



**Arbitration CAS 2021/A/8054 FC Hamrun Spartans v. Union des Associations Européennes de Football (UEFA), award of 30 November 2022 (operative part of 30 June 2021)**

Panel: Mr Francesco Macrì (Italy), Sole Arbitrator

*Football*

*Disciplinary disputes*

*Standing to be sued – indirectly affected parties*

*Eligibility to participate in a competition*

*Interpretation of a rule*

*Enforcement of the period of ineligibility*

- 1. The question of standing to sue or to be sued is a matter of substantive law. Under Swiss law a party must have a current interest worthy of protection that can be addressed or rectified by the claims or appeal being made. This question must be resolved on the basis of a weighting of the interests of the persons affected by said decision. In a case where an appellant request that a decision by UEFA of ineligibility be set aside, UEFA, having issued the disciplinary measure in question, has standing to be sued. With regard to the affected other clubs, they are only indirectly affected while UEFA is best suited to solely defend the participants' shared interests in this competition since these other clubs derive their rights in the UEFA Champions League competition solely from UEFA as the major event organiser and sports governing body of European club football.**
- 2. Swiss law gives the members of an association extensive autonomy, including choosing who else to admit to membership of the association itself. The right of a Swiss association to regulate and determine its affairs is considered essential. If the principles of fairness and good faith are not breached, if no issue of legitimate expectation arises, if the decision in issue does not appear to have been made arbitrarily, then there are no grounds on which to infringe upon an association's right to autonomy. In any case, the competence to decide on the admission or exclusion of clubs from UEFA competitions is exclusively UEFA's, as the organiser of such competitions.**
- 3. The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule.**
- 4. The UEFA's discretionary power can apply only if the club already could not participate in UEFA competitions due to the national sanction's effect. Art 4.02 of the UEFA**

Champions League Regulations provides that *“the national or international sporting body, arbitral tribunal or state court”* decision must have the *“effect of preventing”* the club from participating in a UEFA club competition. The *“effect of preventing”* undoubtedly means something that concretely happened, not only potentially. Therefore, as long as the club has not qualified on sporting merit for the UEFA club competition, it has not been *“prevented”* from participating in said competition.

## I. PARTIES

1. Hamrun Spartans (the “Appellant” or the “Club”) is a professional football club affiliated with the Malta Football Association (the “FFM”), which in turn is affiliated with the Union des Associations Européennes de Football.
2. Union des Associations Européennes de Football is the governing body of European football, based in Nyon, Switzerland (the “Respondent” or “UEFA”).
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

## II. FACTUAL BACKGROUND – BACKGROUND FACTS

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 9 April 2021, the Malta Football Association (“MFA”) Executive Committee brought an end to the 2020-21 Maltese Premier League (“MPL”) season due to the then-existing COVID-19 restrictions. It declared the Appellant as the new Maltese champions.
6. As the winners of the MPL, the Club qualified on sporting merit for the UEFA Champions League (the “UCL”) in the application of Article 3 of the 2021/22 UEFA Champions League Regulations (the “UCLR”).
7. On 10 May 2021, the Appellant submitted the Admission Criteria Form (the “ACF”) for the 2021/2022 UEFA Club Competitions. The MFA also signed the ACF that declared inter alia as follows; “[...] *The undersigned, for and behalf of the above-mentioned club or the corresponding member association, hereby: a) agrees to be bound by and observe the UEFA Statutes and regulations [...] as well as directive and decisions taken by the competent UEFA bodies regarding the competition in question.*”

8. The Club attached a letter dated 10 May 2021 to be considered “as forming part of the UEFA ADMISSION CRITERIA FORM FOR CLUB COMPETITIONS 2021-22”, informing that:

*“[On 31 July 2013]: Hamrun Spartans are charged with corrupt practices. Two committee members accused of having been involved in an activity aimed at arranging or influencing the outcome of matches at a national level. The Club was deemed to be jointly and severally liable for the action of its Committee members. The local football scene embraces the concept of collegiality and collective guilt.*

*[On 13 August 2013]: The Club pleads guilty to the charges. The Club cooperates fully with the MFA Board [i.e., the “Decision”]. [...].*

*The Club is fined Euro ten thousand (€10,000) which is a substantial sum by local standards. (4.6% of total expenditure for 2013 which amounted to Euro 216,920).*

*The Club was to start the next season with a 7 (seven) point deduction. This led the Club, already relegated the previous season (2012/13), to be further relegated to the 3rd tier (2nd Division) of Maltese Football in 2013/14. A result never experienced in the 106-year history of the Club.*

*The Club was furthermore banned from participating in International Competitions for five (5) years [...].”*

9. With the same letter, the Club attached the MFA Board Decision in 2013 and submitted that such decision had already the effect of preventing the Club from participating in a UEFA Clubs’ competition:

*“This additional sanction is in conformity with the Statute and Regulations of the MFA. To this effect, Section IX - Disciplinary Procedures and Sanctions - Clause 6 (i) (a) states:*

*‘A Member Club which is found guilty of the offence mentioned in article 3 of these regulations shall be penalised with expulsion or with relegation or with loss of points during the same season when the case is adjudicated or during the following football season or with a fine not exceeding one hundred thousand euro (€100,000), depending on the gravity of the case. However, the latter three (3) punishments may be combined. Furthermore, such a Club, if not expelled, will be barred from participating in international competitions for five (5) years.’*

