarded as discriminatory.

8.43 The Panel does not find, following a thorough review of the jurisprudence invoked by the Appellant that the sanction imposed is in any way discriminatory against the Appellant or otherwise contrary to the principle of equal treatment.

**e. Finally, in the event that the appeal of the Decision is upheld, is the appeal of the EM Decision admissible and, in the affirmative, should the appeal against the EM Decision be deemed upheld? Furthermore, should the request for provisional and conservatory measures also be upheld?**

8.44 Since the appeal of the Decision is dismissed on the grounds set out above, the Panel finds that the appeal filed against the EM Decision and the request for provisional and conservatory measures filed on 20 August 2013 are considered redundant.

**9. SUMMARY**

9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds no grounds to conclude that the UEFA Appeals Body did not have sufficient legal grounds to render its Decision and, furthermore, the Panel finds no grounds to conclude that the violation was time-barred. Moreover, the Panel finds that there are no grounds to either set aside the Decision or make the Decision suspended against the

background of the Appellant’s submissions concerning alleged disproportionality or violation of the principle of equal treatment.

- 9.2 The Appeal filed against the Decision is therefore dismissed.
- 9.3 As a consequence of the above, the Appeal filed against the EM Decision and the request for provisional and conservatory measures are considered redundant.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 16 August 2013 by Public Joint-Stock Company “Football Club Metalist” against the decision rendered by the UEFA Appeals Body on 13 August 2013 is dismissed.
  2. The decision rendered by the UEFA Appeals Body on 13 August 2013 is confirmed.
  3. As a consequence of the above, the appeal filed by Public Joint-Stock Company “Football Club Metalist” against the decision rendered by the UEFA Emergency Panel on 16 August 2013 and the request for provisional and conservatory measures filed by Public Joint-Stock Company “Football Club Metalist” on 20 August 2013 are considered redundant.
- (...)
6. All other motions or prayers for relief are dismissed.