Arbitration CAS 2018/A/5800 Samir Arab v. Union Européenne de Football Association (UEFA), award of 14 November 2018 (operative part of 16 August 2018)

Panel: Prof. Martin Schimke (Germany), President; Mr Manfred Nan (The Netherlands); Prof. Denis Oswald (Switzerland)

Football
Match-fixing
Restriction of power of review of sanctions limited to evident and gross disproportionate sanctions
Conditions for a reduction of an appellant's sanction based on substantial assistance
Procedural concept of res iudicata
Passive match-fixers' global conduct

1. **Even though CAS panels have full power of review, it is broadly considered that the measure of a sanction imposed by a disciplinary body in the exercise of its discretion allowed by the relevant rules can be reviewed only when such sanction is evidently and grossly disproportionate to the offence. A panel would naturally pay respect to a fully reasoned and well-evidenced decision in pursuit of a legitimate and explicit policy.**

2. **The reduction of a sanction based on the concept of "substantial assistance" requires one to go beyond a mere cooperation with the authorities. According to the relevant regulations, and *mutatis mutandis*, "substantial assistance" requires to fully disclose in a signed written statement all information one possesses in relation to rule violations, and to fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an authority or a hearing panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.**

3. **The procedural concept of *res iudicata* is defined in Swiss law via the concepts of "Sperrwirkung" and "Bindungswirkung". The "Sperrwirkung" (prohibition to deal with a matter, *i.e. ne bis in idem*) has the effect that if a matter with *res iudicata* is brought again before a judge, the latter is not even allowed to look at it but must dismiss the matter (insofar) as inadmissible. The "Bindungswirkung" (binding effect of a decision) leads to the fact that a judge in a second procedure is bound to the outcome of a matter decided in *res iudicata*.**

4. **Not too much emphasis should be placed on a passive match-fixer's counts of failing to report an attempt to fix a match. It is not so much the number of approaches that are informative for the severity of a violation, but one's conduct as a whole.**

I. PARTIES

1. Mr Samir Arab (the "Appellant" or the "Player") is a professional football player of Maltese nationality and former player of the Maltese U-21 national team that participated in the UEFA European U-21 Championship 2017.

2. The *Union Européenne de Football Association* (the "Respondent" or "UEFA") is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

II. FACTUAL BACKGROUND

A. Background Facts

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

4. It is common ground between the parties that it appears from information provided by the Maltese police authorities, the Maltese criminal court, the UEFA Ethics and Disciplinary Inspector (the "EDI"), the proceedings before the UEFA Control, Ethics and Disciplinary Body (the "UEFA CEDB") and the UEFA Appeals Body, that the match-fixing plot under scrutiny was masterminded by Mr Ronnie Mackay, who is banned for life by the Malta Football Association (the "MFA") for match-fixing back in 2012, and Mr Seyble Zammit, a 21-year old former football player who knows many of the players who are under scrutiny. Mr Mackay was approached by an Asian investor, and, in turn, convinced Mr Zammit to approach the players in order to make the fix happen. Mr Mackay was convicted and sentenced to two years in prison in respect of the present match-fixing plot by a Maltese first instance criminal court in August 2016. Mr Zammit was also convicted but was not sanctioned because he cooperated with the authorities.

5. Although disputed by Mr Zammit, it appears that the first contact is made on a Sunday sometime in February 2016 when Mr Zammit approached Mr Llywelyn Cremona, a player of the Maltese U-21 national team, in the Havana nightclub in Paceville, Malta, and speaks about fixing a match. Mr Cremona allegedly goes home and tells his father about the offer, who tells him not to worry about it, and only to tell him again if such an offer is repeated.

6. On 23 February 2016, Mr Zammit contacts Mr Ryan Camenzuli, the captain of the Maltese U-21 national team, via Whatsapp, asking if they could meet. They meet in the Mediterranean Hall in Valetta, Malta, where Mr Zammit makes the offer, telling Mr Camenzuli how he was in danger

if he would not find players to fix the match. Mr Zammit also asks Mr Camenzuli to contact Mr Luke Montebello, a player of the Maltese U-21 national team, about the same offer.

7. On 8 March 2016, at the parking lot of the Tal-Qroqq Sports Complex, Mr Montebello was asked by Mr Zammit to join him in his car. When he enters the car, Mr Kyle Cesare, another player of the Maltese U-21 national team, is already there. Mr Zammit directly asks Mr Montebello whether he would participate in a match fix for a reward of EUR 3,000 for the match against the Montenegro U-21 national team ("Match 1"). This offer was immediately rejected by Mr Montebello.

8. On 7 or 8 March 2016, Mr Zammit contacts Mr Emanuel Briffa, another player of the Maltese U-21 national team, Mr Cesare and the Player and they all meet at the Café Jubilee in Valetta, Malta, on or around 9 March 2016, where Mr Zammit proposes that they fix Match 1. The Player maintains that he refused the offer.

9. On 9 March 2016, Mr Zammit contacted Mr Briffa on Facebook and they meet in Hal Ghaxaq – Bir id Deheb, when Mr Zammit offered EUR 3,000 to lose the match, and that he would tell him the exact score which needed to be achieved later. Mr Briffa claims that he refused such offer.

10. On or around 14 March 2016, Mr Briffa and the Player meet Mr Zammit again at Café Jubilee. Also present at this meeting were Mr Mackay and a *"mysterious Asian investor named Fred"*. Again, an offer of EUR 3,000 is made to Mr Briffa and the Player to have a half-time score of 0:1 and a final score of 0:3. The Player maintains that he refused the offer.

11. Around 15 March 2016, Mr Cesare and Mr Zammit meet in a parking lot outside the training facilities. The individual referred to as "Fred" joined them in Mr Cesare's car.

12. On 16 March 2016, Mr Zammit gets in touch with Mr Matthew Cremona, another player of the Maltese U-21 national team, and, on 19 March 2017, at Hamrun, Junior College, at the bar near the roundabout, they meet in Mr Zammit's car.

13. On 23 March 2016, Match 1 between the Maltese U-21 national team and the Montenegro U-21 national team within the UEFA European U-21 Championship 2017 takes place, ending with a score of 0:1 in favour of Montenegro. The UEFA Betting Fraud Detection System ("BFDS") escalates the match, and it is reported that there was strong pre-match betting for Malta to lose Match 1, thereby resulting in several leading European bookmakers removing their markets prior to kick-off. However, the BFDS report suggests that there was no evidence that this match was actually manipulated for betting purposes, while stating that the possibility that it was targeted cannot be ruled out absolutely.

14. According to information provided by Mr Franz Tabone, Maltese UEFA integrity officer, the A-team manager of the Malta team contacted him in the morning of the day of Match 1. The

manager informed him that he saw suspicious persons having coffee at the bar of the U-21 team in Floriana.

15. Mr Tabone alerted the U-21 team manager Mr Jesmond Abela and informed the police officer Mr Scicluna, who is responsible for investigating match-fixing cases within Malta and is the contact person for the MFA.

16. Following an investigation conducted jointly by the MFA and Mr Tabone, the latter reported that, during Match 1, persons were seen directly at the match stadium, who were strongly believed to be part of a gang engaged in match-fixing practices. Namely, Mr Ronnie Mackay was one of those persons.

17. Mr Tabone also reported that he was informed by the father of the national U-21 player Mr Llywelyn Cremona, Mr Anton Cremona, who was at that time coaching one of the local Maltese clubs, FC Mosta, that his son was approached by match-fixers and that he was worried about him.

18. On 26 March 2016, the U-21 Maltese national team player Mr Joseph Mbong informed the team manager that he had received a message on Whatsapp, containing an offer to fix the match against the national U-21 team of Czech Republic at the occasion of the UEFA European U-21 Championship 2017 ("Match 2"). This message had been sent from the cell phone number of Mr Zammit.

19. On 27 March 2016, the MFA informed the police that Match 1 might have been targeted for manipulation, as well as upcoming Match 2 to be played on 29 March 2016.

20. On 29 March 2016, Match 2 was played and ended with a score of 0:7 in favour of Czech Republic.

21. On 13 April 2016, the Player provided a witness statement to the Maltese police against Mr Mackay and Mr Zammit and he finally also testified in court against Mr Mackay.

22. On 23 January 2017, the EDI opened investigations in relation to Match 1 and 2. Eight persons were investigated, including the Player.

23. On 7 February 2017, six players of the Maltese U-21 national team and Mr Tabone were questioned by the EDI. The Player was not among them.

24. The U-21 Maltese national team players Mr Cesare and Mr Briffa were initially acquitted by the first instance criminal court on 23 August 2016. However, following an appeal by the Maltese Attorney General, they were found guilty of match-fixing on appeal on 5 February 2018, but were exempted from punishment, subject to them not committing another criminal offence within the next two years.

