

**UEFA CLUB FINANCIAL CONTROL BODY**  
**Adjudicatory Chamber**

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**DECISION**

**in case**

**AC-01/2016**

**Galatasaray Sportif Sınai ve Ticari Yatırımlar A.S.**

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**Composition of the chamber:**

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

**Nyon, 2 March 2016**

## **PART I – Introduction**

1. Unless otherwise stated, all references in this Decision to the *Procedural rules governing the UEFA Club Financial Control Body* (the “**Procedural Rules**”) and the *UEFA Club Licensing and Financial Fair Play Regulations* (the “**CL&FFP Regulations**”) shall be to the 2015 editions of such documents.
2. On 18 January 2016, the Chief Investigator of the UEFA Club Financial Control Body (the “**CFCB**”) referred the case of Galatasaray Sportif Sınai ve Ticari Yatirimlar A.S. (“**Galatasaray**” or the “**Club**”) to the CFCB Adjudicatory Chamber.
3. In the present Decision, the CFCB Adjudicatory Chamber examines whether Galatasaray has failed to comply with the terms of a settlement agreement that it entered into with the acting CFCB Chief Investigator on 16 May 2014 (the “**Settlement Agreement**”) in accordance with Articles 14(1)(b) and 15 of the 2014 edition of the Procedural Rules.

## **PART II – Reference by the CFCB Chief Investigator**

4. The Settlement Agreement was concluded after the acting CFCB Chief Investigator determined that Galatasaray had breached the CL&FFP Regulations.
5. Specifically, the acting CFCB Chief Investigator considered that the Club had failed to fulfil the break-even requirement set out in Articles 58 to 63 of the 2012 edition of the CL&FFP Regulations because it had an aggregate break-even deficit for the reporting periods ending in 2012 and 2013 which exceeded the relevant acceptable deviation by four million, three hundred thousand Euros (€4,300,000).
6. The CFCB Chairman did not request that the decision of the acting CFCB Chief Investigator to conclude the Settlement Agreement be reviewed by the CFCB Adjudicatory Chamber under Article 16(1) of the 2014 edition of the Procedural Rules.
7. No directly affected parties requested that the decision of the acting CFCB Chief Investigator to conclude the Settlement Agreement be reviewed by the CFCB Adjudicatory Chamber under Article 16(2) of the 2014 edition of the Procedural Rules.
8. Accordingly, the Settlement Agreement became final and binding.
9. Clause 1.2 of the Settlement Agreement states the following:  
  
*“The objective of this Agreement is to achieve that Galatasaray is break-even compliant in the meaning of the UEFA CLFFPR at the latest in the monitoring period 2015/16, i.e. the aggregate Break-even result for the monitoring periods 2013, 2014 and 2015 must be a surplus or a deficit within the acceptable deviation in accordance with Article 63 UEFA CLFFPR.”*
10. Clause 3 of the Settlement Agreement provides that:  
  
*“...For the reporting period ending in 2015, the total amount of the aggregate cost of employee benefit expenses cannot exceed the total amount of the aggregate cost of employee benefit expenses reported in the future financial information for the reporting period ending in 2014, i.e. EUR 90 Mio.”*
11. The Turkish Football Federation (the “**TFF**”) submitted the Club’s completed monitoring documentation (i.e. the BE2015.09 package, comprising the Club’s break-even

information for the reporting periods ending in 2013, 2014 and 2015) in accordance with the 15 October 2015 deadline set by the UEFA Administration.

12. This monitoring documentation showed that Galatasaray had a break-even deficit of:
  - (a) thirty eight million Euros (€38,000,000) for the reporting period ending in 2013;
  - (b) seventy million, four hundred thousand Euros (€70,400,000) for the reporting period ending in 2014; and
  - (c) fifty five million, eight hundred thousand Euros (€55,800,000) for the reporting period ending in 2015,

which meant that the Club had an aggregate break-even deficit for these reporting periods which exceeded the relevant acceptable deviation by one hundred and thirty-four million, two hundred thousand Euros (€134,200,000).

13. Further, the Club's monitoring documentation showed that its aggregate cost of employee benefits expenses for the reporting period ending in 2015 was ninety-five million, five hundred thousand Euros (€95,500,000).
14. On 19 October 2015, Galatasaray was informed that a compliance audit - to be performed by independent auditors ("**PWC**") - would be carried out at its head office in order to verify the accuracy and completeness of the Club's monitoring documentation.
15. The compliance audit was carried out between 26 and 28 October 2015.
16. On 17 November 2015, further to a request from Galatasaray, the CFCB Chief Investigator decided that a meeting with the Club's representatives would be held at the UEFA headquarters in Nyon, Switzerland on 4 December 2015.
17. On 20 November 2015, PWC issued its final report on the compliance audit. The report confirmed the completeness of the Club's financial information and its aggregate break-even deficit (as set out in Paragraph 12 of this Decision).
18. On 4 December 2015, the CFCB Investigatory Chamber met with Galatasaray's representatives at the UEFA headquarters. In its presentation, Galatasaray confirmed that it had an aggregate break-even deficit above the relevant acceptable deviation for the monitoring period assessed in the licence season 2015/16 of one hundred and thirty-four million, two hundred thousand Euros (€134,200,000).
19. The Club argued, however, that the factors set out in parts (e), (f) and (g) of Annex XI of the CL&FFP Regulations (i.e. "*force majeure*", "*major and unforeseen changes in the economic environment*" and "*operating in a structurally inefficient market*") should be considered by the CFCB Investigatory Chamber.
20. At the meeting, Galatasaray also requested that the settlement regime be extended until 31 May 2018 to allow the Club to achieve the break-even compliance provided for in Clause 1.2 of the Settlement Agreement (as referred to in Paragraph 9 of this Decision).
21. In light of the findings referred to in Paragraphs 12 and 13 of this Decision (as confirmed by PWC), on 18 January 2016, the CFCB Chief Investigator concluded that the Club had not complied with Clauses 1.2 and 3 of the Settlement Agreement (as referred to in Paragraphs 9 and 10 of this Decision) and decided to refer the case to the CFCB

Adjudicatory Chamber in accordance with Clause 7.1 of the Settlement Agreement and Article 15(5) of the Procedural Rules.

