

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-08/2015

ASOCIATIA FOTBAL CLUB BOTOSANI

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 Asociatia Fotbal Club Botosani (“**Botosani**” or the “**Club**”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines, *inter alia*, whether Botosani breached Articles 65(1), 66(1) and 66bis(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 social/tax authorities as at 30 June 2015 and overdue payables in respect of employees and towards social/tax authorities as well as 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 Romanian Football Federation (the “**RFF**”) submitted Botosani’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 Botosani indicating that it had overdue payables of ninety-six thousand Euros (€96,000) as at 30 June 2015, such total amount comprising:
 - (a) overdue payables in respect of employees of five thousand Euros (€5,000); and
 - (b) overdue payables towards social/tax authorities of ninety-one thousand Euros (€91,000).
6. On 2 September 2015, the CFCB Investigatory Chamber met in order to assess Botosani’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).
7. Since the Club had reported overdue payables in its monitoring documentation, on 3 September 2015, the CFCB Chief Investigator asked Botosani (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 RFF (and, in turn, the UEFA Administration) by no later than 15 October 2015.
8. The RFF submitted Botosani’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.
9. This updated monitoring documentation included self-declarations by Botosani indicating that it had total overdue payables of three hundred and seventy-eight thousand Euros (€378,000) as at 30 September 2015, such total amount comprising:
 - (a) overdue payables towards other football clubs of eight thousand Euros (€8,000);

- (b) overdue payables in respect of employees of two hundred and ninety-three thousand Euros (€293,000); and
 - (c) overdue payables towards social/tax authorities of seventy-seven thousand Euros (€77,000).
10. On 28 October 2015, the UEFA Administration gave Botosani the opportunity to inform the CFCB by no later than 30 October 2015 of any subsequent events that took place since 15 October 2015 that could impact overdue payables reported as of 30 September 2015.
 11. On 30 October 2015, thus within the deadline which was set by the UEFA Administration, Botosani submitted evidence of partial payments in respect of employees, amounting to two hundred and twenty-five thousand Euros (€225'000) of the overdue payable reported as of 30 September 2015.
 12. On 5 November 2015, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of Botosani. The CFCB Chief Investigator confirmed the position regarding the Club's overdue payables as at 30 June 2015 (as referred to in Paragraph 5 of this Decision) and as at 30 September 2015 (as set out in Paragraph 9 of this Decision).
 13. 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 Botosani by the CFCB Adjudicatory Chamber in respect of the Club's alleged breaches of Articles 65(1), 66(1) and 66bis(1) of the CL&FFP Regulations:
 - (a) an exclusion from the next UEFA club competition (limited to the UEFA Champions League and UEFA Europa League) for which Botosani would otherwise qualify in a number of seasons to be determined by the CFCB Adjudicatory Chamber at its discretion, unless Botosani 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.
 14. 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

15. 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.
16. On 16 November 2015, the CFCB Chairman informed Botosani of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.

17. 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.
18. The Club has not made any further observations within this deadline.
19. The members of the CFCB Adjudicatory Chamber convened on 30 November 2015.
20. 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.
21. 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

22. The case concerns alleged contraventions of the CL&FFP Regulations.
23. 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.”

24. 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."*

25. Article 66 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) in respect of its employees (as defined in paragraphs 2 and 3 of 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 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 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 in respect of employees.*
- 4 *The licensee must disclose:*
- a) *all employees for which an amount is outstanding to be paid as at 30 June/30 September; and*
 - b) *all employees in respect of which there is 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.*
- 5 *The following information must be given, as a minimum, in respect of each overdue payable towards employees, together with an explanatory comment:*
- a) *Name of the employee;*
 - b) *Position/function of the employee;*
 - c) *Start date;*
 - d) *End date (if applicable);*

- e) *Balance overdue as at 30 June/30 September, including the due date for each overdue element; and*
 - f) *Amounts subject to any claim/proceedings pending.*
- 6 *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.”*
26. 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) *Amounts subject to any claim/proceedings pending.*
 - 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.”*
27. 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.”*
28. 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.”*

29. 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.”*

30. 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.”

31. 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.”*
32. 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

33. Having examined the evidence, in particular the findings of the CFCB Investigatory Chamber and the Club’s monitoring documentation, the CFCB Adjudicatory Chamber determines that the Club has breached:
- (a) Article 65(1) of the CL&FFP Regulations because it had overdue payables towards other football clubs of eight thousand Euros (€8’000) as at 30 September 2015 (as described in Paragraph 5 of this Decision);*
 - (b) Article 66(1) of the CL&FFP Regulations because it had overdue payables towards social/tax authorities of ninety-one thousand Euros (€91’000) as at 30 June 2015 and seventy-seven thousand Euros (€77’000) as at 30 September 2015 (as described in Paragraphs 5 and 9 of this Decision); and*
 - (c) Article 66bis(1) of the CL&FFP Regulations because it had overdue payables in respect of employees of five thousand Euros (€5’000) as at 30 June 2015 and of two hundred and ninety-three thousand (€293’000) as at 30 September 2015 (as described in Paragraphs 5 and 9 of this Decision).*
34. Such figures were freely disclosed by the Club in its monitoring documentation and have not subsequently been contested.

PART VI – Disciplinary Measures

35. 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).
36. Articles 65, 66 and 66bis of the CL&FFP Regulations play a key role in this respect and any disciplinary measure imposed on a club which has breached these Articles must serve as a sufficient deterrent to discourage other clubs from doing the same. In addition, the disciplinary measures imposed must also be fair to those clubs who participate in UEFA competitions in full compliance with the CL&FFP Regulations.
37. In the present case it is clear that the Club has missed deadlines to pay its creditors. In this regard, as it can be seen from the relevant numbers, it had to be noted that the financial situation of the Club had worsened between 30 June 2015 and 30 September 2015.
38. However, the CFCB Adjudicatory Chamber also acknowledged that as at 30 October 2015, the Club has made a considerable effort and managed to decrease its overdue payables in respect of employees from two hundred ninety-three thousand Euros (€293'000) to sixty-eight thousand Euros (€68'000), i.e. by more than 75%. In this regard, the CFCB Adjudicatory Chamber took note that the Club has hence decreased the total amount of its overdue payables from three hundred and seventy-eight thousand Euros (€378'000) to one hundred and fifty-three thousand Euros (€153'000).
39. Having due regard to the circumstances of the present case, the CFCB Adjudicatory Chamber considers that a fine of fifteen thousand Euros (€15'000) is appropriate.
40. The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 14 of this Decision) will no longer be in force upon payment of the fine referred to in Paragraph 39 of this Decision.
41. In addition, costs of two thousand Euros (€2,000) are required to be paid by Botosani, in accordance with Article 32(2) of the Procedural Rules.

PART VII – Operative part

42. The CFCB Adjudicatory Chamber hereby decides:
 1. **Botosani has breached Articles 65(1), 66(1) and 66bis(1) of the CL&FFP Regulations.**
 2. **To impose a fine of fifteen thousand Euros (€15,000) on Botosani.**
 3. **The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 14 of this Decision) will no longer be in force upon payment of the fine referred to in Paragraph 2 of this Operative part.**

4. **Botosani is to pay two thousand Euros (€2,000) 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 Botosani.**
6. **This Decision is final and shall be notified to:**
 - a) **Botosani;**
 - b) **the RFF;**
 - c) **the CFCB Investigatory Chamber; and**
 - d) **the UEFA Administration.**

43. 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.



J. N. Cunha Rodrigues

CFCB Chairman

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