25. On 29 May 2017, the EDI submitted her report to the UEFA CEDB and requested disciplinary proceedings to be opened against eight players, including the Player. The charge against the Player was *"acting in a manner that was likely to exert an unlawful or undue influence on at least one UEFA match with a view of gaining an advantage for themselves and third parties"* in violation of Article 12(2)(a) UEFA Disciplinary Regulations (the "UEFA DR"). The EDI requested the UEFA CEDB to impose a life ban on any football-related activity on the Player, or, alternatively, if the CEDB would not agree to impose the sanction requested, to *"impose appropriate disciplinary sanctions on each of the persons involved depending on their role and involvement into the attempted match-fixing"*.

26. Besides the Player, out of the six remaining players prosecuted by UEFA in respect of the present match-fixing plot, five players have ultimately been sanctioned, *i.e.* no sanction was apparently imposed on Mr Matthew Cremona. As to Mr Cesare and Mr Briffa, while it is stated in the Appealed Decision that they received life-bans, UEFA submitted in the present proceedings before CAS that they are currently banned from football-related activities for ten years. As to Mr Camenzuli, Mr Montebello and Mr Llywelyn Cremona, they all received suspensions of between 1 and 1,5 years for violations of Article 12(2)(d) UEFA DR.

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

27. On 29 May 2017, the UEFA CEDB opened disciplinary proceedings against the Player.

28. On 15 June 2017, the Player submitted his defence, denying a violation of Article 12(2)(a) UEFA DR.

29. On 14 December 2017, following a hearing, the UEFA CEDB rendered its decision (the "UEFA CEDB Decision"), whereby the UEFA CEDB found that the Player was not guilty of a violation of Article 12(2)(a) UEFA DR, but was found guilty of a violation of Article 12(2)(d) UEFA DR (a failure to *"immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition"*). The UEFA CEDB Decision contains the following operative part:

> *"The player Samir Arab is banned on all football-related activities until 31 December 2019"*.

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

C. Proceedings before the UEFA Appeals Body

31. On 17 February 2018, the Player announced his intention to lodge an appeal against the UEFA CEDB Decision.

32. On 19 February 2018, the Player filed the grounds of his appeal, requesting the UEFA Appeals Body to revoke the UEFA CEDB Decision and to impose a more equitable and just punishment for the violation of Article 12(2)(d) UEFA DR.

33. On 15 March 2018, the EDI submitted her reply to the appeal, requesting that it be rejected.

34. On 9 April 2018, following a hearing, the UEFA Appeals Body rendered its decision (the "Appealed Decision"), whereby it rejected the Player's request for a reduction of the sanction for a violation of Article 12(2)(d) UEFA DR, reasoning that the Player had violated Article 12(2)(a) UEFA DR and that the sanction imposed was actually too lenient and that *"the sanction should have gone beyond what was imposed against the player for not reporting the approach"*. The Appealed Decision contains the following operative part:

> *"1. The appeal lodged by Mr. Samir Arab is rejected. Consequently, the UEFA Control, Ethics and Disciplinary Body's decision of 14 December 2017 is upheld.*
>
> *2. The costs of the proceedings, totalling € 2'000 (minus the appeal fee), are to be paid by the Appellant.*
>
> *3. The Malta Football Association is jointly and severally liable for the payment of the costs of the proceedings".*

35. On 15 April 2018, the grounds of the Appealed Decision were communicated to the Player.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 25 June 2018, the Player filed a Statement of Appeal, pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code) with the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision. The Player nominated Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as arbitrator. The Player applied for an expedited procedure to be implemented and indicated that UEFA had indicated that it agreed to such request. The Player also requested the operative part of the arbitral award to be communicated to the parties before the start of the 2018/2019 football season in Malta, which starts on 17 August 2018. Finally, the Player requested UEFA to provide him with the recordings of the hearings before the UEFA CEDB and the UEFA Appeals Body.

37. On 29 June 2018, UEFA indicated that, in accordance with Article 41(3) UEFA DR, parties are in principle not given access to recordings of hearings, but that for the sake of transparency and good faith, UEFA nevertheless provided the Player with the recordings requested. UEFA nominated Prof Dr Denis Oswald, Attorney-at-Law in Colombier, Switzerland, as arbitrator. UEFA also confirmed its agreement to the implementation of an expedited procedure and that the parties had agreed on the following procedural schedule:

- Appeal Brief: 10 July 2018;
- Reply to the Appeal Brief: 3 August 2018;
- CAS hearing: Between 10 and 20 August 2018;

- Notification of the operative part: 25 August 2018.

38. Also on 29 June 2018, pursuant to Article R52 CAS Code, the CAS Court Office confirmed the implementation of the procedural schedule agreed upon by the parties.

39. On 10 July 2018, the Player filed his Appeal Brief, in accordance with Article R51 CAS Code.

40. On 11 July 2018, pursuant to Article R54 CAS Code, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:

- Prof. Martin Schimke, Attorney-at-law in Dusseldorf, Germany, as President;

- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands; and

- Prof. Denis Oswald, Attorney-at-Law in Colombier, Switzerland, as arbitrators.

41. On 12 July 2018, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

42. On 30 July 2018, both parties returned duly signed copies of the Order of Procedure to the CAS Court Office.

43. On 3 August 2018, UEFA filed its Answer, pursuant to Article R55 CAS Code.

44. On 14 August 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel.

45. In addition to the Panel, Mr William Sternheimer, CAS Deputy Secretary General, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Player:

1) Mr Samir Arab, the Player;
2) Mr Roy Vermeer, FIFPro Director Legal Division Europe.

b) For UEFA:

1) Mr Carlos Schneider, UEFA Disciplinary Lawyer;
2) Mr Miguel Liétard, UEFA Ethics and Disciplinary Inspector.

46. The Panel heard evidence from the following persons in order of appearance:

- Mr Carlo Mamo, General Secretary of the Malta Football Players Association, witness called by the Player;

- Mr Samir Arab, the Player.

47. Although the Player initially also called Mr Ray Grech, coordinator of the drug rehabilitation program to which the Player's father was subjected, as a witness, given that UEFA and the Panel indicated not to have any specific questions for this witness, the Player ultimately did not consider it necessary to hear this witness.

48. Mr Mamo and the Player were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both parties and the Panel had the opportunity to examine and cross-examine them.

49. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

50. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

51. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

52. On 16 August 2018, in accordance with the expedited procedural calendar agreed upon by the parties, the operative part of the award was communicated to the parties by facsimile.

IV. REQUESTS FOR RELIEF

53. The Player filed the following requests for relief in his Appeal Brief:

"a) To annul the decision passed by the UEFA Appeals Body.

b) To rule that due to the absence of an appeal by the EDI to the UEFA Appeals Body, the UEFA Appeals Body made an ultra petita ruling when it established that the player violated art. 12(2)(a) DR.

c) To replace the decision with a decision confirming that no sanction is imposed on the Appellant.

In the alternative;

d) To replace the decision with a decision imposing a sanction on the Appellant varying between a 'warning' and community football service up to a probationary suspension, to be determined at the discretion of the Panel.

Further in the alternative;

e) To replace the decision with a decision imposing a sanction on the Appellant which is less severe than the one imposed on him by the CEDB and the UEFA Appeals Body, to be determined at the discretion of the Panel.

In all of the abovementioned scenarios:

f) To rule that the Respondent has to pay the Appellant a contribution towards his legal and other costs incurred in this process, in an amount to be determined at the discretion of the Panel".

54. During the hearing, the Player however clarified that he no longer pursued an acquittal, but that he only requested a reduction of the sanction imposed on him.

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

"- Rejecting the reliefs sought by Samir Arab.

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

V. SUBMISSIONS OF THE PARTIES

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

- As a preliminary observation, it is argued that the prosecution of the Player is incomprehensible and a big step backwards in the fight against match-fixing. The Player provided a witness statement against Mr Mackay and Mr Zammit and testified in court against Mr Mackay, as a result of which both could be convicted. The Player thus provided substantial assistance. The underlying objective of UEFA's anti-match-fixing provisions should be about catching match-fixers and preventing matches from being fixed. Both of these objectives were met in August 2016. The match-fixing plot fell through (due to the rejection of various offers by the Player and the other players) and the masterminds were caught and convicted (predominantly due to the assistance provided by the Player). The consequences of the message that UEFA has now conveyed with the prosecution of the Player is that no player will come forward anymore to assist the authorities in criminal investigations if – having not immediately reported an approach – they know that by means of their testimony in court they will be sanctioned by UEFA

with a 2 year ban on all football-related activities. Surely this cannot be the precedent which UEFA wants to set.