22. In this referral decision, the CFCB Chief Investigator stated that Galatasaray's monitoring documentation clearly indicated that the Club had not implemented any concrete strategy to comply with financial fair play during the settlement regime (in particular, it had failed to properly manage its expenses, as shown by the fact that its transfer expenses and employee wage expenses had increased during this period).
23. In this referral decision, the CFCB Chief Investigator also dismissed the Club's arguments regarding the factors defined in parts (e), (f) and (g) of Annex XI of the CL&FFP Regulations (as referred to in Paragraph 19 of this Decision), noting that:

(a) with regard to part (e) of Annex XI of the CL&FFP Regulations:

- (i) the Club's suggestion that the Syrian refugee crisis and the terrorist attacks in Turkey constituted instances of force majeure which prevented it from complying with the Settlement Agreement was not factually specific or precise and the Club had not quantified the potential impact of these events on its financial position;
- (ii) the Club's suggestion that the match-fixing scandals in Turkey constituted instances of force majeure which had prevented it from complying with the Settlement Agreement because they led to a decrease in gate receipts and sponsorship revenues was not precisely quantified by the Club and, in fact, the Club's total revenues had actually increased over the last three years; and
- (iii) the introduction of an electronic ticketing system in Turkey could not be considered an instance of force majeure because such systems exist in other European countries and therefore this cannot be considered to be an unforeseeable event – in itself, the electronic ticketing system did not make it impossible for the Club to comply with the Settlement Agreement;

(b) with regard to part (f) of Annex XI of the CL&FFP Regulations:

- (i) although some of the Club's liabilities and expenses (e.g. certain bank loans and employee benefits expenses) are denominated in foreign currencies (mainly Euros and US Dollars) which are exposed to variations in exchange rates, some of the Club's revenue streams (e.g. UEFA prize money and broadcasting income) are also denominated in foreign currencies, thus providing a "natural" hedge for the Club (i.e. matching revenues and costs in the same foreign currency);
- (ii) despite having this currency exposure for many years, the Club did not actively put in place a hedging mechanism for the remaining currency risk;
- (iii) the issue of fluctuating exchange rates could have been mitigated by Galatasaray, for example by developing youth players and engaging local players in Turkish Lira;
- (iv) as stated in Clause 2.1 of the Settlement Agreement, the CFCB Investigatory Chamber considers that *"foreign exchange gains/losses on monetary items – whether they are realised or unrealised – are monetary items and should be included in the Break-even calculation"*;

- (v) although Galatasaray placed blame on the slowdown of economic growth in Turkey, such growth in Turkey was actually 2.2% in 2012, 4.2% in 2013, 2.9% in 2014 and 3.0% in 2015 – which is quite stable and even above the economic growth in other countries of the EU; and
  - (vi) Galatasaray refers to the fluctuation of interest rates between 2011 and 2015, however, when referring to a period of four years, the Club cannot consider that such an economic event is extraordinary or temporary (as required by part (f) of Annex XI of the CL&FFP Regulations) - the CFCB Investigatory Chamber would expect the Club to have taken appropriate measures to mitigate such risk; and
- (c) with regard to part (g) of Annex XI of the CL&FFP Regulations:
- (i) although the ratio of total revenues from gate receipts for Turkish clubs to the population of Turkey declined from 1.2 to 0.7 between 2010 and 2014, the ratio of broadcasting income for Turkish clubs to the population of Turkey increased from 3.1 to 3.5 over the same period;
  - (ii) altogether the ratio of revenues from broadcasting rights and gate receipts for Turkish clubs to the population of Turkey has remained globally stable at 4.2 - such ratio is above the median of UEFA member associations, which is calculated at 2.5; and
  - (iii) accordingly, the football market in Turkey cannot be considered to be structurally inefficient. In fact, Turkey is ranked twenty second amongst the fifty four UEFA National Associations over the last five years.
24. In this referral decision, the CFCB Chief Investigator suggested that an exclusion from two UEFA club competitions should be imposed on the Club (one being suspended on the condition that the Club implements a concrete strategy to comply with financial fair play and, as a result, has a maximum break-even deficit of ten million Euros (€10,000,000) for each of the reporting periods ending in 2016 and 2017) and stated that the Settlement Agreement should expire on the date of this Decision in accordance with Clause 8.2 of the Settlement Agreement.

### **PART III – Jurisdiction of and Procedure before the CFCB Adjudicatory Chamber**

25. 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.
26. On 19 January 2016, the CFCB Chairman informed Galatasaray of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
27. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 29 January 2016. At the Chairman’s discretion, this deadline was later extended until 5 February 2016.
28. The Club made its written submission in accordance with the new deadline (the “**Observations**”).
29. The Club’s request for a hearing was accepted by the CFCB Chairman in accordance with Article 21(1) of the Procedural Rules.

