

UEFA CLUB FINANCIAL CONTROL BODY
Adjudicatory Chamber

DECISION

in case

AC-10/2018

Sporting Clube de Portugal – Futebol, SAD

Composition of the chamber:

- **J. N. Cunha Rodrigues, Chairman**
- **L. Peila, Vice-chairman**
- **C. W. A. Timmermans, Vice-chairman**
- **A. Giersz, Member**

Nyon, 6 December 2018

PART I – Introduction

1. On 15 November 2018, the Chief Investigator of the UEFA Club Financial Control Body (the “**CFCB**”) referred the case of Sporting Clube de Portugal, SAD (“**Sporting**” or the “**Club**”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether Sporting has breached Articles 65(1) and 66bis (1) of the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2018* (the “**CL&FFP Regulations**”) as a result of having overdue payables:
 - (a) towards other football clubs as at 30 June 2018 and 30 September 2018; and
 - (b) towards social/tax authorities as at 30 June 2018.
3. Unless otherwise stated, all figures referred to in this Decision have been rounded up or down (as the case may be) to the nearest thousand.

PART II – Reference by the CFCB Chief Investigator

4. On 8 June 2018, Sporting was admitted to the 2018/19 UEFA Europa League.
5. By 16 July 2018, Sporting submitted to the UEFA Administration, via the CL/FFP IT Solution and the Portuguese Football Federation, its completed monitoring documentation (comprising financial information as at 30 June 2018) in accordance with the set deadline. This monitoring information included self-declarations by the Club indicating total overdue payables of € 6,968k as at 30 June 2018 as follows:
 - overdue payables towards other football clubs of € 1,820k; and
 - overdue payables towards social/tax authorities of € 5,148k.

The Club also indicated that it had paid the total amount of the € 5,148k overdue payables towards social/tax authorities shortly after 30 June 2018.
6. In August 2018, Sporting informed the UEFA Administration that outstanding balances towards other football clubs declared as overdue as at 30 June 2018 had been settled.
7. On 7 September 2018, the CFCB Investigatory Chamber informed the Club that it was kept under monitoring because of its declared overdue payables as of 30 June 2018 and the latter was requested to submit its updated monitoring documentation in accordance with Articles 65 (2), 66 (2) and 66bis (2) of the UEFA CL&FFP in order to prove that it had no overdue payables towards other football clubs, in respect of its employees and towards social/tax authorities as at 30 September 2018. Such updated monitoring documentation had to be submitted to the UEFA Administration by no later than 15 October 2018.
8. Taking into account that the payables declared as overdue as at 30 June 2018 had been fully settled as at the date of the meeting of the CFCB Investigatory Chamber in August 2018, the CFCB Investigatory Chamber decided not to open investigatory proceedings against Sporting at that stage.
9. By 15 October 2018, the Club submitted to the UEFA Administration, via the CL/FFP IT Solution and the Portuguese Football Federation, its updated monitoring documentation (comprising financial information as at 30 September 2018) in accordance with the set deadline. This monitoring information included self-declarations by Sporting indicating overdue payables towards other football clubs as at 30 September 2018.