- As another preliminary observation, although all the other seven players prosecuted by the EDI were interviewed by the EDI, the Player never received an invitation to interview, even while the EDI accused the Player of match-fixing, the most severe accusation that can be made against a professional football player, and requested the imposition of a life ban from any football-related activity. The Player was at no time prosecuted by the Maltese authorities and his testimony was fundamental in the conviction of Mr Mackay (Mr Scicluna testified in front of the UEFA CEDB that the Player's testimony was convincing and important, as he was the only one that could testify against Mr Mackay). Yet, the EDI considered it sufficient to declare that he had violated Article 12(2)(a) UEFA DR on the basis of Mr Mackay's indication that the Player had accepted a bribe and that Mr Mackay had no reason to lie.

- The UEFA CEDB concluded that the Player was not guilty of violating Article 12(2)(a) UEFA DR, but the UEFA Appeals Body considered that it was *"satisfied with the conclusion that [the Player] accepted at a first instance the bribe"*, that *"at least in the beginning,* [the Player] *accepted the bribe. The fact that the* [Player] *refused the offer afterwards doesn't change the fact that by accepting at a first instance he already violated Article 12(2)(a) DR"*, that *"it is the Appeal Body's strong conviction that the involvement of* [the Player] *in the match fixing activities prior to Match 1 corresponded also to a violation of Article 12(2)(a) DR"* and that, as a result thereof *"*[i]*t follows that the sanction to be imposed against the player should have gone beyond what was imposed against the player for not reporting the approach (Article 12(2)(d) DR)"*. This conclusion of the UEFA Appeals Body blatantly violated the principle of *res iudicata*, as the EDI did not appeal the UEFA CEDB Decision. The UEFA Appeals Body had no business in going into an analysis of Article 12(2)(a) UEFA DR in the first place. More importantly, by putting forward the conclusion that the Player had violated Article 12(2)(a) UEFA DR and by emphasising that the sanction should have gone beyond what was imposed for not reporting, the UEFA Appeals Body's decision was contaminated and showed that it did not seriously analyse the Player's request to have his sanction for his failure to report reduced.

- The Player submits that his failure to report the match-fixing approach was justified due to the absence of a proper education, the absence of the dissemination of information and the absence of a reliable and secure reporting tool that would guarantee the Player's safety and would protect his identity. The importance of such elements is recognised by the Council of Europe Convention on the Manipulation of Sports Competition and the Memorandum of Understanding signed between UEFA and the Council of Europe. The reason for such measures is that match-fixing is often instigated by organised crime groups, who primarily target the most vulnerable players in football in order to induce or coerce them into fixing matches. It is naïve and unreasonable to put such a heavy burden on young players and expect them to report dangerous criminals to a football association without any guarantees that they would be protected. The education and information

provided to the Player at the time of the relevant events was insufficient (in November 2014 the Player received a short announcement from the MFA Integrity Manager which – all together – did not even last 5 minutes) and there was no secure, structured and anonymous reporting tool available. The MFA Vice-President publicly acknowledged that the education of players in Malta was unsuccessful. The fact that none of the eight players approached for match-fixing in the present matter reported this to UEFA or the MFA shows that many players do not know what to do in such a case. Mr Mbong merely showed a Whatsapp message to the team manager of the U-21 Maltese national team. The MFA Vice-President also publicly declared that the MFA is unfortunately unable to protect whistle-blowers. This fear of reporting is incentivised by a real-life example of a player (Mr Andrea Cassar) that reported match-fixing to the MFA but regretted that ever since, because within days his name was published in the media and he received numerous threats and insults without receiving any protection whatsoever. The Player was never informed about the existence and introduction of the UEFA Integrity App. Because the 2016 FIFPro Global Employment Report prepared by the University of Manchester shows that in Malta 15.5% of players have been approached in relation to match-fixing, the reality is much more complicated than simply writing down in a disciplinary regulation what players have to do when they are approached. The Player is not the offender here, but he is the victim. The Player had justified reasons not to report the approach and should therefore not be sanctioned.

- Subsidiarily, the Player maintains the sanction imposed on him for not voluntarily and immediately reporting a match-fixing attempt is excessive, unfair and grossly disproportionate and should therefore be reduced. Based on the reasoning set out above, the appropriate sanction would lie between a 'warning' and community football service up to a probationary suspension. The Player did not actively participate in any form of corruption and did not accept any offer to fix a match. The EDI, the UEFA CEDB and the UEFA Appeals Body all held that a failure to report a match-fixing approach warrants the most severe sanction of all: a ban from all football-related activities. Yet, no explanation has been put forward why this should be so. As regards the other players that failed to report the approach, in the EDI's report, she requested the imposition of a ban from any football-related activity for one year, of which six months would be spent on probation, with an appropriate number of hours of community work. On the other hand, the UEFA Appeals Body held that a suspension of 1.5 years should be regarded as the absolute minimum suspension for a failure to report under normal circumstances. With reference to CAS jurisprudence, the Player considers it disproportionate that he is sanctioned with a two-year ban for failing to report, while a two-year ban was also imposed on a club that had actively participated in fixing eight matches, while the consequences of such a sanction for a player are arguably much more severe. The sanction imposed on the Player is also disproportionate, because a tennis player that failed to report two match-fixing approaches was sanctioned with a suspension of eight months (of which six months were suspended on condition that no further offences were committed) and fined USD 10,000 (USD 5,000 of which was suspended on the same terms). A ban from all football-related activities is particularly severe, because it also does

not allow the Player to train, and such a ban will normally result in the termination of his employment contract (with just cause) and the unavoidable ensuing claim for compensation for breach of contract, following which the Player will also have difficulties in finding a new club in view of the joint liability concept of Article 17 FIFA RSTP. The consequences of a two year ban are thus devastating and career-threatening and thus grossly disproportionate.

- The UEFA decision-making bodies took into account two aggravating circumstances: i) the Player's experience as a football player, in particular the "fact" that he was part of the national team of the MFA; and ii) that he was given two separate chances to report the match-fixing as there were two meetings. There are however far more elements that would lead to a reduction of the sanction and – in addition – the two elements indicated by UEFA do not warrant an increase of the sanction. It should be taken into account that the Player provided substantial assistance in the prosecution against Mr Zammit and Mr Mackay on the basis of which these two individuals could be convicted. For instance, in the World Anti-Doping Code, provision is made for the reduction of a sanction in case of substantial assistance. The Player is also not an experienced football player. The Player was 21 years old when he was approached. Further, until March 2016, the Player had only played with the U-21 team of Malta and not with the senior national team. This lack of experience was for example considered by the judge in the Maltese court in respect of Mr Cesare and Mr Briffa in which the court acquitted these two players on the basis of coercion. Furthermore, the Player has had a troubled education in which he and his family were subject to threats. The Player's reluctance to come forward about the match-fixing approaches was therefore perfectly understandable. UEFA also dismissed the Player's fear of repercussions far too easily. It shows a lack of understanding to say that the Player's fear was unfounded, which is a subjective emotion. The Player and the other players were genuinely scared of what would or could happen to them and/or their families, which is supported by the statements made by four other players before the EDI. For instance because the family of Mr Zammit was notorious. Furthermore, the match-fixing plot may have caused damage to the image of UEFA, but such damage is not attributable to the Player in person, who refused to accept the offer (of more than six times his monthly salary) to fix the match, which should serve as an example for other players. In fact, it is actually the Player who has suffered great damage after UEFA published the news that he was banned for *"match-fixing offences"*. This term is poorly chosen as it suggests an active illegal act. The media transposed the term *"match-fixing offences"* to *"match-fixers"* and the Player will never lose this stigma. Finally, the UEFA CEDB erred in its conclusion that two encounters equals two approaches and results in two chances to report the plot. The match-fixing plot must be considered as a whole and one cannot separate counts of match-fixing which all relate to the same match. For example, it would be illogical if a player would receive eight Whatsapp messages to fix a match and to then subsequently prosecute that person with eight counts of match-fixing.

- Finally, it is submitted that UEFA's decision to impose a ban from all football-related activity does not fit the infringement of Article 12(2)(d) UEFA DR. It has not been

substantiated why in these kind of matters such a ban is more appropriate than a suspension for a specified number of matches or for a specified period. Why would UEFA want to completely prevent a player from going to practice and from going to a stadium? Such a ban might work for corrupt officials, but lacks logic when it comes to a player who has failed to report and needs to return to the pitch once his sanction is over. Similar conclusions have been reached in CAS jurisprudence.

