

**UEFA CLUB FINANCIAL CONTROL BODY**

**Adjudicatory Chamber**

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**DECISION**

**in case**

**AC-04/2015**

**SPORTING CLUBE DE BRAGA – FUTEBOL, SAD**

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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**
- **A. Giersz, Member**

**Nyon, 10 December 2015**

## **PART I – Introduction**

1. On 12 November 2015, the Chief Investigator of the UEFA Club Financial Control Body (the “**CFCB**”) referred the case of Sporting Clube de Braga – Futebol, SAD (“**SC Braga**” or the “**Club**”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines, *inter alia*, whether SC Braga breached Article 65(1) of the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “**CL&FFP Regulations**”) as a result of having overdue payables towards other football clubs as at 30 September 2015.
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. The Portuguese Football Federation (the “**PFF**”) submitted SC Braga’s completed monitoring documentation (comprising financial information as at 30 June 2015) in accordance with the 15 July 2015 deadline set by the UEFA Administration.
5. This monitoring documentation included self-declarations by SC Braga indicating that the Club had no overdue payables towards other football clubs, in respect of employees or towards social/tax authorities as at 30 June 2015.
6. In addition, this monitoring documentation indicated that:
  - (a) payables totalling seven hundred and forty-two thousand Euros (€742,000) towards other football clubs had been deferred;
  - (b) payables totalling four hundred and ninety-five thousand Euros (€495,000) in respect of employees had been deferred; and
  - (c) payables totalling eighty-eight thousand Euros (€88,000) in respect of employees were in dispute,as at 30 June 2015.
7. On 21 July 2015, LLC Football Club Dynamo Kyiv (“**FC Dynamo**”) requested UEFA’s intervention in a dispute that it had with SC Braga. The dispute related to SC Braga’s failure to pay one million, two hundred and ninety-nine thousand Euros (€1,299,000) plus interest to FC Dynamo, an amount which SC Braga had been held jointly and severally liable for by the Court of Arbitration for Sport (the “**CAS**”) on 22 January 2015 (as upheld by the Swiss Federal Tribunal on 17 June 2015).
8. On 22 July 2015, the UEFA Administration requested that SC Braga explain why the amount owed to FC Dynamo had not been mentioned in its monitoring documentation.
9. On 27 July 2015, SC Braga contacted the UEFA Administration to explain that the amount due to FC Dynamo had not been reported in its monitoring documentation because the Club did not consider it to fall under the scope of Article 65 of the CL&FFP Regulations.
10. On 2 September 2015, the CFCB Investigatory Chamber met in order to assess SC Braga’s monitoring documentation. The CFCB Investigatory Chamber confirmed the

position regarding the Club's overdue payables as at 30 June 2015 (as referred to in Paragraph 5 of this Decision).

11. In light of the significant amounts of deferred and disputed payables reported by the Club in its monitoring documentation, on 4 September 2015, the CFCB Chief Investigator asked SC Braga (in accordance with Articles 65(2), 66(2) and 66bis(2) of the CL&FFP Regulations) to submit updated monitoring documentation (comprising financial information as at 30 September 2015) in order to prove that the Club had no overdue payables towards other football clubs, in respect of employees and/or towards social/tax authorities as at 30 September 2015, such update to be submitted to the PFF (and, in turn, the UEFA Administration) by no later than 15 October 2015.
12. The PFF submitted SC Braga's updated monitoring documentation (comprising financial information as at 30 September 2015) in accordance with the 15 October 2015 deadline set by the UEFA Administration.
13. This updated monitoring documentation included self-declarations by SC Braga indicating overdue payables towards other football clubs of two hundred thousand Euros (€200,000) as at 30 September 2015.
14. In addition, this monitoring documentation indicated that:
  - (a) payables totalling seven hundred and eighty-one thousand Euros (€781,000) towards other football clubs had been deferred;
  - (b) payables totalling three hundred and thirty-three thousand Euros (€333,000) in respect of employees had been deferred; and
  - (c) payables totalling one hundred and seventy thousand Euros (€170,000) towards other football clubs were in dispute,as at 30 September 2015.
15. It was established that the overdue payables referred to in Paragraph 13 of this Decision related to a legal claim brought by Real Betis Balompie ("**Betis**") against SC Braga before the FIFA Players' Status Committee. The Club did not contest this claim and, in a decision dated 12 October 2015, SC Braga was required to pay two hundred thousand Euros (€200,000) to Betis.
16. On 26 October 2015, the UEFA Administration asked the Club to provide an update on the status of the amount due to FC Dynamo (as referred to in Paragraph 7 of this Decision).
17. On 29 October 2015, the Club provided the UEFA Administration with a letter from FIFA dated 28 October 2015 in which FIFA requests that the Club immediately pay the amount owed to FC Dynamo and provide evidence of such payment by no later than 6 November 2015.
18. On 5 November 2015, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of SC Braga. The CFCB Chief Investigator decided that the Club had total overdue payables towards other football clubs of one million, four hundred and ninety-nine thousand Euros (€1,499,000) plus certain interest as at 30 September 2015, such total amount comprising:

- (a) the two hundred thousand Euros (€200,000) due to Betis (as referred to in Paragraph 15 of this Decision); and
  - (b) the one million, two hundred and ninety-nine thousand Euros plus interest due to FC Dynamo (as referred to in Paragraph 7 of this Decision), the CFCB Investigatory Chamber having decided that this amount did in fact relate to transfer activity and therefore fell within the scope of Article 65 of the CL&FFP Regulations.
19. Based on the above findings, on 12 November 2015, 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 UEFA Club Financial Control Body – Edition 2015* (the “**Procedural Rules**”) and suggested that the following disciplinary measures be imposed on SC Braga by the CFCB Adjudicatory Chamber in respect of the Club’s alleged breach of Articles 65(1) of the CL&FFP Regulations:
- (a) an exclusion from the next UEFA club competition for which SC Braga would otherwise qualify in a number of seasons to be determined by the CFCB Adjudicatory Chamber at its discretion, unless SC Braga is able to prove by 31 January 2016 that it has paid the amounts that were established by the CFCB Investigatory Chamber as being overdue payables as at 30 September 2015; and
  - (b) a fine, to be determined by the CFCB Adjudicatory Chamber at its discretion.
20. In addition, the CFCB Chief Investigator decided that all payments due to the Club from UEFA in respect of its participation in UEFA club competitions during the 2015/16 season would be withheld until further notice from the CFCB Adjudicatory Chamber, such conservatory measure having been taken by the CFCB Chief Investigator in accordance with Article 41 of the Procedural Rules.

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

21. 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.
22. On 16 November 2015, the CFCB Chairman informed SC Braga of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
23. Pursuant to Article 20(1) of the Procedural Rules, the Club was invited to submit its written observations by no later than 23 November 2015.
24. The Club made its written submission in accordance with this deadline (the “**Observations**”).
25. The members of the CFCB Adjudicatory Chamber convened on 30 November 2015.
26. The members took note of the report presented by Mr. Umberto Lago, member of the CFCB Investigatory Chamber, acting as reporting investigator pursuant to Article 18(1) of the Procedural Rules.
27. 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**

28. The case concerns alleged contraventions of the CL&FFP Regulations.
29. 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.”*

30. 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."*

31. Article 72 of the CL&FFP Regulations reads 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.”*

32. 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.”*

33. 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.”*

34. 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.”*

35. 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.”*

36. 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**

37. Having examined the evidence, in particular the findings of the CFCB Investigatory Chamber and the Observations, the CFCB Adjudicatory Chamber determines that the Club has breached Article 65(1) of the CL&FFP Regulations because it had overdue payables towards other football clubs of two hundred thousand Euros (€200,000) as at 30 September 2015.

38. The CFCB Investigatory Chamber's analysis of the two hundred thousand Euros (€200,000) owed to Betis is straightforward and such amount was willingly disclosed by the Club as an overdue payable. The Club fully accepted such liability and, in its Observations, provides evidence to show that the amount has now been paid.
39. The CFCB Investigatory Chamber also considered the one million, two hundred and ninety-nine thousand Euros (€1,299,000) plus interest owed to FC Dynamo (as referred to in Paragraph 7 of this Decision) to be an overdue payable as at 30 September 2015. In this regard, the CFCB Adjudicatory Chamber notes that the Club's liability for this amount is solely the consequence of a presumption that the Club had induced a player to breach his contract (in application of the relevant FIFA rules). The obligation to pay compensation for which the Club was found to be jointly and severally liable did not relate to a transfer or transfer activities as foreseen in Articles 65(1) and (3) of the CL&FFP Regulations. Therefore, such amount cannot qualify as an overdue payable under Article 65 of the CL&FFP Regulations. Such a conclusion would be contrary to the principle of legality which prohibits the classification of facts as disciplinary infractions by analogy.
40. It follows from the foregoing that the club has breached Article 65(1) of the CL&FFP Regulations.

#### **PART VI – Disciplinary Measures**

41. 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 by ensuring that clubs settle their liabilities punctually and, thus, the protection of the long-term viability and sustainability of European football (in this regard, see CAS 2013/A/3453 *FC Petrolul Ploiesti v. UEFA*, paragraph 79).
42. Article 65 of the CL&FFP Regulations plays a key role in this respect and any disciplinary measure imposed on a club which has breached this Article must serve as a sufficient deterrent to discourage other clubs from doing the same.
43. The disciplinary measures imposed must also be fair to those clubs who participate in UEFA competitions in full compliance with the CL&FFP Regulations.
44. In the present case, there is evidence of the Club failing to pay its creditors on time.
45. The CFCB Adjudicatory Chamber acknowledges that SC Braga has taken steps to pay the overdue payable identified as at 30 September 2015, as described in its Observations. However, notwithstanding that such remedial action was indeed necessary, such payment was only made after the assessment deadline had passed.
46. Having due regard to the circumstances of the present case, the CFCB Adjudicatory Chamber considers that a fine of twenty thousand Euros (€20,000) will serve as an adequate deterrent.
47. The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 20 of this Decision) will no longer be in force upon payment of the fine referred to in Paragraph 46 of this Decision.
48. In addition, costs of three thousand Euros (€3,000) are required to be paid by SC Braga, in accordance with Article 32(2) of the Procedural Rules.

## **PART VII – Operative part**

49. The CFCB Adjudicatory Chamber hereby decides:

- 1. SC Braga has breached Article 65(1) of the CL&FFP Regulations.**
- 2. To impose a fine of twenty thousand Euros (€20,000) on SC Braga.**
- 3. The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 20 of this Decision) will no longer be in force upon payment of the fine referred to in Paragraph 2 of this Operative part.**
- 4. SC Braga is to pay three thousand Euros (€3,000) towards the costs of these proceedings.**
- 5. The fine and costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to SC Braga.**
- 6. This Decision is final and shall be notified to:**
  - a) SC Braga;**
  - b) the PFF;**
  - c) the CFCB Investigatory Chamber; and**
  - d) the UEFA Administration.**

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



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J. N. Cunha Rodrigues

CFCB Chairman

### UEFA Bank details:

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