*In view of that stated above the Club believes the sanction imposed by the MFA satisfies Article 4.02 of the UEFA Champions League Regulations, in the sense that the impact of the MFA Board Decision has already had the effect of preventing the Club from participating in a UEFA Club Competition.*

*Indeed, in terms of the MFA sanction-imposed way back in 2013 not only was the Club ineligible to participate for one (1) football season but for a whole period of five (5) years.*

*Consequently, we feel that the rebuttal presumption created in article 4.02 has been adequately satisfied. On 3 August 2020, the UEFA administration, via Circular 58/2020, informed its member associations and their clubs of Annex I to the Regulations of the UEFA Champions League (2020/21 season) and Regulations of the UEFA Europa League (2020/21 Season) (“Annex I”), which were approved by the UEFA Executive Committee at its meeting on 17 June 2020. Annex I is named Special rules applicable to the qualifying phase*

*and play-offs due to COVID-19 and sets out “special rules applicable to the qualifying phase and play-offs due to COVID-19”.*

10. On 25 May 2021, the UEFA General Secretary referred the ACF to the Chairman of the UEFA Control, Ethics and Disciplinary Body (“CEDB”), according to Article 4.07 UCLR. Furthermore, the UEFA General Secretary requested that a UEFA Ethics and Disciplinary Inspector (“EDI”) investigate the admission of the Club to the 2021/22 UCL competition.
11. On 25 May 2021, and according to Article 4.07 of the Regulations of the UEFA Champions League 2021/22, the UEFA General Secretary referred to the admission criteria application filed on the 10 May 2021 by the Club to the UEFA Control, Ethics and Disciplinary Body.
12. On 25 May 2021, the Club was informed of the opening of the UEFA Ethics and Disciplinary Inspector’s (the “EDI”) investigation.
13. On 31 May 2021, the UEFA Control, Ethics and Disciplinary Body chairman apprised the Club that the Inspector had submitted his report. Furthermore, in the same correspondence, the Club was also informed that, given the urgent circumstances of the case, the Chairman of the UEFA Control, Ethics and Disciplinary Body decided to refer the matter directly to the UEFA Appeals Body, in virtue of what is laid down in Article 50 (3) of the UEFA Statutes and Article 29 (3) of the UEFA Champions League Regulations.
14. The EDI Report submitted that the Club should have been declared ineligible to participate in the 2021/2022 competition for which it qualified and sought admission under the administrative measure provided by Article 4.02 UCLR.
15. On 4 June 2021, the Club submitted its statements, essentially arguing the following:
  - i. “[...] *The MFA Rules provide for the outcome of a club winning the cup trophy while participating in a lower division, as per Clause 3, which renders the EDI’s assumption that qualification for a UEFA competition for the Club was “not applicable” in the first three years of the five-year ban as misconstrued.*
  - ii. *The MFA Rules have been misinterpreted by the EDI, most notably with respect to the following wording in Clause (6)(i)(a): “[f]urthermore, such a Club, if not expelled, will be barred from participating in international competitions for five (5) years”. In this respect, the Club submits that the five-year ban imposed on it by the MFA in the Decision has been effectively served and submitted further documentary evidence to support such claim.*
  - iii. *The MFA’s regulatory framework allows a national body to exclude clubs from international competitions, which is why Article 4.02 UCLR creates a *juris tantum*, i.e. rebuttable presumption, against ineligibility, meaning that “UEFA can refrain” from declaring a club as ineligible if its disciplinary bodies are comfortably satisfied that the impact of the Decision has already had the effect of preventing the club from participating in a UEFA club competition. As such, UEFA is invited to evaluate the Decision of the MFA, and any other arbitral tribunals or state courts. With this, the Club*

*submits that the five-year ban has been executed - as confirmed by the MFA in its statements to the EDI on 26 May 2021 - and as a result, the presumption of ineligibility is in fact a rebuttable one.*

- iv. The Club challenges the findings in the EDI's Report suggesting that it was never entitled to qualify for an international competition on account of the sporting results it achieved in the five seasons between 2013/14 and 2017/18. On the basis of such reasoning, in theory, any club could be deemed ineligible to participate in a UEFA club competition for many years after a finding of match-fixing which could, in turn, render the fight against corruption as irrelevant, superfluous and non-consequential".*

Moreover, the Club submitted further evidence about the new governance and all the other actions taken to regain compliance with principles of integrity as requested by football regulations.

16. On 7 June 2021, a hearing was held before the Appeals Body.
17. On 9 June 2021, the Club was notified of the decision of the UEFA Appeals Body (the "Appealed Decision"), which declared:  
*"Hamrun Spartans F.C. ineligible to participate in the 2021/2021 UEFA Champions League".*
18. As a direct consequence of the Appealed Decision, three Maltese clubs were scheduled to participate in the UECL 2021/22: Birkirkara F.C., Gzira United and Mosta F.C. The latter achieved its place in the UECL 2021/22 as a direct consequence of the Appealed Decision.
19. Furthermore, Hibernians F.C. (which had finished in second place behind the Appellant in the MPL) were effectively promoted from the UEFA Europa Conference League ("UECL") 2021/22 to the UCL 2021/22.
20. On 15 June 2021, the draw for the First Qualifying Round (Q1) of the UCL 2021/22 took place at UEFA HQ, and the qualified Maltese Clubs, Birkirkara F.C., Gzira United and Mosta F.C. were drawn to play the first leg on 8 July and the second leg on 15 July.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

21. On 19 June 2021, the Appellant filed a Statement of Appeal against the Respondent in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision seeking a declaration to be eligible to participate in the UCL 2021/2022. In the Statement of Appeal, the Appellant further informed that the Parties agreed on the appointment of Mr Francesco Macrì as sole arbitrator in this matter.
22. Included in the Statement of Appeal, the Club filed a Request for Urgent Provisional Measures within the meaning of Article R37 of the CAS Code, requesting to stay the execution of the Appealed Decision given the urgency and risk irreparable prejudice if enforced.

