

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-05/2014

Bursaspor Kulübü Derneği

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, 19th December 2014

PART I – Introduction

1. On 13 November 2014, the acting Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of Bursaspor Kulübü Derneği (“Bursaspor” or the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether Bursaspor breached Article 66 of the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2012* (the “CL&FFP Regulations”) as a result of failing to prove that it had no overdue payables towards employees as at 30 June 2014 and 30 September 2014.
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 acting CFCB Chief Investigator

4. The Turkish Football Federation (the “TFF”) submitted Bursaspor’s completed monitoring documentation (comprising financial information as at 30 June 2014) in accordance with the 15 July 2014 deadline set by the UEFA Administration. This monitoring documentation included self-declarations by Bursaspor indicating total overdue payables towards employees of three million, four hundred and thirty-three thousand Euros (€3,433,000) as at 30 June 2014.
5. Bursaspor’s monitoring documentation also indicated that one hundred and fifty-seven thousand Euros (€157,000) of the overdue payables referred to in Paragraph 4 of this Decision had been paid after 30 June 2014.
6. Between 4 and 22 August 2014, Bursaspor informed the UEFA Administration that two million, one hundred and eighty eight thousand Euros (€2,188,000) of the overdue payables referred to in Paragraph 4 of this Decision had been paid after 15 July 2014.
7. Taking the payments referred to in Paragraphs 5 and 6 of this Decision into account, one million and eighty eight thousand Euros (€1,088,000) of the overdue payables referred to in Paragraph 4 of this Decision remained unpaid as at 22 August 2014.
8. On 25 and 26 August 2014, the CFCB Investigatory Chamber met in order to assess Bursaspor’s monitoring documentation. The acting CFCB Chief Investigator confirmed the position regarding Bursaspor’s overdue payables as at 30 June 2014 (as referred to in Paragraph 4 of this Decision) and determined that, consequently, Bursaspor was in breach of “indicator 4” (as defined in Article 62(3) of the CL&FFP Regulations).
9. Accordingly, on 23 September 2014, the acting CFCB Chief Investigator contacted Bursaspor to:
 - (a) open an investigation, in accordance with Article 12(2) of the *Procedural rules governing the UEFA Club Financial Control Body* (the “Procedural Rules”);
 - (b) require Bursaspor to submit updated monitoring documentation (comprising financial information as at 30 September 2014) in accordance with Articles 65(8) and 66(6) of the CL&FFP Regulations in order to prove that it had no overdue payables towards other football clubs, employees and/or social/tax authorities as at 30 September 2014, such update to be submitted to the TFF (and, in turn, the UEFA Administration) by no later than 15 October 2014; and

- (c) inform Bursaspor that all payments due to the Club from UEFA in respect of its participation in UEFA club competitions during the 2014/15 season would be withheld until further notice from the CFCB, such conservatory measure having been taken by the acting CFCB Chief Investigator in accordance with Article 41 of the Procedural Rules.
10. The TFF submitted Bursaspor's updated monitoring documentation (comprising financial information as at 30 September 2014) in accordance with the 15 October 2014 deadline set by the UEFA Administration. This monitoring information included self-declarations by Bursaspor indicating overdue payables towards employees of one million, one hundred and ninety-one thousand Euros (€1,191,000) as at 30 September 2014.
 11. Between 22 and 31 October 2014, Bursaspor informed the UEFA Administration that:
 - (a) three hundred and thirty thousand Euros (€330,000) of the overdue payables referred to in Paragraph 10 of this Decision had been paid after 15 October 2014; and
 - (b) the Club's obligation to pay one hundred and fifteen thousand Euros (€115,000) of the overdue payables referred to in Paragraph 10 of this Decision had been deferred until after 31 October 2014.

Taking these payments and deferrals into account, eight hundred and sixty one thousand Euros (€861,000) of the overdue payables referred to in Paragraph 10 of this Decision remained unpaid as at 31 October 2014.

12. On 6 November 2014, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of Bursaspor. The acting CFCB Chief Investigator confirmed the position regarding Bursaspor's overdue payables as at 30 June 2014 (as referred to in Paragraph 4 of this Decision) and 30 September 2014 (as referred to in Paragraph 10 of this Decision).
13. Based on the above findings, on 13 November 2014, the acting CFCB Chief Investigator decided to refer the case to the CFCB Adjudicatory Chamber in accordance with Article 14(1)(d) of the Procedural Rules and suggested that the following disciplinary measures be imposed on Bursaspor:
 - (a) an exclusion from the next UEFA club competition for which Bursaspor qualifies in the next three seasons (i.e. the 2015/16, 2016/17 and 2017/18 seasons), unless the Club is able to prove by 31 January 2015 that it has paid the amounts that were identified as overdue payables on 30 September 2014 (as described in Paragraph 10 of this Decision); and
 - (b) a fine, to be determined by the CFCB Adjudicatory Chamber at its discretion.