30. The members of the CFCB Adjudicatory Chamber convened on 23 February 2016 to consider Galatasaray's case.
31. Pursuant to Article 18(1) of the Procedural Rules, Mr. Umberto Lago acted as Reporting Investigator.
32. The Club was represented by Mr. Dursun Aydin Ozbek (President) and Mr. Fatih Isbecer (General Secretary), as well as its external lawyers Mr. Jean-Louis Dupont and Mr. Martin Hissel.
33. At the hearing, the CFCB Chairman informed the Club of the procedure to be followed.
34. The quorum of judges required by Article 25(1) of the Procedural Rules being attained, the members of the CFCB Adjudicatory Chamber conducted its confidential deliberations in accordance with Article 24(1) of the Procedural Rules.

#### **PART IV – Applicable Rules and Regulations**

35. The case concerns an alleged breach of the Settlement Agreement.
36. 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.”*

37. Article 58 of the CL&FFP Regulations states that:

- “1 Relevant income and relevant expenses are defined in Annex X.*
- 2 Relevant income and expenses must be calculated and reconciled by the licensee to the audited annual financial statements and/or underlying accounting records and to the projected break-even information if applicable.*
- 3 Relevant income and expenses from related parties must be adjusted to reflect the fair value of any such transactions.”*

38. Article 59 of the CL&FFP Regulations provides that:

*“A monitoring period is the period over which a licensee is assessed for the purpose of the break-even requirement. As a rule it covers three reporting periods:*

- a) the reporting period ending in the calendar year that the UEFA club competitions commence (hereinafter: reporting period T), and*
- b) the reporting period ending in the calendar year before commencement of the UEFA club competitions (hereinafter: reporting period T-1), and*
- c) the preceding reporting period (hereinafter: reporting period T-2).*

*As an example, the monitoring period assessed in the licence season 2015/16 covers the reporting periods ending in 2015 (reporting period T), 2014 (reporting period T-1) and 2013 (reporting period T-2).”*

39. Under Article 60 of the CL&FFP Regulations:

- “1 The difference between relevant income and relevant expenses is the break-even result, which must be calculated in accordance with Annex X for each reporting period.*
- 2 If a licensee’s relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club’s relevant expenses are greater than relevant income for a reporting period, then the club has a breakeven deficit.*
- 3 If a licensee’s financial statements are denominated in a currency other than euros, then the break-even result must be converted into euros at the average exchange rate of the reporting period.*
- 4 The aggregate break-even result is the sum of the break-even results of each reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2).*
- 5 If the aggregate break-even result is positive (equal to zero or above) then the licensee has an aggregate break-even surplus for the monitoring period. If the*

*aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period.*

- 6 *In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4)."*

40. Article 61 of the CL&FFP Regulations states that:

- "1 *The acceptable deviation is the maximum aggregate break-even deficit possible for a club to be deemed in compliance with the break-even requirement as defined in Article 63.*
- 2 *The acceptable deviation is EUR 5 million. However, it can exceed this level up to EUR 30 million if such excess is entirely covered by contributions from equity participants and/or related parties. A lower amount may be decided in due course by the UEFA Executive Committee.*
- 3 *Contributions from equity participants and/or related parties (as specified in Annex X E) are taken into consideration when determining the acceptable deviation if they have occurred and been recognised:*
  - a) *in the audited financial statements for one of the reporting periods T, T-1 or T-2; or*
  - b) *in the accounting records up until the deadline for submission of the breakeven information for the reporting period T.*

*The onus is on the licensee to demonstrate the substance of the transaction, which must have been completed in all respects and without any condition attached. An intention or commitment from owners to make a contribution is not sufficient for such a contribution to be taken into consideration.*

- 4 *If contributions from equity participants and/or related parties occurring until the deadline for submission of the break-even information for the reporting period T are recognised in a club's reporting period T+1 and have been taken into consideration to determine the acceptable deviation in respect of the monitoring period (T-2, T-1 and T) assessed in the licence season commencing in that same calendar year, then for later monitoring periods the contributions will be considered as having been recognised in reporting period T.*
- 5 *For a monitoring period containing a reporting period of greater than or less than 12 months, the acceptable deviation will be adjusted up or down according to the length of the monitoring period."*

41. Pursuant to Article 62 of the CL&FFP Regulations:

- "1 *By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit:*
  - a) *the break-even information for the reporting period T-1;*
  - b) *the break-even information for the reporting period T-2, if not already previously submitted;*

- c) *the break-even information for the reporting period T, if it has breached any of the indicators defined in paragraph 3 below.*
- 2 *The break-even information must:*
- a) *concern the same reporting perimeter as that for club licensing as defined in Article 46bis;*
- b) *be approved by management, as evidenced by way of a brief statement confirming the completeness and accuracy of the information, and signature on behalf of the executive body of the licensee.*
- 3 *If a licensee exhibits any of the conditions described by indicators 1 to 3, it is considered in breach of the indicator:*
- i) *Indicator 1: Going concern*
- The auditor's report in respect of the annual financial statements (i.e. reporting period T-1) and/or interim financial statements (if applicable) submitted in accordance with Articles 47 and 48 includes an emphasis of matter or a qualified opinion/conclusion in respect of going concern.*
- ii) *Indicator 2: Negative equity*
- The annual financial statements (i.e. reporting period T-1) submitted in accordance with Article 47 disclose a net liabilities position that has deteriorated relative to the comparative figure contained in the previous year's annual financial statements (i.e. reporting period T-2), or the interim financial statements submitted in accordance with Article 48 disclose a net liabilities position that has deteriorated relative to the comparative figure at the preceding statutory closing date (i.e. reporting period T-1).*
- iii) *Indicator 3: Break-even result*
- The licensee reports a break-even deficit as defined in Article 60 for either or both of the reporting periods T-1 and T-2.*
- 4 *In addition, the UEFA Club Financial Control Body reserves the right to ask the licensee to prepare and submit the break-even information for the reporting period T and additional information at any time, in particular if the annual financial statements reflect that:*
- a) *employee benefits expenses exceed 70% of total revenue; or*
- b) *net debt exceeds 100% of total revenue."*
42. Article 63 of the CL&FFP Regulations provides that:
- "1 *The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1.*
- 2 *The break-even requirement is fulfilled, even if an indicator (as defined in Article 62(3)) is breached, if:*