23. By letter of 22 and 23 June 2021, the Parties informed the CAS Court Office that they agreed to an expedite calendar and that the Sole Arbitrator shall issue the decision based only on the written submissions. Furthermore, UEFA also confirmed its agreement to the appointment of the designated sole arbitrator.
24. On 23 June 2021, the Appellant withdrew the Request for Urgent Provisional Measures.
25. On 25 June 2021, the Appellant filed its Appeal Brief under Article 51 of the CAS Code and in accordance with the procedural schedule agreed between the Parties.
26. On the same date, the CAS Court Office confirmed, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the appointment of Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy, as Sole Arbitrator.
27. On 28 June 2021, the Respondent filed its Answer by Article R55 of the CAS Code and in accordance with the procedural schedule agreed between the Parties.
28. On 29 June 2021, the CAS Court Office informed the Parties that, as per their agreement, the Sole Arbitrator would render his decision without holding a hearing and that the operative part of the Arbitral Award would have been issued by 30 June 2021.

#### IV. SUBMISSIONS OF THE PARTIES

29. In its Appeal Brief, the Appellant requested the CAS to rule as follows:
  1. *To declare Appeal filed by Hamrun Spartans F.C. as admissible and upheld.*
  2. *To declare Hamrun Spartans F.C. eligible to participate in the 2021/22 UEFA Champions League competition.*
30. The Appellant's submissions, in essence, may be summarised as follows:
  - Pursuant to Art. 4.02, par. 1, of UEFA Champions League Regulation Cycle – 2021/24 Season (the “UCL Regulations”) *“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 (.) 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 body, arbitral tribunal or state court”.*
  - The Appealed Decision is unlawful and misleads the content of the relevant provision as the Appellant Hamrun Spartans F.C. was sanctioned for a tort committed in 2013 by the MFA Board. Still, no investigation was conducted in the last eight years, and the same Federation's bodies issued no decision upon this matter.

- The MFA imposed on the Appellant, amongst other sanctions, a five-year ban from participating in any international competition, and that sanction has been fully enforced, as confirmed by the MFA communication dated 2 June 2021: “[...] Reference is also made to the replies the Association has provided to the UEFA Disciplinary Inspector in a recent exchange of correspondence related to pending proceedings in relation to your club and which is notified to you as part of the said Inspector’s Report, wherein the Association confirmed that: i) the club was banned from participating in international competitions for five (5) years; and ii) the decision in question has become final and binding and was fully executed. I trust there should be no doubt that for the Association the above-mentioned sanction is deemed to be fully served”.
- Due to MFA’s ban, the Appellant, between 2013 and 2018, had the effective chance to participate in UEFA’s competitions by taking part at F.A. Trophy (the National Maltese Cup). This national tournament entitles the winning club to join to UEFA Europa League. The Club was aware that, despite the chance of winning the national competition, it would have been enforced to waive its right to participate in the relevant UEFA competition.
- The Appealed Decision is excessively harmful and violates the principle of proportionality of the sanction as it punishes the Appellant of disciplinary offences committed in 2013.
- The Appealed Decision violates the *ratio* of the Art. 4.02 UCLR as such provision was issued to prevent the Clubs found guilty of momentous disciplinary offences from participating in any next UEFA competitions and safeguarding UEFA’s image and interests before the public.
- Given the above, the sanction imposed by UEFA has not any promptness or urgency and consequently, it is unlawful and wrong. The Appellant is a restored team with entirely different governance and background, new integrity policy, and it cannot be identified with the old management.
- Moreover, UEFA wrongly considered that the Appellant was never declared ineligible to participate in the UEFA competition. In this regard, the MFA’s communication clearly states that the five-year ban was enforced in its entirety.
- Pursuant to Art. 4.02, par. 2, of the Regulations of the UEFA Champions League “UEFA can refrain from declaring a club ineligible to participate in the competition if UEFA is comfortably satisfied that the impact of a 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 of preventing that club from participating in a UEFA club competition”. It is clear and explicitly confirmed by the official MFA communication dated 2 June 2021 that the penalty inflicted by the MFA to Hamrun Spartans F.C. has already had the effect of preventing the Club from participating in a UEFA club competition. This measure had a harsh impact on the image, the prestige and the economic stability of the Club, which took eight years to recover.

- UEFA wrongfully applied its discretionary power under Art. 50 of the Statute as the five-year ban imposed by the MFA Board was more punitive than the one-year exclusion provided by Art. 4.02 UCLR. Consequently, the Appealed Decision lacks proportionality to the offence, which is unlawful.

UEFA should have refrained from sanctioning the Appellant as this decision infringed the principles of rehabilitation and proportionality, not considering the efforts born by the Appellant to restore its image and structure. The consequent loss of profit deriving from the 2021/2022 UEFA Champions League participation will reinforce the gap from the other Maltese top clubs.