57. UEFA provided the following summary of its submissions:

- *"While it is undisputed that the Appellant has violated Art. 12(2)(d) DR due to his failure to immediately and voluntarily report the match-fixing approach concerning the Montenegro Match, the circumstances of the case indicate a higher degree of involvement in the scheme by the Player. In particular, it remains unclear whether he refused the match-fixing offer in his first meeting with Mr. Zammit, or if such alleged refusal was made in the second meeting that he decided to attend. In any case, the only offense for which he has been sanctioned, and is the object of this appeal, is the aforementioned failure to report.*

- *Although the Appellant requested the Appeals Body to re-evaluate the CEDB's conclusion concerning the possible breach of Art. 12(2)(a) DR, the Appeals Body has strictly focused on the Appellant's undisputed breach of Art. 12(2)(d) DR when determining the appropriateness of the disciplinary measure imposed by the CEDB, finding such sanction to be lenient in light of the circumstances and considering the gravity of the offence committed.*

- *The seriousness of all offences related to match-fixing under Art. 12 DR requires the imposition of the most severe disciplinary measures available: bans from football-related activities. This approach is not only confirmed by the jurisprudence of UEFA's disciplinary bodies, but it has also been endorsed by CAS when dealing with cases involving the manipulation of sports competitions, especially by individuals.*

- *The Appellant has failed to prove any of the alleged mitigating circumstances that he has submitted as a basis for an eventual reduction of the sanction. His arguments in this respect are based chiefly on mere party statements and uncorroborated media releases, without providing any actual evidence or legal arguments to support his position. Only for this reason the Appellant's arguments shall be disregarded.*

- *In any event, there are no mitigating circumstances in this case that would warrant the amendment of the Decision. With all due respect, the Appellant's arguments are for the most part misconstrued and misleading, and in some cases they are simply untrue. Among others already addressed, it is recalled that: (i) he did not voluntarily provide any statements until 'forced' to by the authorities after Mr. Zammit had confessed and been convicted and Mr. Mackay's arrest warrant had been issued, (ii) his alleged corroboration was inexistent, and in any event it was incomplete, as he even failed to name his teammates that were with him in the meetings with the fixers, (iii) he was not the determining factor in the arrest or conviction of any of the masterminds of the plot, but merely one of many individuals who testified against Mr. Mackay after he had already been identified by Mr. Zammit, (iv) he has not proven that he would have been fearful or in any danger if he had reported the approach, and in fact he was in no danger whatsoever: he even went to see Mr. Zammit a second time on his own volition without being afraid of how this alleged dangerous person would react to his supposed refusal to participate in the fix.*

- *The sanction imposed by the CEDB and confirmed in the Decision can only be reviewed by the CAS if it is evidently and grossly disproportionate. However, the Appellant has not submitted any evidence of its disproportionality. On the contrary: UEFA's disciplinary bodies have eloquently reasoned their respective decisions on the basis of the circumstances of the case and CAS' jurisprudence on such matters (which in cases involving UEFA has included a minimum two-year ban from football-related activities for failures to report approaches). These bodies have perfectly justified how the sanction imposed by the CEDB is not only proportionate, but that it is even lenient in light of the precedents in similar situations.*

- *Not only shall deference be given to the Appeals Body's Decision, but there are no reasons to depart from the conclusions contained therein, or to otherwise reduce the suspension imposed on the Player, which is more than adjusted to the seriousness of the offence committed.*

- *The Player's appeal shall therefore be rejected and the Decision confirmed".*

VI. JURISDICTION

58. The jurisdiction of CAS, which is not disputed, derives from articles 62(1) UEFA Statutes (2017 edition) as it determines that *"[a]ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration"* and Article R47 CAS Code.

59. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

60. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

61. The appeal was filed within the deadline of ten days set by Article 62(3) UEFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

62. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

63. The Player did not make any submissions in respect of the law to be applied to the matter at hand.

64. UEFA submits that the procedural and organizational aspects of the disciplinary proceedings carried out by UEFA in the Player's case are governed by the UEFA DR (edition 2017), but

that the merits of the dispute are governed by UEFA's rules and regulations, in particular the UEFA DR (edition 2014) and additionally by Swiss law.

65. Article R58 of the CAS Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

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

> *"These Statutes shall be governed in all respects by Swiss law".*

67. In accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment the alleged offence was committed, subject to the principle of *lex mitior*. However, the procedural aspects of the proceedings are governed by the regulations in force at the time the appeal was lodged.

68. Accordingly, the Panel agrees with UEFA that the various regulations of UEFA are primarily applicable to the dispute. The UEFA DR (edition 2014) are primarily applicable to the merits of the dispute, since the alleged offence was committed before the UEFA DR (edition 2016) entered into force. The Panel is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of UEFA. The procedural and organisational aspects are governed by the UEFA Statutes (edition 2017) and the UEFA DR (edition 2017).

IX. MERITS

69. Given that the Player clarified at the hearing that he no longer requested the ban imposed on him to be entirely annulled, the sole issue to be determined by the Panel is whether the UEFA CEDB Decision issued on 14 December 2017, by means of which the Player was *"banned on all football-related activities until 31 December 2019"*, and as confirmed by means of the Appealed Decision, is to be reduced.

70. In arguing that the Player's ban is to be reduced, the Player relies on a series of arguments which will be addressed one-by-one below, followed by a separate chapter where all considerations in respect of the individual arguments of the Player are considered collectively with a view to determining whether the sanction imposed on the Player was disproportionate.

71. It is established CAS jurisprudence that a sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule should be reviewed only when the sanction is evidently and grossly disproportionate to the offence.

72. In this respect, the Panel fully adheres to the reasoning of the CAS panel in CAS 2011/A/2645:

> *"[T]his CAS Panel, even though it has full power of review of the disputed facts and law in the exercise of its jurisdiction, accepts the dictum in the award of 21 May 2010, CAS 2009/A/1870,* […] *(§ 125), under which "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 (see TAS 2004/A/547,* […], *§§ 66, 124; CAS 2004/A/690,* […], *§ 86; CAS 2005/A/830,* […], *§ 10.26; CAS 2005/C/976 & 986,* […], *§ 143; 2006/A/1175,* […], *§ 90; CAS 2007/A/1217,* […], *§ 12.4)". Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel "would not easily 'tinker' with a well-reasoned sanction, i.e. to substitute a sanction of 17 or 19 months' suspension for one of 18" (award of 10 November 2011, CAS 2011/A/2518,* […], *§ 10.7, with reference to CAS 2010/A/2283,* […], *§ 14.36). Therefore, a panel "would naturally (…) pay respect to a fully reasoned and well-evidenced decision (…) in pursuit of a legitimate and explicit policy" (ibid.)"* (CAS 2011/A/2645, para. 44 of the abstract published on the CAS website).

73. This Panel indeed also deems it appropriate to give a certain deference to sports governing bodies in respect of the proportionality of sanctions and to abstain from interfering with the proportionality of a sanction if it deems such sanction somewhat high or low, but to only interfere if it were to arrive at the conclusion that such sanction is evidently and grossly disproportionate.

A. The violation committed by the Player

74. The Player does not dispute having violated Article 12(2)(d) UEFA DR.

75. Article 12(1) and (2) UEFA DR determine as follows:

> *"1. All persons bound by UEFA's rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour.*
>
> *2. The integrity of matches and competitions is violated, for example, by anyone:*
>
> *a) who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party;*
>
> *b) who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;*

c) who uses or provides others with information which is not publicly available, which is obtained through his position in football, and damages or could damage the integrity of a match or competition;

d) who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;

e) who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article".

B. UEFA's general approach towards match-fixing

76. As a preliminary remark, the Panel wishes to express that it noted the Player's critical remarks in respect of alleged flaws in UEFA's general approach towards match-fixing. The Panel must however remind the Player, and the union representing the Player in these proceedings, that it is in principle for sports governing bodies to set the rules their members are subjected to. Indeed, CAS panels should in principle not express opinions on how a sport-specific issue like match-fixing is to be addressed. Rather, this Panel is solely put to the task of assessing whether the Player violated UEFA's rules and regulations in place at the moment of the relevant actions and whether the ban from taking part in any football-related activity for a period of slightly more than two year was disproportionate[1].

77. The Player's first preliminary observation is that his prosecution is incomprehensible and a big step backwards in the fight against match-fixing, because he provided a witness statement against Mr Mackay and Mr Zammit and testified in court against Mr Mackay, as a result of which both could be convicted. According to the Player, the consequence of the message that UEFA has now conveyed with his prosecution is that no player will come forward anymore to assist the authorities in criminal investigations if – having not immediately reported an approach – they know that by means of their testimony in court they will be sanctioned by UEFA with a two year ban on all football-related activities.