10. On 16 October 2018, further to the review of the Club's above-mentioned updated monitoring documentation, the UEFA Administration requested Sporting to reconfirm the overdue amounts and to provide supporting documents for any subsequent payments.
11. Following this request, Sporting confirmed on 30 October 2018 a corrected overdue payable position as at 30 September 2018. Subsequent to respective amendments of its submission via the CL/FFP IT Solution, the final monitoring information provided by Sporting indicated total overdue payables towards other football clubs of € 2,213k as at 30 September 2018.
12. On 8 November 2018, the CFCB Investigatory Chamber, headed by the CFCB Chief Investigator, Mr Yves Leterme, met in order to assess the overall overdue payables position of the Club. The CFCB Investigatory Chamber confirmed that Sporting had overdue payables towards other football clubs and towards social/tax authorities for a total amount of:
 - € 6,968k as at 30 June 2018; and
 - € 2,213k as at 30 September 2018.
13. The CFCB Investigatory Chamber decided that Sporting had overdue payables towards other football clubs and social/tax authorities as at 30 June 2018 and overdue payables towards other football clubs as at 30 September 2018.
14. Based on the above findings, on 15 November 2018, the CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1)(d) of the *Procedural rules governing the CFCB – Edition 2015* (the "**Procedural Rules**") and suggested that the following disciplinary measures be imposed on Sporting by the CFCB Adjudicatory Chamber in respect of the Club's alleged breaches of Articles 65(1) and 66bis (1) of the CL&FFP Regulations:
 - (a) an exclusion from the next UEFA club competition (UEFA Champions League and UEFA Europa League), for which Sporting would otherwise qualify in a number of seasons to be determined by the CFCB Adjudicatory Chamber at its discretion, unless Sporting is able to prove by 31 January 2019 that it has paid the amounts towards other football clubs that were established by the CFCB Investigatory Chamber as being overdue payables as at 30 September 2018; and
 - (b) a fine, to be determined by the CFCB Adjudicatory Chamber at its discretion.
15. The CFCB Chief Investigator also decided, on the basis of Article 41 of the Procedural Rules, to extend the conservatory measure that was imposed on 15 November 2018 on Sporting, consisting of temporarily withholding the UEFA revenues from the 2018/19 UEFA club competitions that the Club may be entitled to receive. This conservatory measure remains in force until the final decision of the CFCB Adjudicatory Chamber.

PART III – Jurisdiction of and procedure before the CFCB Adjudicatory Chamber

16. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.

17. On 16 November 2018, the CFCB Chairman informed Sporting of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
18. Pursuant to Article 20(1) of the Procedural Rules, the Club was invited to submit its written observations.
19. The Club made its written submission within the established deadline (the "**Observations**"), announcing that it would pay the overdue payable amounts.
20. The Club further provided, after the deadline established for the written submission, three proofs of payment as announced.
21. On 29 November 2018, the Chief Investigator informed the Chairman of the Adjudicatory Chamber that the Club "*evidenced payment orders for all amounts payable towards other football clubs that were established by the CFCB Investigatory Chamber as being overdue as at 30 September 2018, i.e. EUR 2'213k less EUR 55k for solidarity contributions in accordance with the transfer agreements*".
22. The Chief Investigator further stated that "*as a consequence, and in reference to the disciplinary measures suggested in my above-mentioned decision, I remain with the suggestion of a fine to be determined by the CFCB Adjudicatory Chamber at its discretion*".
23. Pursuant to Article 21(1) of the Procedural rules, the CFCB Chairman decided that a hearing was not needed.
24. The quorum of judges required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted their confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

PART IV – Applicable rules and regulations

25. The case concerns alleged contraventions of the CL&FFP Regulations.
26. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (*inter alia*) intended to achieve the objectives set out in Article 2 of the CL&FFP Regulations:

"1 These regulations aim:

- a) to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
- b) to ensure that clubs have an adequate level of management and organisation;*
- c) to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
- d) to protect the integrity and smooth running of the UEFA club competitions;*
- e) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.*

- 2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:
- a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
 - b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;
 - c) to introduce more discipline and rationality in club football finances;
 - d) to encourage clubs to operate on the basis of their own revenues;
 - e) to encourage responsible spending for the long-term benefit of football;
 - f) to protect the long-term viability and sustainability of European club football.”