- a) *the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or*
  - b) *the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)).*
- 3 *The break-even requirement is not fulfilled if the licensee has an aggregate breakeven deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)).”*

43. Article 68 of the CL&FFP Regulations states the following:

*“If one of the monitoring requirements is not fulfilled, then the UEFA Club Financial Control Body makes a decision, including the possibility to conclude a settlement agreement with the licensee, taking into consideration other factors as defined in Annex XI, and takes the appropriate measure(s) without delay in accordance with the procedure defined in the Procedural rules governing the UEFA Club Financial Control Body.”*

44. Annex XI of the CL&FFP Regulations provides that:

*“Other factors within the meaning of Article 68 to be considered by the UEFA Club Financial Control Body include, but are not limited to, the following:*

*...*

*e) Force majeure*

*As part of its considerations, the UEFA Club Financial Control Body may also take into account extraordinary events or circumstances beyond the control of the club which are considered as a case of force majeure.*

*f) Major and unforeseen changes in the economic environment*

*As part of its considerations, the UEFA Club Financial Control Body may also take into account the quantifiable financial impact on the club of extraordinary national economic events which are temporary and considered to be beyond the general fluctuation of the economic environment. Such events are beyond the control of the club and the club had no reasonable chance to mitigate the significant negative financial impact.*

*g) Operating in a structurally inefficient market*

*As part of its considerations, the UEFA Club Financial Control Body may consider if the licensee is operating in a structurally inefficient football market. The inefficiency of a football market (i.e. defined as the territory of a UEFA member association) is determined by the UEFA administration on a yearly basis by means of a comparative analysis of the top division clubs’ total gate receipts and broadcasting rights revenues relative to the population of the territory of the UEFA member association concerned.*

*...”*

45. Article 14(1) of the Procedural Rules provides that:

*“<sup>1</sup> At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:*

- a) dismiss the case; or*
- b) conclude, with the consent of the defendant, a settlement agreement; or*
- c) apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*
- d) refer the case to the adjudicatory chamber.”*

46. Article 15 of the Procedural Rules states that:

*“<sup>1</sup> Settlement agreements pursuant to Article 14(1)(b) shall take into account, in particular, the factors referred to in Annex XI of the UEFA Club Licensing and Financial Fair Play Regulations. Such agreements may be deemed appropriate in circumstances which justify the conclusion of an effective, equitable and dissuasive settlement without referring the case to the adjudicatory chamber.*

*<sup>2</sup> Settlement agreements may set out the obligation(s) to be fulfilled by the defendant, including the possible application of disciplinary measures and, where necessary, a specific timeframe.*

*<sup>3</sup> If a defendant proves that it has fulfilled the obligations set out in a settlement agreement in advance of the established timeframe, the CFCB chief investigator may, on reasoned request by the defendant, decide to amend the terms of the settlement agreement for the following sporting season.*

*<sup>4</sup> The CFCB chief investigator monitors the proper and timely implementation of the settlement agreement.*

*<sup>5</sup> If a defendant fails to comply with the terms of a settlement agreement, the CFCB chief investigator shall refer the case to the adjudicatory chamber.”*

47. 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.”*

48. 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.”*

49. 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.”*
50. 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**

51. At the hearing, and in its Observations, the Club did not dispute that on the basis of the break-even information submitted by the Club under Article 62 of the CL&FFP Regulations in respect of the monitoring period ending in 2015, it was in breach of Clauses 1.2 and 3 of the Settlement Agreement.
52. The Club argued, however, that the factors set out in parts (e), (f) and (g) of Annex XI of the CL&FFP Regulations (i.e. “*force majeure*”, “*major and unforeseen changes in the economic environment*” and “*operating in a structurally inefficient market*”) should be taken into consideration by the CFCB Adjudicatory Chamber and, if such factors were accepted, then the Club should not be considered to have breached the Settlement Agreement.
53. The external factors affecting its finances to which the Club drew particular attention were the Syrian refugee crisis, the Turkish match-fixing scandal, the terrorist attacks in Turkey, the introduction of the Passolig electronic ticketing system and the national economic downturn in Turkey. It was argued that those factors had indubitably affected attendance at football matches and thus the finances of the Club. The Adjudicatory Chamber accepts, on the basis of statistics produced at the hearing, that those factors may well have had a general detrimental effect on attendance at matches and thus gate receipts. However, notwithstanding such potential effect, the question of whether such factors can be considered to be mitigating factors requires careful consideration of Annex XI of the CL&FFP Regulations and is discussed below.