31. In its Answer, the Respondent requested the CAS to issue an award:

- a. Declaring the appeal filed on behalf of Hamrun Spartans Football Club inadmissible.*
- b. In the alternative, dismissing the appeal filed on behalf of Hamrun Spartans Football Club.*
- c. In any event, confirming the decision of the UEFA Appeals Body of 7 June 2022*
- d. In any event, ordering that the Parties shall bear their own legal fees and other expenses incurred in connection with these proceedings.*

32. The Respondent's submissions, in essence, may be summarised as follows:

- First, UEFA objects that the Appeal is meritless for procedural reasons.
- The Appellant requests the CAS to order UEFA to immediately reinstate the Appellant to the UCL 2020/2021, which claim directly affects all other participants in this competition.
- However, the Appellant failed to call these participants co-respondents, even when they are all third parties affected from a sporting perspective by the appeal if the Appellant is reinstated to the UCL 2021/2022.
- Also, from a legal perspective, the Appellant ignores the principle that all clubs that may be affected by the Appellant's request must have "a seat at the table" so that they can defend their rights.
- In this situation, the case law of the CAS is clear: the Appellant cannot direct such a request to UEFA alone.
- Furthermore, a reintroduction of the Appellant at this stage would result in a distortion of the sporting principles for completion like the UCL 2021/2022, as the other potentially affected clubs by any decision already started their training preparation.



- Consequently, the Appeal must be rejected and/or declared inadmissible.
- In any case, the provision of Art. 4.02 UCLR “Admission criteria and procedure” triggers based on precise conditions that all occurred in the case at stake.
- Whenever it is ascertained that a club is directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a national or international match, the UEFA body in charge “*will declare such club ineligible to participate in the competition*”. Such ineligibility will be effective only for one football season.
- As such, UEFA can refrain from declaring a club ineligible only if a national or international decision issued “*by any sporting body, arbitral tribunal or state court in charge had the effect of preventing that club from participating in a UEFA club competition*”. Regrettably, this is not the case, and the Appellant is seeking an inadmissible exception to such a rule.
- The Appealed Decision complies with the provisions of Article 4.02 UCLR.
- The Appellant was found guilty of being involved in activities aimed at arranging or influencing the outcome of matches; MFA sanctioned the Appellant, and such decision became final and binding. Therefore, Art. 4.02 fully applies, and the Appellant must be declared ineligible to participate in the UEFA competition for one year.
- Notwithstanding the five-year ban from participating in international competitions, it is indisputable that only UEFA, as the organiser, has the competence to decide on the admission or exclusion of clubs from UEFA competitions.
- The Appellant errs in trying to wrongly identify the simple possibility to compete for participation in UEFA competition with the effective qualification that would trigger the ban provided by Art. 4.02 UCLR. As this event never occurred, UEFA cannot even consider refraining from declaring the Appellant ineligible for the UCL competition 2021/2022.
- The admission criterion that a club wishing to participate in UEFA club competitions cannot have been involved in any match-fixing activity is valid and legitimate to prevent any unlawful activity and protect the competitions’ integrity.
- This is the first time UEFA takes any measure against Appellant: therefore, any issue of *ne bis in idem* arises. The Swiss Federal Tribunal also confirmed that UEFA’s two-step approach in match-fixing cases (*i.e.*, possible combining the initial administrative measure with a subsequent disciplinary procedure) aligns with the *ne bis in idem* principle.
- For the sake of completeness, even if a national or international ban has already had the effect of preventing the Appellant from participating in a UEFA club competition, UEFA still maintains a discretionary power to declare a club’s ineligibility.

- This UEFA’s margin of discretion has been recognised by long-standing CAS jurisprudence as it results from the Federation’s autonomy as an association under Swiss Law. That said, the Appellant is prevented from asking the CAS to order UEFA to apply its discretion in the way that the Appellant deems most convenient for its interests.

## V. JURISDICTION

33. Article R47 of the CAS Code provides as follows:

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

34. Pursuant to Article 54 of the UEFA DR, “[t]he UEFA Statutes stipulate which decisions taken by the disciplinary bodies may be brought before the Court of Arbitration for Sport, and under which conditions”.

35. Pursuant to Article 62 para. 1 of the UEFA Statutes, “[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”.

36. Furthermore, according to Article 85.01 of the UCL Regulations, “In case of litigation resulting from or in relation to these regulations, the provisions regarding the Court of Arbitration for Sport (CAS) laid down in the UEFA Statutes apply”.

37. The jurisdiction of the CAS derives from Article 54 of the UEFA DR and Article 62 para. 1 of the UEFA Statutes and Article 85.01 of the UCL Regulations in conjunction with Article R47 of the CAS Code.

38. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, which was further confirmed by signing the Order of Procedure. .

39. The Sole Arbitrator finds that he has jurisdiction to decide the present dispute.

## VI. ADMISSIBILITY

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

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

41. The deadline provided in Article R49 of the CAS Code (twenty-one days from the receipt of the decision appealed against) is only relevant in the absence of a time limit set in the statutes or regulations of the relevant federation. The UEFA Statutes provide in Article 62 para. 3 that “[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”. Therefore, the appeal against the Appealed Decision must be filed with the CAS within 10 days from its receipt.
42. The Appealed Decision was notified to the Appellant on 9 June 2021, and the Appellant’s Statement of Appeal was lodged on 19 June 2021, *i.e.* within the statutory time limit of 10 days set forth in Article 62 para. 3 of 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.
43. It follows that the Appeal is admissible.