78. The Panel finds that a meaningful cooperation with domestic authorities should in principle be taken into account as a mitigating factor also in disciplinary proceedings before UEFA, not least because the information provided to domestic authorities may well be important information that can also be used in proceedings before UEFA's disciplinary bodies, as indeed happened in the proceedings against the Player and his teammates of the Maltese U-21 team. The Panel also considers it relevant in this respect that the EDI did not deem it necessary to interrogate the Player, while she did interrogate seven other persons, including all the Player's teammates that were ultimately sanctioned by UEFA. The EDI thereby did not enable the Player to make the same statements to her as he made to the Maltese authorities.

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1 Although the ban is in fact for a period of two years and half a month, for the sake of convenience the Panel will refer to a two year ban throughout the award.

79. However, importantly, and contrary to the Player's argument, UEFA indeed took this into account as a mitigating factor. Para. 78 of the UEFA CEDB Decision reads as follows:

> *"Notwithstanding the above, this UEFA disciplinary body has also some sympathy towards the particular situation of the player. In particular, this UEFA disciplinary body deems the following circumstances tempering the evident negligent attitude of the player:*
>
> - *Even though he did not immediately report the approach to UEFA in order to unveil the match fixing activity taking place, he did so and without resistance once interrogated before the police authorities, before the Maltese criminal courts;*
>
> - *He also directly admitted the infringement before the CEDB".*

80. Taking into account these mitigating factors, the UEFA CEDB decided that a two year ban was to be imposed on the Player. The reasoning of the UEFA CEDB does not provide insight into what length of ban would have been imposed if such mitigating circumstances would not have existed. Although the UEFA Appeals Body reasoned that *"the sanction to be imposed against the player should have gone beyond what was imposed against the player for not reporting the approach"*, the fact is that it did not and that the two-year ban imposed by the UEFA CEDB was confirmed in the Appealed Decision. The Panel therefore finds that even though the Appealed Decision does not specifically refer to such a mitigating factor, it remains part of UEFA's considerations on the proportionality of the sanction in the present matter.

81. Insofar as the Player maintains that he provided "substantial assistance" in the way it is defined in the World Anti-Doping Code, even if the Player's analogy in this respect were to be followed, the Panel notes that also there substantial assistance only exceptionally leads to an acquittal (Article 10.6.1.2 World Anti-Doping Code (edition 2015)), but more often only results in a reduction of the sanction otherwise imposed: *"The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed and the significance of the Substantial Assistance proved by the Athlete or other Person to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended"* (Article 10.6.1.1 World Anti-Doping Code (edition 2015)).

82. As to the significance of the assistance provided by the Player, the Panel finds that the Player did what could be expected of him. The evidence provided by the Player was crucial in convicting Mr Mackay and Mr Zammit as he was the only witness before the Maltese criminal court that was not being prosecuted himself, leading the Maltese Police Inspector to say that the Player's testimony was convincing and important in sentencing Mr Mackay and Mr Zammit, and the Maltese Criminal Court to rule that *"Samir Arab is a very important witness in this case who removes all doubt that might arise with regards to the credibility of the principal witness Seyble Zammit. He ties the evidence against the accused, says that Ronnie Mackay came with the Asian individual and the offer was made by both Ronnie Mackay and Seyble Zammit"* (cf. p. 40 of the judgement).

83. The Panel however does not find that the Player's assistance reached the threshold of "substantial assistance" as defined in the World Anti-Doping Code because that would have required the Player to do the following:

> *"(1) fully disclose in a signed written statement all information he or she possesses in relation to anti-doping rule violations, and (2) fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an Anti-Doping Organization or hearing panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated must have provided a sufficient basis on which a case could have been brought"* (Appendix 1 to the World Anti-Doping Code (edition 2015)).

84. The Player, however, limited his assistance to answering questions from the judge and police officer Mr Scicluna, without spontaneously providing insight into his full knowledge of the circumstances at stake. Indeed, the concept of substantial assistance requires one to go beyond mere cooperation with the authorities, but to come clean and provide all information known. The Player for instance certainly had knowledge about the involvement of his teammates as the in-person meeting that took place on or around 9 March 2016 was attended also by Mr Briffa and Mr Cesare and the second in-person meeting that took place on or around 14 March 2016 was attended by Mr Briffa, but he failed to mention this before the Maltese authorities.

85. Although the Player was in his right to limit himself to answering the questions posed to him by the authorities, the Panel finds that the Player should have done more in order to benefit from providing "substantial assistance". Indeed, also in accordance with the definition of "substantial assistance" set out in the World Anti-Doping Code, he was required to *"fully disclose (…) all information he or she possesses"*.

86. The Panel is therefore satisfied that the assistance provided by the Player to the Maltese courts should be taken into account as a mitigating factor, but that the assistance provided was not so significant or substantial that it should lead to an annulment of the ban.

87. The Panel understands the Player's point that UEFA's current policy is ineffective in that it does not encourage players to testify before ordinary courts as the Player did in the matter at hand. Indeed, the Panel finds that the possibility cannot be excluded that, should the Player have refused to testify before the Maltese courts, UEFA may well have lacked the required evidence to convict the Player for a failure to report, and that he therefore incriminated himself. Notwithstanding such doubts, the Panel reiterates that it is well within UEFA's power to autonomously determine its policy in this respect. If UEFA, for whatever reason, does not deem it fit to prioritise encouraging players to testify before ordinary courts in order to have the masterminds of match-fixing operations convicted in exchange for an acquittal or significant reduction of the ban for failing to report, or to provide substantial assistance in general, then it is not for this Panel to interfere with such policy.

88. Consequently, although the impact of the findings in respect of the Player's arguments to justify a reduction of the sanction will be reviewed as a whole below, the Panel finds that the Player's assistance to the Maltese authorities shall be taken into account as a mitigating circumstance, while also recognising that the UEFA CEDB already took this into account as a mitigating factor in arriving at the conclusion that a two-year ban was justified and that the assistance provided was not so significant as to justify an annulment of the ban or a significant reduction of the sanction imposed on him.

C. The UEFA Appeal Body's alleged violation of the principles of *non ultra petita*, *non reformatio in peius* and *res iudicata*

89. The Player was initially also accused by the EDI of having committed a violation of Article 12(2)(a) UEFA DR (*"who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party"*), but the UEFA CEDB concluded that the Player was not guilty of such infringement. Given that the Player lodged an appeal against this decision with the UEFA Appeals Body, but the EDI did not, the Player submits that it was an *ultra petita* ruling of the UEFA Appeals Body to consider that it was *"satisfied with the conclusion that* [the Player] *accepted at a first instance the bribe"*, that *"at least at the beginning,* [the Player] *accepted the bribe. The fact that the* [Player] *refused the offer afterwards doesn't change the fact that by accepting at a first instance he already violated Article 12 (a) DR"* and that *"it is the Appeal Body's strong conviction that the involvement of* [the Player] *in the match fixing activities prior to Match 1 corresponded also to a violation of Article 12(a) DR"*, while ultimately concluding that *"[i]t follows that the sanction to be imposed against the player should have gone beyond what was imposed against the player for not reporting the approach"*.

90. The Player submits that, since the UEFA CEDB Decision was not appealed by the EDI, the UEFA CEDB's ruling on Article 12(2)(a) UEFA DR became final and binding, as a consequence of which the UEFA Appeals Body's conclusion violates the principle of *res iudicata*. By concluding that the Player violated Article 12(2)(a) UEFA DR, the UEFA Appeals Body did not seriously analyse the Player's request to have his sanction for a violation of Article 12(2)(d) UEFA DR reduced. Because the analysis on the reduction of the sanction was contaminated by the unfounded and unwarranted conclusion that the Player had violated Article 12(2)(a) UEFA DR, the Player argues that the Appealed Decision constituted a clear *ultra petita* ruling.

91. UEFA maintains that the UEFA Appeals Body expressly declined to evaluate the disciplinary consequences of a potential breach of Article 12(2)(a) UEFA DR, in light of the limitations imposed by the principles of *non reformatio in peius* and *non ultra petita*, which prevented it from imposing a harsher sanction on the Player. Most significantly, the UEFA Appeals Body only evaluated the proportionality of the sanction in consideration of a breach of Article 12(2)(d) UEFA DR, without taking into consideration a possible violation of Article 12(2)(a) UEFA DR. As stated in the Appealed Decision, *"it is noted that the CEDB imposed a sanction against the player strictly for not reporting (Article 12(2)(d) DR), and not for acting in a manner likely to exert an unlawful or undue influence on the course and/or result of a match (Article 12(2)(a) DR). Consequently, it is therefore this approach that is mainly under the scope of the Appeals Body evaluation"*.

