

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-03/2014

Asociatia Fotbal Club Astra

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 Asociatia Fotbal Club Astra (“FC Astra” or the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether FC Astra breached Articles 65 and 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 other football clubs, employees and social/tax authorities 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 Romanian Football Federation (the “RFF”) submitted FC Astra’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 FC Astra indicating total overdue payables of eight hundred and eighty-two thousand Euros (€882,000), such total amount comprising:
 - (a) overdue payables towards other football clubs of three hundred and fifty-three thousand Euros (€353,000);
 - (b) overdue payables towards employees of three hundred and fifty-three thousand Euros (€353,000); and
 - (c) overdue payables towards social/tax authorities of one hundred and seventy-six thousand Euros (€176,000),as at 30 June 2014.
5. FC Astra’s monitoring documentation also indicated that two thousand Euros (€2,000) of the overdue payables referred to in Paragraph 4(b) of this Decision had been paid after 30 June 2014.
6. On 22 August 2014, FC Astra also informed the UEFA Administration that it had paid forty thousand Euros (€40,000) of the overdue payables referred to in Paragraph 4 of this Decision after 15 July 2014.
7. Taking the payments referred to in Paragraphs 5 and 6 of this Decision into account, eight hundred and forty thousand Euros (€840,000) 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 FC Astra’s monitoring documentation. The acting CFCB Chief Investigator confirmed the position regarding FC Astra’s overdue payables as at 30 June 2014 (as referred to in Paragraph 4 of this Decision) and determined that, consequently, FC Astra 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 FC Astra to:

- (a) open an investigation, in accordance with Article 12(2) of the *Procedural rules governing the UEFA Club Financial Control Body* – Edition 2014 (the “Procedural Rules”);
 - (b) require FC Astra 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 RFF (and, in turn, the UEFA Administration) by no later than 15 October 2014; and
 - (c) inform FC Astra 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 RFF submitted FC Astra’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 documentation included self-declarations by FC Astra indicating total overdue payables of one million, four hundred and sixty-six thousand Euros (€1,466,000), such total amount comprising:
- (a) overdue payables towards other football clubs of one hundred and six thousand Euros (€106,000);
 - (b) overdue payables towards employees of six hundred and ninety-five thousand Euros (€695,000); and
 - (c) overdue payables towards social/tax authorities of six hundred and sixty-five thousand Euros (€665,000),
- as at 30 September 2014.
11. FC Astra’s monitoring documentation also indicated that two hundred and fifteen thousand Euros (€215,000) of the overdue payables referred to in Paragraph 10(b) of this Decision had actually been paid after 30 September 2014.
12. On 30 October 2014, FC Astra also informed the UEFA Administration that it had paid a further two hundred and thirty-one thousand Euros (€231,000) of the overdue payables referred to in Paragraph 10(b) of this Decision after 15 October 2014 (in respect of its employee Bruno Miguel). This was actually more than the two hundred and eleven thousand Euros (€211,000) amount disclosed as being due to Bruno Miguel in the Club’s updated monitoring documentation, however the additional twenty thousand Euros (€20,000) appear to be attributable to an amount that arose after the assessment deadlines.
13. Taking the payments referred to in Paragraphs 11 and 12 of this Decision into account, one million and forty thousand Euros (€1,040,000) of the overdue payables referred to in Paragraph 10 of this Decision remained unpaid as at 30 October 2014 (not including the additional amount paid to Bruno Miguel).

14. On 6 November 2014, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of FC Astra. The acting CFCB Chief Investigator confirmed the position regarding FC Astra'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).
15. 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 Procedural Rules and suggested that the following disciplinary measures be imposed on FC Astra:
 - (a) an exclusion from the next UEFA club competition for which FC Astra 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.

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

16. The jurisdiction of the CFCB Adjudicatory Chamber is derived from Article 19(1) of the Procedural Rules, which provides that the CFCB Adjudicatory Chamber has competence to decide on cases referred to it by the CFCB Chief Investigator.
17. On 13 November 2014, the CFCB Chairman informed FC Astra of the opening of the judgment stage (in accordance with Article 19(3) of the Procedural Rules).
18. Pursuant to Article 20(1) of the Procedural Rules, FC Astra was invited to submit its written observations by no later than 24 November 2014.
19. The Club did not make any submission and did not request an oral hearing.
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 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.”