## VII. APPLICABLE LAW

44. Article 63 para. 2 of the UEFA Statutes states as follows:

*“Moreover, proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.*

45. Article R58 of the Code provides 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”.*

46. Article 64 para. 1 of the UEFA Statutes states as follows:

*“These Statutes shall be governed in all respects by Swiss law”.*

47. The Panel is satisfied that the primarily the various regulations of UEFA are applicable to the merits of this Appeal, in particular Regulations of the UEFA Champions League 2021/24 Cycle – 2021/22 Season (the “UCL Regulations”), effective as of 24 June 2021, Annex I and the UEFA DR, effective as of 15 June 2019. Subsidiarily, Swiss law will apply should there be a need to fill a lacuna in various regulations of UEFA.

## VIII. MERITS

48. The Sole Arbitrator preliminary notes that the Respondent objected that the Appellant failed to name as respondents other Clubs which may be impacted by the present procedure, namely

those Maltese Club qualified for the UEFA competitions in place of the Club. This procedural flaw jeopardises the appeal brought by the Club and hampers any decision on the merits.

49. The Sole Arbitrator stresses that, as the Appeal was brought in time, the Appealed Decision was not binding, and the other Maltese clubs did not yet acquire the right to participate in the UECL Q1.
50. CAS Jurisprudence already dealt with this matter as a question of standing to sue or to be sued: *“The question of standing to sue or to be sued is a matter of substantive law. Under Swiss law it is well established that a party must have a current interest worthy of protection that can be addressed or rectified by the claims or appeal being made. This principle is provided in Article 59(2) of the Swiss Code of Civil Procedure (the CCP) and is known as “Rechtsschutzinteresse” or “intérêt digne de protection”. This is generally translated into English by the term “standing” (although standing can have a somewhat different role when applying English or other Common laws)”* (CAS 2016/A/4787).
51. Concerning the standing to be sued, the CAS, on several occasions in appeal proceedings, held that *“the question of standing to be sued ... must be resolved on the basis of a weighting of the interests of the persons affected by said decision”*. (CAS 2015/A/3910, para. 138, endorsed by CAS 2016/A/4602, paras. 81 ff.). One must ask whether a party *“stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law”* (cf. CAS 2017/A/5227, para. 35). Similarly, the CAS panel in 2015/A/3910 held as follows:  
  
*“[T]he Panel holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on basis of a weighing of the interests of the persons affected by said decision. The question, thus, is who [...] is best suited to represent and defend the will expressed by the organ of the association”* (Para. 138).
52. The Sole Arbitrator notes that it is undisputed that the present case is – in principle – of a disciplinary nature, and UEFA, having issued the disciplinary measure in question, has thus standing to be sued in respect of the Appellant’s request to set aside such a measure.
53. The other Maltese clubs derive their rights in the UEFA competitions competition solely from UEFA as the major event organiser and sport governing body of European club football. Their legal position can therefore not be stronger than or different from the legal position held by UEFA itself: *“The Sole Arbitrator has serious doubts whether the First Respondent’s position holds true, that the Appellant – in pursuing its request for reintegration into the competition – should have directed its claim against all clubs participating in the competition. These other clubs derive their rights in the UEFA Champions League competition solely from UEFA as the major event organiser and sports governing body of European club football ...”* (CAS 2020/A/7356).
54. Thus, these other clubs are only indirectly affected in the case at hand. UEFA is best suited to solely defend the participants’ shared interests in this competition.
55. The Sole Arbitrator does not ignore the risk that the reintegration of a club into competition may cause difficulties. These difficulties, however, originate solely from the decision taken by

UEFA and, therefore, cannot be shifted to the Appellant by denying it adequate access to justice.

56. Thus, the main issues to be resolved by the Sole Arbitrator are:

- A) Did the Appellant fulfil the “Admission Criteria” of the UCLR?
- B) Did the UEFA AB correctly apply the UCLR provisions, namely Art. 4.02?
- C) Are the rules enforced by the UEFA AB in the Appealed Decision lawful?
- D) And if yes: was the sanction of ineligibility provided by Art. 4.02 UCLR entirely enforced against the Appellant?

**A) Did the Appellant fulfil the “Admission Criteria” of the UCLR?**

60. Art 4 of the UCLR provides the “Admission criteria and procedure” to be eligible to participate in the competition as listed from letters a) to h). Particularly, Art. 4.1g) reads as follows:

*“[ clubs must] not have 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 and confirm this to the UEFA administration in writing”*

And lett. h):

*“inform UEFA about any and all proceedings before disciplinary bodies or state courts implicating the club or its officials in any activity aimed at arranging or influencing the outcome of a match at national or international level, whether or not the club or its officials have been acquitted”.*

61. It is undisputed that the Appellant, as the champion of the Maltese Premier League, qualified on sporting merit for the UEFA Champions League in applying Article 3 of the 2021/2022 UCLR. Therefore, as above provided, the Appellant submitted to UEFA the Admission Criteria Form (the “ACF”) along with an attachment where the Club informed that:

*“31 July 2013 Hamrun Spartans are charged with corrupt practices. Two committee members accused of having been involved in an activity aimed at arranging or influencing the outcome of matches at a national level. The Club was deemed to be jointly and severally liable for the action of its Committee members. The local football scene embraces the concept of collegiality and collective guilt.*

*13 August 2013 The Club pleads guilty to the charges. The Club cooperates fully with the MFA Board [i.e., the “Decision”]. [...].*