92. The Panel observes that, contrary to the allegation of UEFA, the Appealed Decision does not exclusively consider the violation of Article 12(2)(d) UEFA DR, as reference is made to the fact that *"it is therefore this approach that is **mainly** under the scope of the Appeals Body evaluation"* (emphasis added by the Panel), thus leaving room for other circumstances, such as an alleged violation of Article 12(2)(a) UEFA DR, to be taken into account.

93. The Panel indeed does not consider it appropriate that the UEFA Appeals Body may have taken an alleged violation of Article 12(2)(a) UEFA DR into account in reaching the conclusion that a two year ban was appropriate, as the Player was no longer accused of having violated Article 12(2)(a) UEFA DR and was not put in a position to defend himself against such allegation, as he was under the legitimate understanding that this issue was closed after he learned that the EDI did not file an appeal against the UEFA CEDB Decision.

94. This is however not a violation of the principles of *non ultra petita* or *non reformatio in peius*. Indeed, as argued by UEFA, the principle of *non ultra petita* does not extend to arguments advanced, but is limited to a comparison between the decision and the requests for relief (the *petita*) put forward. Given that the UEFA CEDB imposed a ban on the Player until 31 December 2019 and because only the Player lodged an appeal against this decision, pursuant to the principle of *reformatio in peius*, the UEFA Appeals Body could not increase the sanction, but only reduce it. The UEFA Appeals Body was therefore within its rights to dismiss the Player's appeal and confirm the outcome of the UEFA CEDB Decision, even if the reasons invoked to reach such a conclusion were influenced by an illegitimate finding that the Player also violated Article 12(2)(a) UEFA DR.

95. This, however, does amount to a violation of the principle of *res iudicata* because the findings of the UEFA Appeals Body on the merits superseded the findings on the merits of the UEFA CEDB in considering that the Player had also violated Article 12(2)(a) UEFA DR. The mere fact that the Player, in his appeal against the UEFA CEDB Decision, requested the UEFA Appeals Body in his requests for relief to *"[c]onfirm the decision of the CEDB in regard to appellant as finding appellant not guilty of a violation of Art 12 (2) (a) DR"* does not make this any different, as UEFA should have filed an independent appeal against the UEFA CEDB Decision if it wanted the Player to be tried for a violation of such provision.

96. The Panel feels comforted in this respect by the reasoning of another CAS panel:

> *"The Panel observes that the procedural concept of res iudicata is defined in Swiss law (OBERHAMMER /NAEGELI, in OBERHAMMER/DOMEJ/HAAS (Ed), Commentary on Swiss Civil Procedure, 2nd ed. 2014, Art. 236, no. 39 et seq.). According thereto res iudicata has two elements:*
>
> *1) the so-called "Sperrwirkung" (prohibition to deal with the matter = ne bis in idem). The consequence of this effect is that if a matter (with res iudicata) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. It is for this reason*

– e.g. – that article 59(2) of the Swiss Federal Code of Civil Procedure (hereinafter: the "CCP") provides that a claim must be rejected as inadmissible, if the matter falls under res iudicata.

2) the so-called "Bindungswirkung" (binding effect of the decision). According thereto, the judge in a second procedure is bound to the outcome of the matter decided in res iudicata. The binding effect is only of interest, if the judge asked second has to deal with a preliminary question that has been decided finally by the first judge.

The Panel finds that although the UEFA Appeals Body did not increase the sanction imposed by the UEFA CDB, the findings on the merits of the UEFA Appeals Body surpassed the findings on the merits of the UEFA CDB. Although this is strictly speaking not prohibited by the UEFA DR (2012), the Panel finds that this is a violation of the principle of res iudicata. The discretion of the UEFA Appeals Body to re-examine the case from both a factual and a legal perspective (comparable to the de novo competence of CAS pursuant to Article R57 of the CAS Code) neither allows the UEFA Appeals Body to change the matter in dispute, nor is any justification given by UEFA on the basis of which an exception should be made in the present case.

Hence, the Panel finds that the Appellant could rely on the findings of the UEFA CDB, i.e. it could not reasonably be expected from the Appellant to defend itself against general accusations in respect of matches that were not individually assessed by the UEFA CDB. By discussing and specifically establishing that five matches had been influenced, the UEFA CDB limited the scope of the proceedings to these five matches. If five cases of match-fixing are the basis of the UEFA CDB Decision, UEFA cannot, without appealing the decision of the UEFA CDB, introduce other cases at the appeal stage before the UEFA Appeals Body. A general confirmation of the UEFA CDB stating that this list of five matches is not exhaustive is of no avail in this respect, also taking into account the Appellant's denial of all factual allegations.

The Panel thus adheres to the Appellant's position and finds that the scope of the proceedings is limited to the findings of the UEFA CDB on the five matches and that the UEFA Appeals Body was prevented from assessing any additional matches by the "Sperrwirkung" attached to the principle of res iudicata" (CAS 2013/A/3256, para. 138-140 of the abstract published on the CAS website).

97. Notwithstanding this violation of the "Sperrwirkung" attached to the principle of *res iudicata*, the Panel finds that this should not lead to an annulment of the Appealed Decision, but rather that the Panel shall focus its attention on the proportionality of the sanction imposed for violating Article 12(2)(d) UEFA DR and that an alleged violation of Article 12(2)(a) UEFA DR plays no role in this respect.

D. Justification for failure to report

98. The Player submits that his failure to report was justified by i) the absence of proper education; ii) the absence of dissemination of information; iii) the absence of a reliable and secure reporting tool that would guarantee the Player's safety and would protect his identity; and iv) the Player's fear of repercussions if he reported the match-fixing approach.

99. The Panel agrees with the Player that the issues mentioned are important and fall under the responsibility of sports governing bodies, as is also reflected in Article 6 and 7 of the Council of Europe Convention on the Manipulation of Sports Competitions, to which reference is made in Article 2.3 of the Memorandum of Understanding concluded between UEFA and the Council of Europe. The Panel however does not agree with the Player that UEFA failed to comply with its duties in this respect.

100. Indeed, it is not disputed by the Player that he received an instruction from the MFA Integrity Manager around November 2014 (*i.e.* about a year and three months before the match-fixing approach), but he argues that such instruction did not even last 5 minutes and should therefore not be regarded as proper education. The Panel finds that it is established that the Player was educated about match-fixing and that at least one other player from his team (Mr Mbong) had understood the instruction and reported the approach to his team manager.

101. When asked at the hearing whether the integrity officer had told him how to report, the Player testified that he was not really told how to do this, but at the same time that he was instructed to go to his coach or to the integrity officer. The Panel finds that the Player had therefore at least understood the crucial part of the message, *i.e.* report the approach to the coach or integrity officer, but nevertheless failed to comply with it, as he did not report the match-fixing approach.

102. In any event, the Panel finds it difficult to reconcile the Player's arguments that, on the one hand, he was not aware of a duty to report because no appropriate education had been given, but on the other hand, that he did not comply with his duty to report the approach because he was afraid of repercussions. One cannot blow hot and cold at the same time: either the Player was aware of his duty to report or not and the Player's reliance on the argument of fear suggests that he was aware of this duty.

103. The Panel finds that sports governing bodies have a certain duty to make reporting easy and secure, especially related to match-fixing issues. The Panel acknowledges and emphasises the importance of a proper reporting tool, such as the UEFA Integrity App. Such tool should not only be made available, but football players from around the world should also be instructed on how to use it.

104. However, the Panel finds it crucial in this respect that the Player did not prove that he showed any interest or willingness to report the match-fixing approach and that the reason why he ultimately failed to do so was that his safety was at risk or that his identity would not be protected. Indeed, had the Player shown that he explored the possibility of reporting the match-fixing approach to his coach, to his team manager, to the integrity officer, to the police, or otherwise, but that he subsequently decided not to proceed in view of the fact that insufficient guarantees as to his safety and/or anonymity were provided, the Panel would have been open to considering the Player's argument. However, in the absence of such evidence, the Panel finds that there is nothing on file indicating that the Player was genuinely prepared to report the match-fixing approach, which renders it impossible for the Panel to distinguish the Player's

argument from a situation where a player makes up such argument retrospectively in an attempt to justify a violation of a duty to report.