54. In addition, the Club requested that it be allowed to enter into a voluntary agreement under Annex XII of the CL&FFP Regulations and, more generally, questioned the legality of the CL&FFP Regulations.

55. Such matters were considered by the Adjudicatory Chamber as follows:

Force majeure

56. Under part (e) of Annex XI of the CL&FFP Regulations, the CFCB Adjudicatory Chamber is entitled to *"take into account extraordinary events or circumstances beyond the control of the club which are considered as a case of force majeure"*.

57. Indeed, the CFCB Adjudicatory Chamber has considered the application of the principle of force majeure on several occasions. Notably, in its decision in case CFCB AC-02/2014, *FC Dnipro* (at paragraphs 45 to 47), the CFCB Adjudicatory Chamber stressed that:

*"In this regard, the CFCB Adjudicatory Chamber stresses that according to CAS, 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 that renders the performance of the obligation impossible. In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation" (CAS 2006/A/1110 PAOK FC v. UEFA, paragraph 41).*

*Further, as CAS has also stated, "the mere reference to a general situation of troubles in a concrete place is not enough to justify a breach on the basis of exceptional circumstances as the force majeure. The party asking for its application shall duly identify and accredit which specific and precise fact prevented it to perform a certain activity. And in this case, the IFA has not alleged any concrete fact occurred in a concrete moment that prevented it from making the transfer of the appeal fee to FIFA within the time limits prescribed in the FIFA Disciplinary Code" (CAS 2008/A/1621 Iraqi Football Association v. FIFA & Qatar Football Association, paragraph 62).*

*The benchmark for successfully asserting a force majeure defence to a breach of the CL&FFP Regulations is therefore a high one and the burden is on the club to provide specific evidence of the impact of the relevant event(s) and/or circumstance(s) on its performance of the relevant obligation(s)."*

58. It is clear from this citation that force majeure may apply where a particular event or circumstance has rendered the performance of a particular obligation impossible.

59. The case advanced by the Club with regard to the Syrian refugee crisis and terrorist attacks, however, is different from the arguments put forward in the *FC Dnipro* case because Galatasaray asserts that these general circumstances rendered its compliance with the terms of the Settlement Agreement impossible (in particular, the break-even targets). These are not circumstances specifically targeted at the Club or directly affecting any specific obligation of the Club, but circumstances that applied to Turkey (and the Turkish economy) as a whole.

60. The CFCB Adjudicatory Chamber notes that Club has not produced any accounting evidence which would enable it to reach a proper conclusion as to whether or not these general circumstances did indeed render it impossible for the Club, over a period of two years, to bring its finances into line with the terms of the Settlement Agreement (in particular, the break-even targets).

61. Galatasaray also claims that the Turkish match-fixing scandal and the introduction of the Passolig electronic ticketing system ought to be considered to be instances of force majeure. However, although such situations are more specifically football-related, the Club's claims are equally vague and unsubstantiated by accounting evidence.
62. The Club argues that:
- “Common sense therefore dictates that – at the very least – these serious and proven crisis situations have had a negative impact on Galatasaray's financial results, at least by slowing the growth that the club would have recorded if such situations had not existed.”*
63. The CFCB Adjudicatory Chamber is not satisfied that the way in which the Club's force majeure arguments are expressed demonstrates that the high benchmark of establishing a force majeure defence has been reached. The arguments do not demonstrate that the factors relied on rendered compliance with the break-even requirements set out in the Settlement Agreement impossible.
64. Between 2013 and 2015, the Club's gate receipts increased from ten million Euros (€10,000,000) to thirty-two million Euros (€32,000,000) and its broadcasting revenue from twenty-nine million Euros (€29,000,000) to thirty-five million Euros (€35,000,000). Also, although the Club's sponsorship income did reduce from forty-four million Euros (€44,000,000) to thirty-four million Euros (€34,000,000), its overall revenue increased from one hundred and forty-four million Euros (€144,000,000) to one hundred and forty-eight million Euros (€148,000,000). This situation, in particular the increase in gate receipts, is not consistent with the Club's suggestion that the match fixing scandal and/or the electronic ticketing system introduced by the government in the event seriously affected revenue.
65. At the hearing, the Club explained that revenue had been increased by acquiring a greater share of receipts from its parent association, rather than from increased attendance figures.
66. However, the overall increase in the Club's revenue is not consistent with the generalised case being advanced by Galatasaray that its revenues were so seriously affected by the alleged force majeure events as to make it impossible for the Club to achieve compliance with the terms of the Settlement Agreement (in particular, the break-even targets). It should also be noted that over the three relevant reporting periods, the Club had received approximately sixty five million Euros (€65,000,000) from participating in the UEFA Champions League, which should have assisted the Club to meet the break-even targets.
67. In light of the foregoing, the CFCB Adjudicatory Chamber agrees with the reasons given by the CFCB Investigatory Chamber for rejecting the Club's force majeure arguments (as referred to in Paragraph 23(a) of this Decision).

#### Major and unforeseen changes in the economic environment

68. Under part (f) of Annex XI of the CL&FFP Regulations, in order for this provision to apply there has to be a “quantifiable financial impact” of extraordinary national economic events that is “beyond the general fluctuation of the economic environment”. The events have to “beyond the control of the club” and the club must have had “no reasonable chance to mitigate the significant financial impact”.