27. Article 65 of the CL&FFP Regulations is worded as follows:

- “1 As at 30 June and as at 30 September of the year in which the UEFA club competitions commence, the licensee must not have any overdue payables (as specified in Annex VIII) towards other football clubs as a result of transfers undertaken up to 30 June and up to 30 September respectively.
- 2 Every licensee must prove that it has no overdue payables as at 30 June. If a licensee has overdue payables as at 30 June of the year in which the UEFA club competitions commence or if otherwise requested by the UEFA Club Financial Control Body, then it must also prove that it has no overdue payables as at the 30 September.
- 3 Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.
- 4 By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit the transfers information, even if there have been no transfers/loans during the relevant period.
- 5 The licensee must disclose:
- a) all new player registrations (including loans) in the 12 month period up to 30 June/30 September, irrespective of whether there is an amount outstanding to be paid at 30 June/30 September;
 - b) all transfers for which an amount is outstanding to be paid at 30 June/30 September, irrespective of whether they were undertaken in the 12 month period up to 30 June/30 September or before; and
 - c) all transfers subject to a claim pending before the competent authority under national law or proceedings pending before a national or international football authority or relevant arbitration tribunal, as at 30 June/30 September.

- 6 The transfers information must contain the following as a minimum (in respect of each player transfer, including loans):
- a) Player (identification by name);
 - b) Date of the transfer/loan agreement;
 - c) Name of the football club that formerly held the registration;
 - d) Transfer (or loan) fee paid and/or payable (including training compensation and solidarity contributions) even if payment has not been requested by the creditor;
 - e) Other direct costs of acquiring the registration paid and/or payable;
 - f) Amount settled and payment date;
 - g) Balance payable as at 30 June/30 September in respect of each player transfer including the due date(s) for each unpaid element;
 - h) Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as at 30 June/30 September; and
 - i) Amounts subject to any claim/proceedings pending.
- 7 The licensee must reconcile the total liability as per the transfers information to the figure in the financial statements balance sheet for 'Accounts payable relating to player transfers' (if applicable) or to underlying accounting records.
- 8 The transfers information must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licensee."
28. Article 66bis of the CL&FFP Regulations is worded as follows:
- "1 As at 30 June and as at 30 September of the year in which the UEFA club competitions commence, the licensee must not have any overdue payables (as specified in Annex VIII) towards social/tax authorities as a result of contractual or legal obligations in respect of its employees as defined in Article 50.
 - 2 Every licensee must prove that it has no overdue payables as at 30 June. If the licensee has overdue payables as at 30 June of the year that the UEFA club competitions commence or if otherwise requested by the UEFA Club Financial Control Body, then it must also prove that it has no overdue payables as at 30 September.
 - 3 By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit a declaration confirming the absence or existence of overdue payables towards social/tax authorities.
 - 4 The following information must be given, as a minimum, in respect of each overdue payable towards social/tax authorities, together with an explanatory comment:
 - a) Name of the creditor;

- b) *Balance overdue as at 30 June/30 September, including the due date for each overdue element; and*
 - c) *Amount subject to any claim/proceedings pending as at 30 June/30 September.*
- 5 *The declaration must be approved by management and this must be evidenced by way of a brief statement and signature on behalf of the executive body of the licensee.”*
29. Article 72 of the CL&FFP Regulations provides that:
- “1 *The UEFA Club Financial Control Body at all times bears in mind the overall objectives of these regulations, in particular to defeat any attempt to circumvent these objectives.*
 - 2 *Any breach of these regulations may be dealt with by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body.”*
30. Annex VIII of the CL&FFP Regulations defines the notion of overdue payables as follows:
- “1. *Payables are considered as overdue if they are not paid according to the agreed terms.*
 - 2. *Payables are not considered as overdue, within the meaning of these regulations, if the licence applicant/licensee (i.e. debtor club) is able to prove by 31 March (in respect of Articles 49, 50 and 50bis) and by 30 June and 30 September (in respect of Articles 65, 66 and 66bis) respectively that:*
 - a) *it has paid the relevant amount in full; or*
 - b) *it has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline (note: the fact that a creditor may not have requested payment of an amount does not constitute an extension of the deadline); or*
 - c) *it has brought a legal claim which has been deemed admissible by the competent authority under national law or has opened proceedings with the national or international football authorities or relevant arbitration tribunal contesting liability in relation to the overdue payables; however, if the decision making bodies (licensor and/or UEFA Club Financial Control Body) consider that such claim has been brought or such proceedings have been opened for the sole purpose of avoiding the applicable deadlines set out in these regulations (i.e. in order to buy time), the relevant amount will still be considered as an overdue payable; or*
 - d) *it has contested to the competent authority under national law, the national or international football authorities or the relevant arbitration tribunal, a claim which has been brought or proceedings which have been opened against it by a creditor in respect of overdue payables and is able to demonstrate to the reasonable satisfaction of the relevant decision-making bodies (licensor and/or UEFA Club Financial Control Body) that it has established reasons for contesting the claim or proceedings which have been opened; however, if the decision-making bodies (licensor and/or UEFA Club Financial Control Body)*