- *The Club is fined Euro ten thousand (€10,000) which is a substantial sum by local standards. (4.6% of total expenditure for 2013 which amounted to Euro 216,920).*

- *The Club was to start the next season with a 7 (seven) point deduction. This led the Club, already relegated the previous season (2012/13), to be further relegated to the 3rd tier (2nd Division) of Maltese Football in 2013/14. A re-sult never experienced in the 106-year history of the Club.*
  - *The Club was furthermore banned from participating in International Competitions for five (5) years.*
62. Based on the above, the Sole Arbitrator finds that let alone the below-mentioned findings, whether the Appellant already suffered any sanction provided by UCLR, the provided information regarding the former unlawful activity of the Club, rightly triggered the application of Art. 4.02 that reads: *“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 a 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 of preventing that club from participating in a UEFA club competition”.*
63. In this regard, the Appellant was involved in an *“...activity aimed at arranging or influencing the outcome of a match at national.level”*: two members of the Club’s executive committee, as well as two players, were accused of having been involved in an activity aimed at arranging or influencing the outcome of several matches the Club played during the 2012/13 season, namely seven MPL matches and an MFA trophy match.
64. During a hearing before the competent body, *i.e.*, the MFA Board, the Club, which was deemed to be jointly and severally liable for the conduct mentioned above of its executive committee members, admitted to the charges and pleaded guilty. The decision was issued, which resulted in everyone involved being banned for life. The Club did not appeal the decision, and it became final and binding.
65. On these findings, the UEFA General Secretary correctly referred the Appellant’s ACF to the Chairman of the UEFA Control, Ethics and Disciplinary Body (“CEDB”), according to Article 4.07 UCLR. On this basis, the UEFA General Secretary rightly decided to request that a UEFA Ethics and Disciplinary Inspector (“EDI”) investigate the admission of the Club to the 2021/22 UCL competition.
66. Concluding, the Sole Arbitrator is convinced that the Appellant did not fulfil the “UCLR Admission Criteria”, and a disciplinary proceeding was rightly opened.
- B) Did the UEFA AB correctly apply the UCLR provisions, namely the Art. 4.02?**
67. The Sole Arbitrator initially recalls the EDI Report’s findings:

- *In season 2012/13, the Club participated in the MPL, at the end of which it was relegated to the First Division.*
  - *Following the conclusion of the competition, two members of the Club's executive committee, as well as two players, were accused of having been involved in an activity aimed at arranging or influencing the outcome of several matches the Club played during the 2012/13 season, namely seven MPL matches and a MFA trophy match.*
  - *During a hearing before the competent body, i.e. the MFA Board, the Club, which was deemed to be jointly and severally liable for the aforementioned conduct of its executive committee members, admitted to the charges and plead guilty.*
  - *As such, the Decision was issued, which resulted in each individual concerned being banned for life. The Decision was not appealed by the Club and therefore, became final and binding.*
  - *Based on the positioning at the end of every football season since 2012/2013, the EDI*
68. Based on the positioning at the end of every football season since 2012/2013, the EDI Report concluded that the 2021/22 UCL season was the first time the Club became eligible to participate in a UEFA club competition on sporting merit following the issuance of the MFA Decision.
69. The EDI Report submitted that the Club should therefore be declared ineligible to participate in the 2021/22 UCL competition for which it qualified and sought admission by the administrative measure foreseen in Article 4.02 UCLR.
70. Accordingly, the EDI requested that:
- the Chairman of the CEDB refers the case to the Appeals Body by Articles 29(3) and 30(4) of the UEFA Disciplinary Regulations ("D.R").
  - the Club to be declared ineligible to participate in the 2021/22 UCL competition.
71. The EDI submitted the following legal assessment of the present matter:
- As a preliminary point, the EDI referred to the relevant CAS jurisprudence and the double regulatory regime UEFA implemented to prevent and prosecute match-fixing activities. The EDI emphasized the administrative nature and measure in the present case, distinct to that of disciplinary proceedings.
  - Further, the EDI recalled that, within the context of the UEFA club admission process, and according to the well-established jurisprudence of the UEFA disciplinary bodies, within the meaning of Article 4.01(g) UCLR, if such involvement is strictly limited to only one or more of its players, and does not involve any of the club's officials, then such involvement would ordinarily not result in a club being deemed ineligible to participate in UEFA competitions.