69. The three national economic events that Galatasaray seeks to rely on are exchange rate fluctuations, the national economic downturn in Turkey and interest rate fluctuations. In each case the relevant period to consider is between May 2014, when the Settlement Agreement was entered into, and the end of the reporting period in 2015 (i.e. 31 May 2015). The Club cannot rely on economic factors that were in existence at the date of the Settlement Agreement but only on unforeseen changes which occurred subsequently.
70. In its representations to the CFCB Investigatory Chamber, the Club stated that as at 16 May 2014, *inter alia*, there was a decreasing trend of foreign exchange rates, the Turkish economy was stable (and expected to grow) and loan rates were at normal levels. So, the Club's case has to be that in the period between May 2014 and the end of the reporting period in May 2015 there were exceptional changes in the economic environment, which the Club could not mitigate and which were responsible for substantially all of the break-even deficit which the Club reported in 2015.
71. It should be noted that the aggregate break-even deficit reported by the Club included an amount of thirty-eight million (€38,000,000) for the reporting period ending in 2013 and an amount of seventy million (€70,000,000) for the reporting period ending in 2014, so that the aggregate deficit as at the date of the Settlement Agreement must already have stood in excess of one hundred million Euros (€100,000,000).
72. It is thus difficult to see that trading in the following year would have avoided the Club being in breach of Clause 1.2 of the Settlement Agreement. In fact, the total revenue of the Club increased from one hundred and twenty-eight million Euros (€128,000,000) in 2014 to one hundred and forty-eight million Euros (€148,000,000) in 2015. This is not consistent with the case that there was a major economic downturn which affected the Club's finances in 2015.
73. The CFCB Adjudicatory Chamber agrees with the CFCB Investigatory Chamber's point that economic growth in Turkey between 2013 and 2015 was stable and, by comparison to most EU countries, reasonably strong (as referred to in Paragraph 23(b)(v) of this Decision).
74. It may be that the Club has suffered some losses in respect of foreign exchange and interest rate fluctuations, but for part (f) of Annex XI of the CL&FFP Regulations to apply, such losses have to be quantifiable. The Club has produced no accounting evidence to explain which transactions gave rise to losses, why they could not be avoided and how they affected the break-even deficit(s) reported by the Club.
75. There may have been losses caused by exchange rate fluctuations, but in the reported figures the foreign exchange result is shown as a loss of fourteen million Euros (€14,000,000) in 2014 and nine million Euros (€9,000,000) in 2015. These figures are not material in the context of an aggregate break-even deficit (exceeding the relevant acceptable deviation) of one hundred and thirty-four million, two hundred thousand Euros (€134,200,000).
76. Further, the Club has produced no analysis which justifies the asserted loss of sixty million Euros (€60,000,000) on foreign exchange over a five year period from 2010. The Observations gave a number of different figures and time periods for these losses, none of which were supported by the accounts which had been submitted under the monitoring requirements. Annex X of the CL&FFP Regulations contains detailed rules as to how the effect of foreign exchange losses should be taken into account and the losses disclosed in the accounts submitted bear no relation to the losses asserted in the Observations.

77. In respect of interest rate fluctuations, the chart of loan rates produced to the CFCB Investigatory Chamber appears to show that loan rates were high, but stable in 2014 and 2015. Finance costs did increase from thirteen million, six hundred thousand Euros (€13,600,000) in 2014 to twenty-two million, eight hundred thousand Euros (€22,800,000) in 2015, but that appears to be mainly attributable to an increase in borrowings over the same period of over forty per cent (40%). The Club has not, by reference to the reported figures, or any other accounting evidence, made good the case that foreign exchange rate fluctuations caused the Club's substantial losses.
78. Given the scale of the aggregate break-even deficit, which exceeded the relevant acceptable deviation by one hundred and thirty-four million, two hundred thousand Euros (€134,200,000), the Club would need to show a specific quantifiable effect of unforeseen events occurring in 2014 and 2015 which accounted for substantially all the deficit. Based on the evidence made available, the CFCB Adjudicatory Chamber can only conclude that even if there were some losses attributable to unforeseen events falling within part (f) of Annex XI of the CL&FFP Regulations, those losses can only have accounted for a minor proportion of the reported deficit and that irrespective of those losses the Club would have been in breach of the terms of the Settlement Agreement.

#### Operating in a structurally inefficient market

79. Part (g) of Annex XI of the CL&FFP Regulations provides that:

*"The inefficiency of a football market ... is determined by the UEFA administration on a yearly basis by means of a comparative analysis of the top division clubs' total gate receipts and broadcasting rights revenues relative to the population of the territory of the UEFA member association concerned."*

80. The basis on which the analysis is carried out is explained in the CFCB Investigatory Chamber's referral decision (at paragraph 30). The analysis is not carried out by the CFCB Investigatory Chamber but by the UEFA Administration. The CFCB Adjudicatory Chamber notes that the UEFA Administration has made a firm determination on this matter and the list of UEFA member associations generated by such analysis was provided by the UEFA Administration at the hearing.
81. As the ratio of revenues to population in Turkey is above the median of the fifty four UEFA member associations, Turkey is not deemed to be a structurally inefficient market.
82. The Club argues that it would be more appropriate to compare Turkey, the seventh largest football market, with its direct rivals. That, however, would not comply with the terms of part (g) of Annex XI of the CL&FFP Regulations. There is no basis on which the analysis carried out by the UEFA Administration can be challenged, or the basis of the analysis changed from that prescribed by the CL&FFP Regulations which requires a UEFA-wide analysis of the football market.
83. Accordingly, this mitigating factor cannot apply.