105. Indeed, the Panel finds that the Player would have complied with his duty to report if he had reported the match-fixing approach anonymously. That is to say, even if the Player had failed to provide further details such as the names of people involved in the match-fixing approach, the Player could not have been found guilty of violating Article 12(2)(d) UEFA DR, as such provision cannot be stretched beyond its wording (*"immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition"*). Article 12(2)(d) UEFA DR for instance does not require someone to provide a minimum amount of information, let alone to come forward against gambling syndicates, mafia and other forms of organised crime (as suggested by the Player), but only to report the match-fixing approach. It should, however, be noted, that a failure to provide further information may arguably be a reason for UEFA to sanction under Article 12(2)(e) UEFA DR (*"immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article"*), as this provision emphasises the duty to report behaviour, which necessarily requires one to provide certain details and therefore goes beyond the mere reporting of an approach. UEFA also appears to distinguish between *"those who breach their duty to report approaches (Art. 12(2)(d) DR) or their knowledge of a possible match-fixing plot (Art. 12(2)(e) DR)"*. The latter provision is however not in play here.

106. Finally, the Player's arguments relating to his fear of criminals, stemming from his childhood experiences, which included threats from criminals due to problems encountered by his father concerning the latter's drug and alcohol addiction, are regrettable. These experiences, however, do not exempt the Player from his duty to report match-fixing approaches to the authorities in the absence of convincing evidence in this regard.

107. The Panel finds that no such convincing evidence was provided. Indeed, the Player testified that he was not afraid of Mr Zammit, while it is undisputed that the first match-fixing approach was made by Mr Zammit alone in a meeting further attended by Mr Briffa and Mr Cesare. The Player did not submit that he feared any of these persons, but that he was mainly afraid of Mr Mackay because he was a convicted criminal. The Player also testified that during the first meeting he did not yet know that Mr Mackay was involved in the match-fixing scheme, as Mr Mackay only attended the second meeting. Therefore, importantly, the Player's fear of Mr Mackay does not justify why he did not report the first match-fixing approach during the five-day period until he met Mr Mackay during the second meeting.

108. The Panel is in any event not convinced that the Player legitimately feared Mr Zammit, Mr Briffa and/or Mr Cesare to such an extent that he was legitimately exempted from his duty to report the match-fixing approach.

109. Finally, the Panel notes that the Player did not submit that he had received threats from anyone involved in the match-fixing scheme following his refusal to take part therein, so that his fear was in any event only a general one, and not based on any specific threats or warnings.

110. Consequently, the Panel finds that the Player did not put forward any evidence that justified his failure to report.

E. General considerations on proportionality

111. The Player submits that he did not actively participate in any form of corruption and did not accept any offer to fix a match; he rejected the offer to fix a match and even assisted the police in putting the mastermind of the match-fixing plot behind bars. The Player argues that he should not be treated as the instigator, co-conspirator or active participant of the match-fixing plot. To the contrary, the Player submits that he must exclusively be considered as someone who only failed to report said attempt and the sanction to be imposed should be proportionate to the degree of fault.

112. The Panel fully agrees with the Player's considerations in this respect, but finds that there is no evidence on file suggesting that the UEFA CEDB regarded the Player as *"instigator, co-conspirator or active participant of the match-fixing plot"*, while still imposing a two year ban on the Player.

113. Insofar as the Player alludes to the reasoning of the Appealed Decision in respect of a violation of Article 12(2)(a) UEFA DR, the Panel reiterates that such considerations should indeed be excluded from the equation in imposing an appropriate sanction on the Player.

114. As to why a ban on football-related activities would have to be imposed for a failure to report, rather than a suspension for a specified number of matches or for a specified or unspecified period, the Panel finds that UEFA's position in this respect is, under the specific circumstances of this case, justifiable. UEFA argues that all actions falling with the scope of Article 11(1)(a) and 12 UEFA DR are absolutely unacceptable in football and require sanctions of the utmost severity, not only to punish the offenders, but also to dissuade other possible wrongdoers from even considering getting involved in such activities. This applies to persons that accepted bribes, but also for a failure to report approaches or their knowledge of a possible match-fixing plot.

115. Besides, the Panel finds that match suspensions are generally imposed for infringements committed on the pitch, whereas sanctions with consequences beyond mere match suspensions are regularly imposed for infringements committed off the pitch, such as a failure to report a match-fixing approach.

F. Comparison with other cases

116. The Panel finds that the comparison put forward by the Player with the CAS decision in CAS 2013/A/3256 […] (the "Fenerbahce case") and with *Tennis Integrity Unit v. Federico Coria* (the "Coria case") are not appropriate for various reasons.

117. The comparison with the Fenerbahce case is flawed because, as indicated by the UEFA CEDB in the UEFA CEDB Decision, *"[t]his UEFA disciplinary body is of the opinion that there is a*

fundamental difference between match fixing for sporting reasons and match fixing based on third parties profits, mainly as the result of placing bets. (…) The CEDB deems that the present case is indeed incardinated in this kind of match fixing activities. Briefly, there can't [sic] *be no doubt that there was an attempt to fix Match 1 and 2 for betting purposes"*. The Fenerbahce case involved match-fixing for sporting reasons, whereas on the facts this case appears to have involved match-fixing primarily or wholly for third party profits. The Panel furthermore does not find that the severity of sanctions should always be lower for players than for clubs, as violations committed by individuals are of a different nature to violations committed by clubs. Indeed, violations committed by a club can only be exercised through natural persons.

118. The Panel is however willing to concede that, in general, passive match-fixing violations, such as the one committed by the Player in the matter at hand, shall in principle be sanctioned less severely than active match-fixing offences. This principle as such does however not appear to be disputed by UEFA, as UEFA argues that for active match-fixing a life-time ban is to be imposed, whereas for passive match-fixing violations a standard sanction of a 1.5 year ban shall in principle be imposed. The Panel will address this issue in more detail below, but for now it suffices to conclude that the Panel does not deem the comparison with the Fenerbahce case of particular importance for the determination of whether or not the two-year ban imposed on the Player is disproportionate.

119. As to the Coria case, the Panel observes that the Player's argument is solely based on a press release regarding a judgment of the Tennis Integrity Unit, this however does not provide the Panel with any insight into the particular circumstances at stake. The Panel is therefore not impressed by the Player's argument that because Mr Coria was only sanctioned with a suspension of eight months (six of which were suspended) and a fine of USD 10,000 (half of which was suspended), and that such a sanction is much more sensible and proportionate than the sanction imposed on the Player.

120. In fact, the Panel observes that a life-time ban was imposed on a referee for a failure to report in CAS 2010/A/2172 and that a two-year suspension imposed on a football player for a failure to report was confirmed in CAS 2010/A/2266, while recognising that the CAS panel in CAS 2010/A/2266 held that the player concerned *"participated in a concealed planned attempt of match fixing very shortly prior to the Match"* and that such consideration may have inflated the severity of the ban imposed on this player, while this is not at issue in the proceedings at hand.

121. Consequently, the Panel finds that the precedents cited by the Player are of no particular relevance for the Panel in assessing the proportionality of the sanction imposed on the Player.

G. The Player's experience and age

122. Whereas UEFA maintains that the Player's age and experience were to be considered as aggravating circumstances, the Player maintains that this should not be the case.

123. Given that the Player played in the Maltese U-21 team at the moment of the violation, the Panel finds that the age of the Player does not allow using it in favour or against the Player. Indeed, the age of 21 does in general not allow someone to argue that he is so young and inexperienced that his violations deserve a lower sanction. Likewise, the Panel also does not consider it appropriate to hold that someone of 21 years of age is so experienced that this shall be considered as an aggravating circumstance in determining an appropriate sanction.

H. Damage to the Player's image

124. The Panel finds it regrettable that the Player is associated with active match-fixing in the media. The Panel finds such qualifications incorrect, as the Player did not actively take part in match-fixing; the Player was no accomplice and he is not charged by UEFA for actively taking part in match-fixing.

125. The only violation for which the Player can be validly reproached is for his failure to report being *"approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition"* and this is indeed what UEFA stated in its press release of 9 January 2018.

126. Insofar as the Player objects to being associated with match-fixing in general as his only violation was a failure to report, the Panel finds that such objection must be dismissed. The Player's violation of Article 12(2)(d) UEFA DR concerns a passive involvement in match-fixing, because the duty to report set out in this provision does not cover other potential disciplinary violations under the UEFA DR, but is strictly limited to match-fixing.

127. The Panel finds that, in any event, any possible wrongful damage done to the Player's image is not inflicted on him by UEFA, but by the media, and above all, the Player is the author of his own misfortune by knowingly failing to comply with the duty imposed on him and therefore does not justify a reduction of the sanction imposed on him.

I. Second match-fixing approach

128. Importantly, the Panel agrees with UEFA that it is an important aspect and an aggravating circumstance that the Player was approached twice for match-fixing. This indeed sets aside the Player's case from players that were only approached once and this makes the Player's violation more severe.