consider the reasons for contesting the claim or proceedings which have been opened as manifestly unfounded the amount will still be considered as an overdue payable; or

e) it is able to demonstrate to the reasonable satisfaction of the relevant decision making bodies (licensor and/or UEFA Club Financial Control Body) that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation and solidarity contributions.”

31. Under Article 27 of the Procedural Rules:

“The adjudicatory chamber may take the following final decisions:

a) to dismiss the case; or

*b) to accept or reject the club’s admission to the UEFA club competition in question;
or*

c) to impose disciplinary measures in accordance with the present rules; or

d) to uphold, reject, or modify a decision of the CFCB chief investigator.”

32. Under Article 28 of the Procedural Rules:

“The adjudicatory chamber determines the type and extent of the disciplinary measures to be imposed according to the circumstances of the case.”

33. Article 29(1) of the Procedural Rules provides the following scale of disciplinary measures that may be imposed on a club (being a defendant who is not an individual):

“a) warning,

b) reprimand,

c) fine,

d) deduction of points,

e) withholding of revenues from a UEFA competition,

f) prohibition on registering new players in UEFA competitions,

g) restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of the employee benefits expenses of players registered on the A-list for the purposes of UEFA club competitions,

h) disqualification from competitions in progress and/or exclusion from future competitions,

i) withdrawal of a title or award.”

34. According to Article 29(3) of the Procedural Rules, such disciplinary measures may be combined.

PART V – Factual and legal appreciation by the CFCB Adjudicatory Chamber

35. Having examined the evidence, the findings of the CFCB Chief Investigator and the Club's Observations, the CFCB Adjudicatory Chamber determines that Sporting has breached Articles 65(1) and 66bis (1) of the CL&FFP Regulations because it had:
 - (a) overdue payables towards other football clubs as at 30 June 2018 and 30 September 2018; and
 - (b) towards social/tax authorities as at 30 June 2018.
36. The Club claims (i) that it has paid the total amount towards other football clubs after deducting the solidarity contributions; and (ii) that the overdue payables towards social and tax authorities as at 30 June 2018 were paid shortly after that date.
37. The Chief Investigator confirmed the payments and that the Club no longer has overdue payables.
38. The CFCB Adjudicatory Chamber notes that as the overdue payable as at 30 June 2018 were only conclusively settled in August 2018 and that the overdue payables as at 30 September 2018 were only settled after the 30 September 2018 deadline they therefore have no bearing on the Club's overdue payables position as at the relevant dates.
39. In its Observations, the Club argued that, in August 2018, the CFCB Investigatory Chamber decided not to open an investigation against the Club with respect to its overdue payable as at 30 June 2018 and that therefore it was not possible for the CFCB Investigatory Chamber to refer this aspect to the CFCB Adjudicatory Chamber in November 2018.
40. In addition, Sporting invoked several circumstances that should be considered as *extraordinary events*, beyond the control of the club, which must be qualified as a case of *force majeure*, for the purposes of e) Annex XI of the CL&FFP Regulations.
41. In this context, the Club requests that the CFCB Adjudicatory Chamber dismiss the case, releasing Sporting from any disciplinary sanctions.
42. Finally, the Club requests the immediate withdrawal of the conservatory measures of temporarily withholding the UEFA revenues from the 2018/2019 UEFA club competitions determined by the CFCB Investigatory Chamber.