### Breach of Clause 3 of the Settlement Agreement

84. Clause 3 of the Settlement Agreement states that:

*“...For the reporting period ending in 2015, the total amount of the aggregate cost of employee benefit expenses cannot exceed the total amount of the aggregate cost of employee benefit expenses reported in the future financial information for the reporting period ending in 2014, i.e. EUR 90 Mio.”*

85. The Club has clearly breached this provision because its aggregate cost of employee benefits expenses for the reporting period ending in 2015 was ninety-five million, five hundred thousand Euros (€95,500,000).

86. It is not logical to conclude that any of the force majeure arguments put forward by the Club could have somehow obliged it to increase its expenditure on employees and/or to ignore Clause 3 of the Settlement Agreement, therefore part (e) of Annex XI of the CL&FFP Regulations cannot be applied to this breach.

87. Similarly, such an increase in expenditure cannot be justified by reference to any major and unforeseen change in the economic environment under part (f) of Annex XI of the CL&FFP Regulations.

88. For completeness, based on the reasoning set out in Paragraphs 79 to 83 of this Decision, it is also clear that the club is not operating in a structurally inefficient market under part (g) of Annex XI of the CL&FFP Regulations.

89. Based on the foregoing, the CFCB Adjudicatory Chamber considers that, even if the Club is given the benefit of the doubt with regard to the impact of the various mitigating factors discussed above on its failure to comply with Clause 1.2 of the Settlement Agreement (i.e. with regard to its failure to reach the break-even targets), Galatasaray would still have breached Clause 3 of the Settlement Agreement.

### Request for a voluntary agreement

90. In its Observations, the Club requests the conclusion of a voluntary agreement under Annex XII of the CL&FFP Regulations.

91. However, in accordance with part A(3) of this Annex, the Club is not eligible to apply for a voluntary agreement because it entered into the Settlement Agreement on 16 May 2014, which falls within the last three reporting periods.

92. This is in fact acknowledged by the Club in its Observations, although the Club argues that this provision should be given a teleological interpretation as this would meet the aim of the CL&FFP Regulations in improving the way clubs are managed and their financial capability. However, the CFCB Adjudicatory Chamber considers that such an interpretation would be contrary to a very clearly expressed exclusion in the provision.

93. Further, under parts A(1) and B(1) of Annex XII of the CL&FFP Regulations, any voluntary agreement requires an application to the CFCB Investigatory Chamber by 31 December preceding the season in which the voluntary agreement would come into force. There has been no such application by the Club.

94. For these reasons, the Club's request for a voluntary agreement cannot be accepted.

### Legality of the CL&FFP Regulations

95. In its Observations, the Club raised the question of the legality of the CL&FFP Regulations. However, the Club did not make any substantive legal argument to this effect, and without proper argument the CFCB Adjudicatory Chamber is not able to give this point any weight.

### Conclusion

96. Having examined the evidence, in particular the findings of the CFCB Chief Investigator, the Observations and the arguments presented at the hearing, the CFCB Adjudicatory Chamber determines that the Club has failed to comply with the terms of the Settlement Agreement since it had an aggregate break-even deficit which exceeded the relevant acceptable deviation by one hundred and thirty-four million, two hundred thousand Euros (€134,200,000) for the reporting periods ending in 2013, 2014 and 2015 and because its aggregate cost of employee benefits expenses for the reporting period ending in 2015 was ninety-five million, five hundred thousand Euros (€95,500,000).

## **PART VI – Disciplinary Measures**

97. At the hearing, the Club explained the measures which its new management team, which was elected in June 2015, has taken to bring its finances under control with the aim of complying with the break-even requirements contained in the CL&FFP Regulations. In particular, major steps have been taken to reduce employee benefits costs and employee numbers. In the January 2016 transfer period, twenty three players were sold by the Club, including its star player (Yilmaz) for eight million Euros (€8,000,000). In the reporting period ending in 2016, the total employee benefits costs are forecast to reduce from ninety-five million Euros (€95,000,000) to eighty million Euros (€80,000,000), of which sixty-five million Euros (€65,000,000) will be attributable to players. The CFCB Adjudicatory Chamber recognises the steps which have been taken by the new management team and has taken them into account in considering the appropriate disciplinary measures to impose on the Club.
98. The CFCB Adjudicatory Chamber stresses the importance of the objectives of UEFA's financial fair play rules which aim to protect the integrity and smooth running of the UEFA club competitions and to achieve financial fair play in the UEFA club competitions, in particular by improving the economic and financial capability of the clubs, increasing the transparency and credibility of the clubs, protecting creditors, encouraging the clubs to operate on the basis of their own revenues (i.e. to "break-even") and protecting the long-term viability and sustainability of European football.
99. In the present case, the Club was found to have breached the break-even requirement and, in what essentially constituted a second chance, was given the opportunity to bring itself into compliance with UEFA's regulations through the conclusion of a settlement agreement (comprising, *inter alia*, certain break-even targets).
100. The CFCB Adjudicatory Chamber has made it clear in a number of cases that UEFA's financial fair play rules are underpinned by the principle that all of the clubs that compete in UEFA's club competitions must be treated equally (in this regard, see paragraph 51 of case AC-01/212, *Malaga CF* and paragraph 47 of case AC-06/2014, *Panevézio Futbolo Klubas Ekranas*).
101. Indeed, this principle is expressly stated in the CL&FFP Regulations, with Article 53(2) providing that in carrying out its responsibilities the CFCB must ensure the "equal treatment of all licensees".