- In turn, however, the EDI noted that the involvement of the Club's officials, *i.e.*, its executive committee members, in the match-fixing activity that occurred through-out the 2012/13 MPL season automatically resulted in, at the very least, the Club's indirect involvement in the activities foreseen in Articles 4.01(g) and 4.02 UCLR. The EDI noted that the Club pleaded guilty to all charges against it and did not contest the Decision.
  - Despite admitting its liability according to the above, the Club submitted to the EDI that it had allegedly satisfied the requirements set in Article 4.02 UCLR, as the execution of the Decision already had the effect of preventing the Club from participating in a UEFA club competition. However, the EDI emphasised that, in any case, no reference to the five-year ban may be found in the content of the Decision and the MFA failed to provide any documentation regarding the execution of such ban, despite being requested to do so by the EDI.
  - Based on the evidence mentioned above, it is clear that the Club competed in a lower-tier national during the five-years between the 2013/14 and 2017/18 seasons in which the Club was allegedly prohibited from participating in an international competition.
72. Based on the above, the Chairman of the CEDB, as requested by EDI, correctly submitted the matter to the Appeals Body following Articles 29.3 and 30.4 of the UEFA Disciplinary Regulations. The Club did not object to the competence of the Appeals Body during the proceedings.
73. The Sole Arbitrator agrees with the legal framework reported in the Appealed Decision and finds that the Club has been directly involved in an activity aimed at arranging or influencing the outcome matches at a national level, as a consequence of the involvement of two of its former executive committee members in fixing matches at a national level, falling under the scope of Article 4 UCLR. Furthermore, the Club did not challenge the relevant facts and pleaded guilty to the charges about the two officials involved in match-fixing activities.
74. Therefore, the sanction provided, *i.e.*, the one football season-ineligibility, was correctly applied in principle
- C) Are the rules enforced by the UEFA AB in the Appealed Decision lawful??**
75. The Appellant submits that the UEFA Appeals Body made a wrong and unlawful application of its discretionary power for applying sanctions against the charged clubs. In any case, such discretionary power should have specific evaluation standards complying with principles of proportionality to the offence.
76. Art. 50 (Competition Regulations) of UEFA Statutes provides at para. 3: *"The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures"*.



77. The Sole Arbitrator notes that it is not disputed that sports associations, like UEFA, have disciplinary powers over their members under Swiss law, even if such controls are not unlimited.
78. Article 75 of the Swiss Civil Code reads:
- “Any member who has not consented to a resolution which infringes the law or the articles of an association is entitled by law to challenge such a solution in court within one month of learning thereof”.*
79. Swiss law gives the members of an association extensive autonomy, including choosing who else to admit to membership of the association itself. The right of a Swiss association to regulate and determine its affairs is considered essential (BGE 97 II 108): *“One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance and their membership. However, this autonomy is not absolute. In light of the principle recognised by CAS jurisprudence regarding the general distinction between procedural and substantive rules, generally, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred (...). If the principles of fairness and good faith are not breached, if no issue of legitimate expectation arises, if the decision in issue does not appear to have been made arbitrarily, then there are no grounds on which to infringe upon an association’s right to autonomy. The principle of autonomy should not be limited by formal breaches, which carry no substantive unfairness”* (CAS 2014/A/3828).
80. CAS Award 2013/A/3324 & 3369 states: *“According to Swiss law, sporting measures imposed by Swiss associations are subject to Swiss civil law [...]. Under Swiss law the right of associations to impose sanctions or disciplinary measures on athletes and clubs is not the exercise of a power delegated by the State, rather it is the expression of the freedom of associations and federations”.*
81. In this regard, the Sole Arbitrators stresses that UCLR rules, particularly Art. 4.01’s provision does not appear *prima facie* unfair; rather, it stands its footing on the UEFA associated clubs’ willingness to avoid any unlawful activity providing a specific sanction if a club is found guilty of such violation. And this sanction is provided for the UEFA’s organised competitions, and only UEFA bodies can impose as the associated clubs themselves entrusted them. Therefore, in principle, it can not be replaced by other sanctions provided by the national football federations.
82. This having stated, the Sole Arbitrator stresses that the provision at stake falls under the prerogative of UEFA whether to apply the sanction of ineligibility.
- D) And if yes: was the sanction of ineligibility provided by Art. 4.02 UCLR entirely enforced against the Appellant?**
83. It remains to ascertain if UEFA AB had a valid reason to refrain from applying the ineligibility sanction on the Appellant, as provided by Art. 4.02.
84. In this regard, the Appellant submitted before the UEFA AB that, on 13 August 2013:

*“The Club pleads guilty to the charges. The Club cooperates fully with the MFA Board [i.e. the “Decision”].  
[...]*

*The Club is fined Euro ten thousand (€10,000) which is a substantial sum by local standards. (4.6% of total expenditure for 2013 which amounted to Euro 216,920).*

*The Club was to start the next season with a 7 (seven) point deduction. This led the Club, already relegated the previous season (2012/13), to be further relegated to the 3rd tier (2nd Division) of Maltese Football in 2013/14. A result never experienced in the 106-year history of the Club.*

*The Club was furthermore banned from participating in International Competitions for five (5) years.*

*This additional sanction is in conformity with the Statute and Regulations of the MFA. To this effect, Section IX - Disciplinary Procedures and Sanctions - Clause 6 (i) (a) states:*

*‘A Member Club which is found guilty of the offence mentioned in article 3 of these regulations shall be penalised with expulsion or with relegation or with loss of points during the same season when the case is adjudicated or during the following football season or with a fine not exceeding one hundred thousand euro (€100,000), depending on the gravity of the case. However, the latter three (3) punishments may be combined. Furthermore, such a Club, if not expelled, will be barred from participating in international competitions for five (5) years.’*

*In view of that stated above the Club believes the sanction imposed by the MFA satisfies Article 4.02 of the UEFA Champions League Regulations, in the sense that the impact of the MFA Board Decision has already had the effect of preventing the Club from participating in a UEFA Club Competition.*

*Indeed, in terms of the MFA sanction imposed way back in 2013 not only was the Club ineligible to participate for one (1) football season but for a whole period of five (5) years.*

*Consequently, we feel that the rebuttal presumption created in article 4.02 has been adequately satisfied”.*

85. As a preliminary remark, the Sole Arbitrator agrees with the Appeals Body that the competence to decide on the admission or exclusion of clubs from UEFA competitions is exclusively UEFA’s, as the organiser of such competitions.
86. Nevertheless, although the sanction imposed by the Maltese football was harsh and fully served against the Appellant, that decision taken by such a national federation did not prevent the Club from participating in a UEFA club competition.
87. The UEFA’s discretionary power can apply only if the Club already could not participate in UEFA competitions due to the national sanction’s effect: but this is not the case.
88. The Respondent stated, but the Appellant did not object, that the Club ever qualified itself for a UEFA competition since the football season 2021/2013 until 2019/2020. Parties agree that the Club had a chance to achieve such qualification, but this event never occurred. Therefore, the 2020/2021 football season is the first time the Club became eligible to participate in a UEFA club competition on sporting merit.