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

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 other football clubs as a result of transfer activities undertaken up to 30 June.*

² *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.*

³ *By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit the transfer payables information, even if there have been no transfers/loans during the relevant period.*

⁴ *The licensee must disclose all transfer activities (including loans) undertaken up to 30 June, irrespective of whether there is an amount outstanding at 30 June. In addition, the licensee must disclose all transfers subject to legal proceedings before a national or international sporting body, arbitration tribunal or state court.*

⁵ *The transfer payables 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) *The 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 at 30 June in respect of each player transfer;*
 - h) *Due date(s) for each unpaid element of the transfer payables; and*
 - i) *Conditional amounts (contingent liabilities) not yet recognised in the balance sheet as of 30 June.*
- ⁶ *The licensee must reconcile the total liability as per the transfer payables table to the figure in the financial statements balance sheet for 'Accounts payable relating to player transfers' (if applicable) or to underlying accounting records.*
- ⁷ *The transfer payables 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.*
- ⁸ *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 towards other football clubs as a result of transfer activities undertaken up to 30 September. Paragraphs 2 to 7 above apply accordingly."*

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

33. Having examined the evidence, in particular the findings of the acting CFCB Chief Investigator and FC Astra’s monitoring documentation, the CFCB Adjudicatory Chamber determines that the Club had overdue payables towards other football clubs of three hundred and fifty-three thousand Euros (€353,000) as at 30 June 2014 and one hundred and six thousand Euros (€106,000) as at 30 September 2014. FC Astra has not provided any explanation justifying the outstanding amounts.

34. The CFCB Adjudicatory Chamber observes that the Club had overdue payables towards employees and social/tax authorities of five hundred and twenty-nine thousand Euros (€529,000) as at 30 June 2014 and one million, three hundred thousand and sixty thousand Euros (€1,360,000) as at 30 September 2014. FC Astra has not provided any explanation justifying the outstanding amounts and the CFCB Adjudicatory Chamber notes that the balance of overdue payables towards employees and social/tax authorities materially increased in just three months.

35. The CFCB Adjudicatory Chamber acknowledges that FC Astra has paid some of the total overdue payables identified as at 30 June 2014 and as at 30 September 2014. However, notwithstanding that such remedial action was indeed necessary, such payments were only made after the assessment deadlines had passed. Furthermore, such payments were small when compared to the overall amounts of overdue payables (as referred to in Paragraphs 4 and 10 of this Decision).

36. Accordingly, the CFCB Adjudicatory Chamber determines that FC Astra has breached Articles 65(1), 65(8), 66(1) and 66(6) of the CL&FFP Regulations, as a result of having overdue payables towards other football clubs, employees and social/tax authorities as at 30 June 2014 and 30 September 2014.

PART VI – Disciplinary Measures

37. 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).
38. FC Astra had overdue payables totalling eight hundred and eighty-two thousand Euros (€882,000) as at 30 June 2014 and one million, four hundred and sixty-six thousand Euros (€1,466,000) as at 30 September 2014. The Club has not provided any explanation in respect of such amounts nor how its financial situation can reasonably be expected to improve in order to bring the Club into compliance with Articles 65 and 66 of the CL&FFP Regulations in the near future. Furthermore, the CFCB Adjudicatory Chamber notes the material increase of these overdue payables in just three months. Such a trend highlights that the Club has not been able to deal with its financial difficulties. This is the kind of situation that the CL&FFP Regulations are designed to address, as stressed in Article 2(2) of the CL&FFP Regulations.
39. Having due regard to the circumstances of the case, an exclusion from the next UEFA club competition for which FC Astra would otherwise qualify in the next three (3) seasons (i.e. the 2015/16, 2016/17 and 2017/18 seasons) and a fine of one hundred thousand Euros (€100,000) are appropriate penalties.
40. Nevertheless, FC Astra should be given a chance to achieve financial stability and, therefore, the exclusion from UEFA club competitions 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, four hundred and sixty-six thousand Euros (€1,466,000)).
41. Costs of one thousand and five hundred Euros (€1,500) are required to be paid by FC Astra, in accordance with Article 32(2) of the Procedural Rules.
42. 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 fine referred to in Paragraph 39 of this Decision.

PART VII – Operative part

43. The CFCB Adjudicatory Chamber hereby decides:
- 1. FC Astra has breached Articles 65(1), 65(8), 66(1) and 66(6) of the CL&FFP Regulations.**
 - 2. To exclude FC Astra from participating in the next UEFA club competition for which it would otherwise qualify in the next three (3) 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 (i.e. one million, four hundred and sixty-six thousand Euros (€1,466,000)).**

3. To impose a fine of one hundred thousand Euros (€100,000) on FC Astra.
 4. 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 fine referred to in Paragraph 3 of this Operative part.
 5. FC Astra is to pay one thousand five hundred (€1,500) 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 FC Astra.
 7. This Decision is final and shall be notified to:
 - a) FC Astra;
 - b) the Romanian Football Federation;
 - c) the CFCB Investigatory Chamber; and
 - d) the UEFA Administration.
44. This Decision may be appealed in writing before the Court of Arbitration for Sport (the "CAS") in accordance with Article 34(2) of the Procedural Rules and Articles 62 and 63 of the *UEFA Statutes*. According to Article 62(3) of the *UEFA Statutes*, the time limit for appeal to CAS is ten days from the receipt of this Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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