The acting CFCB Chief Investigator also decided that the conservatory measure referred to in Paragraph 9(c) of this Decision should remain in force until further notice from the CFCB Adjudicatory Chamber.

14. On 17 and 18 November 2014, the CFCB received two faxes from the lawyer of a Bursaspor player, Michael Chretien, relating to the late payment by Bursaspor of sixty five thousand Euros (€65,000). Such amount was due to be paid on 15 November pursuant to a settlement agreement between the parties. The amount was actually

paid on 18 November 2014. On 19 November 2014, the CFCB informed Bursaspor that these faxes had been added to the case file.

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 13 November 2014, the CFCB Chairman informed Bursaspor 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, Bursaspor was invited to submit its written observations by no later than 24 November 2014.
18. Bursaspor made its written submission in accordance with this deadline. Its submission comprised the Club's written observations and also certain supporting documents (the "Observations"). The Club did not request an oral hearing.
19. At the initiative of the CFCB Chairman, Bursaspor was invited to provide comments on certain disciplinary measures previously imposed on the Club for non-compliance with the CL&FFP Regulations. Bursaspor submitted its comments in accordance with the set deadline (the "Additional Observations").
20. The members of the CFCB Adjudicatory Chamber convened on 11 December 2014. The members took note of the report presented by Mr. Petros Mavroidis, 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 intended to achieve the financial fair play objectives set out in Article 2(2) of the CL&FFP Regulations, i.e.:
 - 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 players, 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 56 of the CL&FFP Regulations provides that:

"The licensee must:

- a) *cooperate with the licensor and the UEFA Club Financial Control Body in respect of their requests and enquiries;*
- b) *provide the licensor and the UEFA Club Financial Control Body with all necessary information and/or relevant documents to fully demonstrate that the monitoring requirements are fulfilled, as well as any other document requested and deemed to be relevant for club monitoring decision-making (the reporting entity or combination of entities in respect of which information is required to be provided must be the same as for club licensing);*
- c) *promptly notify the licensor in writing about any subsequent events that constitute a significant change to the information previously submitted to the licensor."*

25. Article 62(3)(iv) of the CL&FFP Regulations provides that:

³ *If a licensee exhibits any of the conditions described by indicators 1 to 4, it is considered in breach of the indicator:*

...

iv) Indicator 4: Overdue payables

The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence as further defined in Articles 65 and 66."

26. Article 66 of the CL&FFP Regulations provides that:

¹ *The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables (as specified in Annex VIII) towards its employees and/or social/tax authorities (as defined in paragraphs 2 and 3 of Article 50) that arose prior to 30 June.*

² *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 employees and social/tax authorities.*

³ *The following information must be given, as a minimum, in respect of each overdue payable towards employees, together with explanatory comment:*

a) *Name of the employee;*

b) *Position/function of the employee;*

c) *Start date;*

d) *Termination date (if applicable); and*

e) *Balance overdue as at 30 June, including the due date for each overdue element.*

⁴ *The following information must be given, as a minimum, in respect of each overdue payable towards social/tax authorities, together with explanatory comment:*

a) *Name of the creditor;*

b) *Balance overdue as at 30 June, including the due date for each overdue element.*

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.*

⁶ *If the licensee is in breach of indicator 4 as defined in Article 62(3), then it must also prove that, as at the following 30 September, it has no overdue payables (as specified in Annex VIII) towards employees and/or social/tax authorities that arose prior to 30 September. Paragraphs 2 to 5 above apply accordingly.”*

27. Article 72 of the CL&FFP Regulations reads that:

“Any breach of these regulations may be penalised 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 and 50) and by 30 June and 30 September (in respect of Articles 65 and 66) 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.”

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 against a club (being a defendant who is not an individual) in respect of such club’s infringement of the CL&FFP Regulations:

- 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

Breach of the CL&FFP Regulations in the present case

33. Having examined the evidence, in particular the findings of the acting CFCB Chief Investigator, Bursaspor’s monitoring documentation and the Observations, the CFCB Adjudicatory Chamber determines that the Club had overdue payables towards employees of three million, four hundred and thirty-three thousand Euros (€3,433,000) as at 30 June 2014 and one million, one hundred and ninety-one thousand Euros (€1,191,000) as at 30 September 2014.