89. The pertinent issue in these proceedings is whether or not the five-year ban from participating in international competitions imposed on the Club in the Decision – under the MFA Rules – had the requisite “preventative” effect envisaged in Article 4.02 UCLR.
90. The Appellant submits that the five-year ban imposed on it has been effectively served between the 2013/14 and 2017/18 seasons, meaning the Club would become eligible to participate in the 2021/22 UCL competition. Therefore, the Appealed Decision is wrong.
91. The Sole Arbitrator emphasizes that, on the contrary, the Appellant can’t identify a single year or UEFA club competition at any stage since 2013 that it would have qualified for on sporting merit but which it was “prevented” from participating in as a consequence of the MFA decision in 2013.
92. The Sole Arbitrator is aware that a sanction was enforced against the Appellant from its National Federation, but this disciplinary punishment was limited to the national competition. Moving to a “European level”, it becomes clear that MFA five-year ban was never enforced against the Club.
93. Art 4.02 provides that “*the national or international sporting body, arbitral tribunal or state court*” decision must have the “*effect of preventing*” the Club from participating in a UEFA club competition.
94. The wording of such provision is straightforward and does not need to require any further interpretation where the “*effect of preventing*” undoubtedly means something that concretely happened, not only potentially: “*CAS jurisprudence itself establishes the following principles of interpretation of those regulations of a federation breach of which entail disciplinary sanctions: they must be precise if binding upon athletes or, mutatis mutandis, clubs*” (CAS 2013/A/3324 & 3369).
95. Moreover, the CAS Panel in CAS 2010/A/2071 rightly found as follows:

*“The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rules, which falls to be interpreted. The adjudicating body – in this instance the Panel – will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule [...]”.*
96. In this regard, it is clear that UEFA maintains a disciplinary power strictly related to its competitions, within which a one-year ban shall be served to the club found guilty of match-fixing or any other related activity. No matter if this sanction comes from UEFA or any other adjudicating body.
97. Based on the foregoing and after taking into consideration the applicable regulations and all evidence produced and all arguments submitted, the Sole Arbitrator can’t identify a single year or UEFA club competition at any stage since 2013 that the Appellant would have qualified for on sporting merit, but which it was “prevented” from participating in as a consequence of the MFA decision in 2013.

98. Although the Appellant submits that “*the Club was aware and informed that, even if it was to win the trophy, it would not have been eligible to take part in any international match anyway*”, it is clear to the Sole Arbitrator that, since 2013, the Club suffered only a pecuniary sanction and a points’ deduction in the national competition. Never was declared ineligible in a national or international competition for one football season.
99. Therefore, it cannot be stated that the sanction has been enforced in its entirety, and the Sole Arbitrator finds that the UEFA AB was correct in issuing the Appealed Decision. Consequently, the Appeal filed by the Appellant should be dismissed and the Appealed Decision upheld.

#### **IX. FINAL REMARKS**

100. The Sole Arbitrator is aware that a significant lapse of time has passed since the investigation of the wrongdoing of the Club and that the sanction of one-year ineligibility was imposed by UEFA seven years later. Furthermore, the Sole Arbitrator acknowledges that the Appellant has been very proactive in restoring the Club’s image, providing different governance, improving transparency and integrity alongside new financial commitments to settle outstanding salary debts from previous seasons.
101. In this regard, it is more evident that the profit deriving from UEFA Champions League’s participation would have been crucial for the Club. Participation to UEFA Competitions is, for a club like the Appellant, a unique chance.
102. In deciding the present matter, the Sole Arbitrator is bound to the regulations provided by UEFA in light of the association’s right to autonomy. However, the Sole Arbitrator cannot avoid noting that the result, in light of the particular circumstances of the case, *i.e.* the time elapsed since the wrongdoings of the former Club’s management, is not satisfactory.
103. For this reason, the Sole Arbitrator is eager to purport a broader understanding of the provision at stake, namely Art. 4.02. In order to avoid situation like the present, the Sole Arbitrator trusts that the next regulations of UEFA Competitions could also provide for a limit of time within which a club may be declared ineligible to participate in UEFA Competitions for wrongdoings occurred in the past. Such period of prescription would avoid that, after a considerable period of time, a club that has shown serious intentions in continuing the sporting activity may still suffer from the mistakes of the past, especially where these errors, as in the present case, have been completely overcome and eliminated.

## ON THESE GROUNDS

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

1. The appeal filed on 19 June 2021 by Hamrun Spartans F.C. against the decision rendered on 7 June 2021 (Ref. nr. 34379) by the Appeals Body of the *Union des Associations Européennes de Football* is dismissed.
2. The decision issued on 7 June 2021 by the Appeals Body of the *Union des Associations Européennes de Football* is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.