129. Indeed the Player did the opposite to what he should have done after being approached for the first time. Instead of immediately reporting this approach to the authorities, the Player, after having had about five days (the period between the first meeting on or around 9 March 2016 and the second meeting on or around 14 March 2016) to think about what to do, chose to meet Mr Zammit again, knowing that the purpose of this meeting was to discuss a possible collaboration to fix football matches.

130. The Panel does not find the Player's argument credible that the sole purpose of meeting Mr Zammit again in person was because he wanted to make clear that he would not participate in the match-fixing, because Mr Zammit allegedly did not stop bothering the Player about this. The fact is that besides the Player's testimony there is no evidence on file suggesting that Mr Zammit continuously contacted the Player during the five-day span between the two meetings (such as text message or phone logs during this period), even though the Player testified that these contacts could indeed be verified by phone logs. Furthermore, the Panel finds that the Player could have relatively easily discontinued the contact with Mr Zammit by blocking him on his phone.

131. Although the Panel notes that, for instance, the CAS panel in CAS 2014/A/3467 held that the athlete concerned *"deliberately proceeded to engage in what he knew full well to be a violation of the 2010 Program on at least two counts"* (CAS 2014/A/3467, para. 122 of the abstract published on the CAS website), the Panel finds that not too much emphasis should be placed on the two counts of failing to report in the matter at hand, as it is not so much the number of approaches that are informative for the severity of the Player's violation but the conduct of the Player as a whole, as is indeed submitted by the Player. In this respect, the Panel finds the second meeting important because it shows that the Player did exactly the opposite of what he should have done after being approached with an offer to engage in match-fixing: he did not report the approach, but he attended a second in-person meeting with the fixer.

132. Consequently, the Panel finds that it is indeed an aggravating circumstance that the Player met with Mr Zammit in person for a second time, knowing full well that the purpose of the second meeting would be a proposal to engage in a match-fixing scheme.

J. Collective considerations on the proportionality of the sanction imposed on the Player

133. In determining whether the two-year ban imposed on the Player is disproportionate, the Panel finds that the sanction imposed on the Player should not be disproportionate if taken alone, but also that such sanction should not be disproportionate in comparison with the sanctions imposed on his teammates.

134. Considering the proportionality of the sanction imposed on the Player individually, the Panel does not find that the two-year ban imposed on the Player is evidently and grossly disproportionate, taking into account the specific circumstances of this matter. Although the Player did not actively engage in match-fixing, he deliberately acted in breach of his duty to report a match-fixing approach, as imposed on him by Article 12(2)(d) UEFA DR, and thereby committed a passive match-fixing violation.

135. As concluded above, the Panel finds that none of the specific arguments invoked by the Player should lead to a significant reduction of the sanction. Although the Panel finds that the Player's cooperation with the Maltese authorities should serve as a mitigating circumstance, potentially justifying a reduction, the Panel notes that this was indeed taken into account by the UEFA CEDB. Although it is not clear how much value the UEFA CEDB attributed to this mitigating

factor, the Panel finds that this mitigating factor alone does not, under the specific circumstances of this case, make the two-year ban so disproportionate as to justify a reduction, particularly considering the aggravating circumstances set out below.

136. The Panel considers it an important aggravating factor that the Player was approached twice for match-fixing, while knowing that the purpose of the second encounter would be to discuss a match-fixing plot and while having had approximately five days to think about what to do, but that he nonetheless attended the second meeting and failed to report any of this on his own initiative to UEFA or any other national or international body.

137. The Panel is well aware that a two year ban on all football-related activities is a severe sanction, also considering that it prevents the Player from training and because it deprives him of the income gained from his football activities, although it was not made clear to the Panel what the Player's income from his football activities was at the relevant moment in time.

138. The Panel however finds that such a severe sanction is justified because the Player intentionally omitted to report the match-fixing approach. The Player's failure to report is particularly serious, as it not only jeopardizes UEFA's fight against match-fixing, but also demonstrates a serious disregard for UEFA's key values and principles. Also, as held by the CAS panel in CAS 2010/A/2266, *"[t]he failure to do so* [*i.e.* to inform the authorities] *breaches the principles of 'loyalty, integrity and sportsmanship' also because it amounts to a 'conduct* [which] *brings the sport of football into disrepute' (…) and ends up in the (at least passive) involvement in a bribery attempt"* (CAS 2010/A/2266, para. 24 of the abstract published on the CAS website).

139. Insofar as the Player submits that *"in the end of the day the best way to protect the integrity of the game is to say no to match-fixing"* and that *"[t]his is exactly what the player did and he should get credit for it"* (cf. para. 5.11 Appeal Brief), the Panel finds that these statements must be rejected. Rather than just saying no to the match-fixers, the Player was also obliged to show that he said no to the approach by reporting it to the authorities. He failed to do so and therefore left the possibility open that the match-fixing scheme would be executed. By doing so, he did nothing to protect his teammates from getting in trouble or even danger, nor to prevent the match-fixers from possibly approaching further persons. The mere fact that he came forward when the match-fixing scheme already unravelled deserves some credit, but the fact remains that the Player was far too late in doing so, also considering that under Article 12(2)(d) UEFA DR requires the reporting to be done immediately.

140. Considering all the circumstances set out above as a whole and weighing the mitigating and aggravating factors identified above, as well as the violation itself and the Player's level of guilt, the Panel does not find a ban of two years in this specific matter to be so disproportionate as to justify a reduction.

141. In respect of the comparison between the sanction imposed on the Player and the sanctions imposed on his teammates, the Panel observes that the following sanctions were imposed on the Player's teammates by UEFA:

- Mr Cesare, Mr Briffa: 10-year ban;

- Mr Camenzuli, Mr Montebello, Mr Cremona: 1-1.5 year ban.

142. Also in this respect, the Panel finds that the two-year ban imposed on the Player is not disproportionate. While it is not aware of the full circumstances of the proceedings against the Player's teammates, the Panel finds that it appears that the violation committed by the Player was considerably less severe than the infringements committed by Mr Briffa and Mr Cesare, but more severe than the violations committed by Mr Montebello, Mr Cremona and Mr Camenzuli.

143. The Panel initially had some doubts about UEFA's argument that the Player's violation was more severe than the one committed by Mr Camenzuli, as the latter was allegedly also approached twice and because he was the captain of the Maltese U-21 team. The Panel asked some questions to UEFA in this regard and ultimately concluded that it was satisfied with the explanations given by UEFA and finds that Mr Camenzuli indeed appears to have been approached for match-fixing only once, that he could not act as a witness before the Maltese courts because he had not attended the meeting with Mr Mackay on or around 14 March 2016 and that the Player knew what the thrust of the second in-person meeting would be, and that notwithstanding this knowledge, the Player still decided to attend the meeting. In particular this last aspect sets aside the severity of the Player's violation from that of Mr Camenzuli, Mr Montebello and Mr Cremona.

144. Indeed, the Panel finds that these circumstances are appropriately reflected in the sanctions imposed on the players by UEFA and that the Player failed to establish that the two-year ban imposed on him is disproportionate in comparison with the bans imposed on his teammates. Indeed, a ban of 2 years fits squarely within the scope of the ten-year ban and the 1-1.5-year bans, and should indeed be somewhat on the lower end of this spectrum.

145. Based on the foregoing, and after having taken into due consideration the regulations applicable, the evidence produced and all arguments submitted, the Panel does not consider a two-year ban to be evidently and grossly disproportionate. Although the outcome remains the same, maybe it gives some comfort to the Player that the Panel finds that the reasoning of the UEFA CEDB was more appropriate to justify this conclusion than the reasoning of the UEFA Appeals Body and of UEFA in the present proceedings before CAS, insofar as the latter held that the sanction imposed by the UEFA CEDB was lenient. The Panel finds that the two-year ban is not lenient, but that it is justifiable to reflect the severity of the violation committed by the Player taking into account all specific circumstances of this matter.

146. Finally, as reconfirmed by UEFA during the hearing following a question of the Panel, and with reference to para. 84 of the UEFA CEDB Decision that was confirmed by the UEFA Appeals Body *"as an exception, the player may return to train with a team or to use the facilities of a team or other member organisation of a national association during the shorter of: a) the last two months of the player's period of suspension; or b) the last one-quarter of the period of suspension imposed"*.

147. Consequently, the Panel holds that the Appealed Decision as well as the Player's ban from all football-related activities until 31 December 2019 is to be confirmed.

148. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Samir Arab on 25 June 2018 against the decision issued on 9 April 2018 by the Appeals Body of the *Union Européenne de Football Association* is dismissed.

2. The decision issued on 9 April 2018 by the Appeals Body of the *Union Européenne de Football Association* is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.