34. It appears from the Observations that, since 30 September 2014, Bursaspor has paid eight hundred and two thousand Euros (€802,000) of the total overdue payables towards employees identified as at 30 September 2014 (as referred to in Paragraph 10 of this Decision). In addition, the Club has committed to pay the outstanding amounts (i.e. a total of three hundred and sixty-seven thousand Euros (€367,000)) by 15 December 2014.

35. The CFCB Adjudicatory Chamber acknowledges the remedial action taken by Bursaspor. However, notwithstanding that such remedial action was indeed necessary, the CFCB Adjudicatory Chamber observes that such payments were only

made after the assessment deadline had passed. The CFCB Adjudicatory Chamber also notes that the amount of the Club's overdue payables as at 30 June 2014 was very large (i.e. three million, four hundred and thirty-three thousand Euros (€3,433,000)), even if it did manage to significantly reduce the overdue amounts by 30 September 2014.

36. The Club contends that its current liabilities are the consequence of the previous owner's actions. In this respect, the CFCB Adjudicatory Chamber observes that whilst it is possible that the present financial situation of the Club can possibly be attributed to the previous management team of Bursaspor, it must be stressed that a club cannot avoid liability for its obligations by changing its management team (see in this regard, CFCB, 14 January 2013, case AC-03/2012, *HNK Hajduk Split*, paragraph 40; CFCB, 26 June 2013, case AC-03/2013, *Panathinaikos FC*, paragraph 88). Similarly, matters such as the ill health of employees and problematic ownership structures are irrelevant when assessing breaches of the CL&FFP Regulations (see in this regard CFCB, 5 June 2014, case AC-01/2014, *FK Crvena Zvezda*, paragraph 141).
37. Accordingly, the CFCB Adjudicatory Chamber determines that Bursaspor has breached Articles 66(1) and 66(6) of the CL&FFP Regulations, as a result of having overdue payables towards employees as at 30 June 2014 and 30 September 2014.

Previous breach of the CL&FFP Regulations

38. The CFCB Adjudicatory Chamber notes that, on 24 February 2012, the UEFA Control and Disciplinary Body (the "CDB") found that Bursaspor had breached Article 65 of the *Club Licensing and Financial Fair Play Regulations – Edition 2010* and a fine of two hundred thousand Euros (€200,000) was imposed on the club, together with the following suspended exclusion from UEFA club competitions:

"Bursaspor (...) is excluded from one UEFA club competition for which it qualifies in the next four years. This exclusion is suspended for a probationary period of three years".

This decision was appealed by UEFA and, on 30 May 2012, the UEFA Appeals Body (the "AB") reduced the fine to fifty thousand Euros (€50,000), made the payment of such fine subject to a probationary period and made the exclusion from UEFA club competitions immediate. The AB decision was appealed by Bursaspor to the Court of Arbitration for Sport (the "CAS") and, on 10 July 2012, CAS decided to annul the AB decision, ruling that Bursaspor would be fined two hundred and fifty thousand Euros (€250,000) and:

"...excluded from one UEFA club competition for which it qualifies in the next four years. This exclusion is suspended for a probationary period of three years"

(the "2012 Decision").

39. Bursaspor contests the competence of the CFCB Adjudicatory Chamber to consider the 2012 Decision when deliberating the present case. The Club contends that only the CDB or the AB would be empowered to do so since they were the competent bodies tasked with adjudicating on the CL&FFP Regulations at the time of the 2012 Decision.
40. This assertion cannot be accepted. As a result of the entry into force of the CL&FFP Regulations and of the *Procedural rules governing the UEFA Club Financial Control Body – Edition 2012* in June 2012, the CFCB was established to replace the Club

Financial Control Panel which immediately ceased to exist (see in this regard CFCB, 31 May 2013, AC-02/2013, *Debreceni VSC*, paragraph 60). The adjudicatory function which was previously exercised by the CDB and the AB was transferred to the CFCB Adjudicatory Chamber which is therefore bound to consider the 2012 Decision.