102. The principle of equal treatment has particular importance in relation to the break-even requirement because a breach of this requirement may directly affect the competitive position of a club, to the detriment of the vast majority of clubs who comply with UEFA's financial fair play requirements.
103. Under Article 29 of the Procedural Rules, a wide range of disciplinary measures may be imposed. The CFCB Adjudicatory Chamber thus has flexibility to impose a sanction which properly meets the seriousness of the contravention, taking into account the objectives of the CL&FFP Regulations, as referred to above.
104. Any sanction imposed must serve as a sufficient deterrent to discourage clubs from breaching the rules. The disciplinary measures imposed must also be fair to those clubs who have participated in UEFA competitions in full compliance with the rules.
105. In this regard, the CFCB Adjudicatory Chamber bears in mind the requirement for proportionality and consistency with other decisions on similar facts and circumstances, as reflected in the Court of Arbitration for Sport ("CAS") decision in *CAS 2012/A/2821 Bursaspor v UEFA* (at paragraph 144). However, it is not possible to draw easy comparisons between different cases, for the relevant factors involved will vary greatly between clubs. Nor for the same reason is it possible to apply any rigid benchmark, for the relevant factors will also include the reasons why the club is in breach, whether it has remedied the breach and whether it is in a position to ensure that it complies with the rules in the future.
106. In the *Bursaspor* case, CAS recognised (at paragraph 143) that UEFA's financial fair play rules do not provide for standard sanctions.
107. Moreover, in *CAS 2012/A/2702 Gyori v UEFA*, CAS underlined that the sanctions regime in respect of club licensing is established within the discretionary powers of UEFA, based on its assessment of the facts and circumstances of each case (at paragraph 160).
108. Finally, in *CAS 2012/A/2824 Besiktas v UEFA*, CAS held that simply because a different sanction might have been imposed, that would not make a selected sanction disproportionate (at paragraph 127).
109. Under the Procedural Rules, it is for the CFCB Adjudicatory Chamber to decide on the appropriate sanction to impose, taking into account the circumstances of the particular case.
110. It also needs to be borne in mind that UEFA's club licensing and financial fair play regime is a developing area, so that the requirement for sanctions to provide a real incentive to ensure compliance may require the type and seriousness of disciplinary measures to change over time.
111. At the hearing, the Club argued that being excluded from future UEFA club competitions would be the most severe sanction that could be imposed by the CFCB Adjudicatory Chamber and would also be disproportionate. However, in light of the considerations discussed above and having regard to the large scale of the Club's aggregate break-even deficit for the reporting periods ending in 2013, 2014 and 2015, the CFCB Adjudicatory Chamber considers that an exclusion from one UEFA club competition for which Galatasaray would otherwise qualify in the next two (2) seasons (i.e. the 2016/2017 and 2017/2018 seasons) should be imposed on the Club.
112. In addition, it is necessary to ensure that the Club does have an incentive to continue with its efforts to comply with the break-even requirement. Galatasaray should therefore

be required to adhere to its plan to limit its expenditure on the employee benefits expenses of players. Accordingly, a limit of sixty-five million Euros (€65,000,000) will be imposed on the Club's overall aggregate cost of the employee benefits expenses of all of its players (calculated in accordance with part C of Annex X of the CL&FFP Regulations) in each of the next two reporting periods (i.e. the reporting period ending in 2016 and the reporting period ending in 2017). This approach is consistent with the aims of the Settlement Agreement and less onerous than the conditional exclusion proposed by the CFCB Investigatory Chamber, but directed at the same aim. Further, it is consistent with the objective of UEFA's financial fair play regime (as set out in Article 2 of the CL&FFP Regulations) to encourage clubs to operate on the basis of their own revenues.

113. Compliance with the order referred to in Paragraph 112 of this Decision will be monitored by the CFCB Investigatory Chamber. If the Club fails to comply with this order, the CFCB Investigatory Chamber may refer the case to the CFCB Adjudicatory Chamber.
114. The imposition of such disciplinary measures on the Club in this Decision must be considered to be a "*new measure*" and, accordingly, the CFCB Adjudicatory Chamber determines that the Settlement Agreement shall cease to have effect as of the date of this Decision in accordance with Clause 8.2 of the Settlement Agreement.
115. For the avoidance of doubt, the intention is that the exclusion imposed in this Decision should only apply to the UEFA Champions League and the UEFA Europa League.

## **PART VII – Operative part**

116. The CFCB Adjudicatory Chamber hereby decides:

- 1. Galatasaray has failed to comply with the terms of the Settlement Agreement.**
- 2. To impose on Galatasaray an exclusion from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. the 2016/2017 and 2017/2018 seasons).**
- 3. To order Galatasaray to limit the overall aggregate cost of the employee benefits expenses of all of its players (calculated in accordance with part C of Annex X of the CL&FFP Regulations) in each of the next two reporting periods (i.e. the reporting period ending in 2016 and the reporting period ending in 2017) to a maximum of sixty-five million Euros (€65,000,000).**
- 4. The Settlement Agreement shall cease to have effect as of the date of this Decision.**
- 5. Galatasaray is to pay five thousand Euros (€5,000) towards the costs of these proceedings.**
- 6. The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Galatasaray.**
- 7. This Decision is final and shall be notified to:**
  - a) Galatasaray;**
  - b) the TFF;**
  - c) the CFCB Investigatory Chamber; and**
  - d) the UEFA Administration.**

117. This Decision may be appealed in writing before 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 days from the receipt of this Decision.



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J. N. Cunha Rodrigues, CFCB Chairman

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