PART VI – Disciplinary Measures

43. In cases such as this, it is particularly important to underline the objectives of the CL&FFP Regulations which include, *inter alia*, the protection of creditors and ensuring that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually, at all times with the protection of the long-term viability and sustainability of European football in mind (in this regard, see CAS 2013/A/3453 *FC Petrolul Ploiesti v. UEFA*, paragraph 79).
44. With respect to the Club's argument that the CFCB Investigatory Chamber was prevented from investigating the Club's overdue payables amount as at 30 June 2018 as it did not do so in August 2018, the CFCB Adjudicatory Chamber is not persuaded. The CFCB Adjudicatory Chamber notes that a decision by the CFCB Investigatory Chamber not to immediately open investigatory proceedings in August 2018 and to

instead require the Club to provide an update of its payables information by 30 September 2018 in no way prevents the CFCB Investigatory Chamber from reviewing the totality of that information once received and making whatever decision it considered appropriate at that stage. Accordingly, the Club's argument in this respect is rejected.

45. Sporting has asked to be released of any sanction invoking *force majeure* by reference to (i) an invasion of the Club's academy in May 2018 (ii) a period of management instability and (iii) a Swiss court attachment order in the amount of EUR 2,300,000 in September 2018.
46. In this regard, the CFCB Adjudicatory Chamber stresses that *force majeure* is a strict concept and that it must be established that there is an impossibility which is beyond the control of the Club. As has been consistently found in CAS jurisprudence, the legal principle of *force majeure* implies an objective (rather than a personal) impediment, beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted and renders the performance of the obligation impossible (CAS 2013/A/3471 and 2015/A/3909). Such an impossibility has not been alleged, let alone established, by the Club in the present case. In addition, the amount seized on foot of the court order in September 2018 manifestly had no impact on Sporting's commission of the offences in these proceedings. Accordingly, the Club's arguments based on *force majeure* are rejected.
47. The CFCB Adjudicatory Chamber reverts to the amended proposal of the CFCB Investigatory Chamber, which suggested the imposition of a fine, to be determined by the CFCB Adjudicatory Chamber at its discretion.
48. As confirmed by CAS, strict deadlines are inevitable and "*the matter of deadlines has to be considered under the principles of equality of treatment; it is a must to treat all the clubs and the national football associations the same way*" (in this regard, see CAS 2013/A/3233 *PAS Giannina v. UEFA*).
49. Having due consideration to the facts, the CFCB Adjudicatory Chamber deems that a fine of fifty thousand Euros (€50,000) is appropriate.
50. In addition, costs of three thousand Euros (€3,000) are required to be paid by the Club, in accordance with Article 32(2) of the Procedural Rules.
51. The conservatory measure imposed by the CFCB Chief Investigator is lifted and therefore, will no longer be in force.

PART VII – Operative part

52. The CFCB Adjudicatory Chamber hereby decides:
 1. **Sporting Clube de Portugal – Futebol, SAD ("Sporting") has breached Articles 65(1) and 66bis (1) of the CL&FFP Regulations.**
 2. **To impose a fine of fifty thousand Euros (€50,000) on Sporting.**
 3. **The conservatory measure imposed by the CFCB Chief Investigator is lifted.**
 4. **Sporting is to pay three thousand Euros (€3,000) towards the costs of these proceedings.**

5. **The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Sporting.**
 6. **This Decision is final and shall be notified to:**
 - a) **Sporting;**
 - b) **the Federação Portuguesa de Futebol;**
 - c) **the CFCB Chief Investigator; and**
 - d) **the UEFA Administration.**
53. This Decision may be appealed in writing before the Court of Arbitration for Sport (the “CAS”) in accordance with Article 34(2) of the Procedural Rules and Articles 62 and 63 of the *UEFA Statutes*. According to Article 62(3) of the *UEFA Statutes*, the time limit for an appeal to CAS is ten (10) days from the receipt of this Decision.



J.N. Cunha Rodrigues
CFCB Chairman

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