41. In the 2012 Decision, CAS determined that the exclusion imposed on Bursaspor from UEFA club competitions should be suspended, unless there were further breaches of the CL&FFP Regulations. The facts of the present case demonstrate that the Club has committed further breaches of the CL&FFP Regulations. Both in the present case and in the 2012 Decision, the breaches relate to the “no overdue payables” requirements of the CL&FFP Regulations. In the present case, and even after 30 September 2014, the Club still had a significant amount of overdue payables towards employees.
42. Article 42 of the Procedural Rules provides that cases not provided in such rules shall be “*decided in accordance with the UEFA Disciplinary Regulations*”. Article 20 of the UEFA Disciplinary Regulations – Edition 2014 provides for the suspension of disciplinary measures for a probationary period and at Article 20(3) states “*if a further offence is committed during the probationary period, the competent body, as a rule, orders that the original disciplinary measure be enforced. This may be added to the disciplinary measure imposed for the new offence*”.
43. It follows from the forgoing that, in the present case, the CFCB Adjudicatory Chamber is obliged to consider the 2012 Decision and also to give immediate effect to the suspended exclusion imposed in the 2012 Decision in view of the further breach of the “no overdue payables requirement” (as described in Paragraph 33 of this Decision).

VI – Disciplinary measures

44. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which include 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).

Disciplinary measures imposed on Bursaspor for previous breach of the CL&FFP Regulations

45. In the present case, in view of the suspended exclusion imposed on Bursaspor in 2012 and the fact that the Club has now breached the CL&FFP Regulations once again and within the probationary period set out in in the 2012 Decision, it follows that the 2012 Decision shall come into immediate effect and, consequently, Bursaspor must be excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons).

Disciplinary measures imposed on Bursaspor for breaches of the CL&FFP Regulations in the present case

46. Furthermore, having due regard to the circumstances of the case, and without prejudice to the disciplinary measure set out in Paragraph 45 of this Decision, an exclusion from the next UEFA club competition for which Bursaspor would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons) and a fine of one hundred thousand Euros (€100,000) are appropriate penalties.

47. Nevertheless, Bursaspor should be given a chance to achieve financial stability and, therefore, the exclusion from UEFA club competitions referred to in Paragraph 46 of this Decision as well as half of the amount of the fine referred to in Paragraph 46 of this Decision (i.e. fifty thousand Euros (€50,000)) will be lifted if the Club is able to prove by 31 January 2015 that it has paid the amounts that were identified as overdue payables as at 30 September 2014 (i.e. one million, one hundred and ninety-one thousand Euros (€1,191,000)).
48. Costs of one thousand and five hundred Euros (€1,500) are required to be paid by Bursaspor, in accordance with Article 32(2) of the Procedural Rules.
49. The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 9(c) of this Decision) will no longer be in force upon payment of the immediately payable portion (i.e. fifty thousand Euros (€50,000)) of the fine referred to in Paragraph 46 of this Decision.

PART VII – Operative part

50. The CFCB Adjudicatory Chamber hereby decides:

As a consequence of the 2012 Decision:

1. **The exclusion imposed in the 2012 Decision shall come into immediate effect and Bursaspor is therefore excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons).**

Without prejudice to the above, and as a consequence of the breaches of Articles 66(1) and 66(6) of the CL&FFP Regulations in the present case:

2. **To impose on Bursaspor a further exclusion (i.e. for a different season to the season in which the immediate exclusion referred to in Paragraph 1 of this Operative part applies) from participating in a UEFA club competition for which it would otherwise qualify in the next four (4) seasons (i.e. the 2015/16, 2016/17, 2017/18 and 2018/19 seasons), unless the Club is able to prove by 31 January 2015 that it has paid the amounts that were identified as overdue payables on 30 September 2014 (i.e. one million, one hundred and ninety-one thousand Euros (€1,191,000)).**
3. **To impose a fine of one hundred thousand Euros (€100,000) on Bursaspor.**
4. **Fifty thousand Euros (€50,000) of the amount referred to in Paragraph 3 of this Operative part is suspended and will only fall due if the Club is not able to prove by 31 January 2015 that it has paid the amounts that were identified as overdue payables on 30 September 2014 (i.e. one million, one hundred and ninety-one thousand Euros (€1,191,000)).**
5. **The conservatory measure imposed by the CFCB Investigatory Chamber (as referred to in Paragraph 9(c) of this Decision) will no longer be in force upon payment of the immediately payable portion (i.e. fifty thousand Euros (€50,000)) of the fine referred to in Paragraph 3 of this Operative part.**
6. **Bursaspor is to pay one thousand and five hundred Euros (€1,500) towards the costs of these proceedings.**

7. **The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Bursaspor.**
8. **This Decision is final and shall be notified to:**
- a) **Bursaspor;**
 - b) **the Turkish Football Federation;**
 - c) **the CFCB Investigatory Chamber; and**
 - d) **the UEFA Administration.**
51. 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 appeal to CAS is ten days from the receipt of this Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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