

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-06/2014

Panevėžio Futbolo Klubas Ekranas

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 Panevėžio Futbolo Klubas Ekranas (“Ekranas” or the “Club”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether Ekranas breached Articles 54, 56, 65 and 66 of the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2012* (the “CL&FFP Regulations”) because the Club did not comply with the monitoring process and failed to prove that it had no overdue payables towards other football clubs, employees and/or 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. Ekranas was required to submit its completed monitoring documentation (comprising financial information as at 30 June 2014) to the Lithuanian Football Federation (the “LFF”) by 15 July 2014 so that the LFF could in turn submit such monitoring documentation to the UEFA Administration in accordance with this deadline. Ekranas did not comply with such obligation.
5. On 15 July 2014, the LFF informed the UEFA Administration that Ekranas had suggested that its failure to submit its monitoring documentation was due to changes in the Club’s personnel.
6. On 17 July 2014, the LFF informed the UEFA Administration that Ekranas had filed a request to extend the 15 July 2014 deadline to 1 August 2014, again citing difficulties and changes within the club’s administration as the reason for the delay. The LFF told Ekranas that such an extension was not possible.
7. On 21 July 2014, the UEFA Administration contacted Ekranas to remind the Club of its disclosure obligations under the CL&FFP Regulations. Ekranas did not respond to the UEFA Administration, nor did it submit its monitoring documentation to the LFF.
8. On 25 and 26 August, the CFCB Investigatory Chamber met in order to assess the situation of Ekranas. The acting CFCB Chief Investigator confirmed that Ekranas had failed to return its completed monitoring documentation (comprising financial information as at 30 June 2014) in accordance with the deadline set by the UEFA Administration. The acting CFCB Chief Investigator concluded that this omission should be considered as a deliberate attempt to hide overdue payables that existed at 30 June 2014 and, consequently, determined that Ekranas was in breach of “indicator 4” as defined in Article 62(3) of the CL&FFP Regulations.
9. Accordingly, on 18 September 2014, the acting CFCB Chief Investigator contacted Ekranas 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 Ekranas 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 LFF (and, in turn, the UEFA Administration) by no later than 15 October 2014; and

- (c) inform Ekranas 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. On 14 October 2014, Ekranas requested the acting CFCB Chief Investigator to extend the 15 October 2014 deadline to 15 November 2014.
 11. On 15 October 2014, the acting CFCB Chief Investigator informed the Club that the deadline would not be extended. The LFF could not submit Ekranas' monitoring documentation (comprising financial information as at 30 September 2014) to the UEFA Administration on 15 October 2014 because, again, Ekranas did not submit any documentation.
 12. On 16 and 30 October 2014, the UEFA Administration asked the LFF to encourage Ekranas to submit its updated monitoring documentation.
 13. On 5 November 2014, Ekranas informed the UEFA Administration of its inability to complete and submit its updated monitoring documentation (comprising financial information as at 30 September 2014) and reiterated its request for an extension to 15 November 2014.
 14. On 6 November 2014, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of Ekranas. The acting CFCB Chief Investigator confirmed that Ekranas had repeatedly failed to submit its completed monitoring documentation (comprising financial information as at 30 June 2014 and 30 September 2014) in accordance with the deadlines set by the UEFA Administration and thus had failed to prove that it had no overdue payables towards other football clubs, employees and/or social/tax authorities as at 30 June 2014 and 30 September 2014.
 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 the Procedural Rules. The acting CFCB Chief Investigator alleged that Ekranas had breached Article 54(2)(b) of the CL&FFP Regulations as a result of having failed to comply with the monitoring process, Articles 56(a) and 56(b) of the CL&FFP Regulations as a result of having failed to cooperate with both the LFF and the CFCB with regard to the provision of information and Articles 65(1), 65(8), 66(1) and 66(6) of the CL&FFP Regulations as a result of having failed to prove that it had no overdue payables towards other football clubs, employees and/or social/tax authorities as at 30 June 2014 and 30 September 2014.

Further, the acting CFCB Chief Investigator suggested that the following disciplinary measures be imposed by the CFCB Adjudicatory Chamber in respect of such alleged breaches:

- (a) exclusion from the next UEFA club competition for which Ekranas qualifies in the next three seasons (i.e. the 2015/16, 2016/17 and 2017/18 seasons); 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 Ekranas 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, Ekranas was invited to submit its written observations by no later than 24 November 2014.
19. Ekranas made its written submission in accordance with this deadline (the “Observations”).
20. Ekranas requested an oral hearing which was held on 11 December 2014 in accordance with Article 21(1) of the Procedural Rules.
21. 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. Ekranas was represented by its President, Mr. Aušrys Labinas.
22. 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

23. The case concerns alleged contraventions of the CL&FFP Regulations.
24. 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.”*

25. Under Article 54(2) of the CL&FFP Regulations:

“The [monitoring process] consists of the following minimum key steps:

- a) issuing of the monitoring documentation to the licensor and licensee;*
- b) return of the required completed monitoring documentation by the licensee to the licensor;*
- c) assessment and confirmation of the completeness of each licensee’s documents by the licensor;*
- d) submission of the validated documentation by the licensor to the UEFA administration;*
- e) assessment of the documentation by the licensor to the UEFA Club Financial Control Body;*
- f) if appropriate, request for additional information by the UEFA administration or UEFA Club Financial Control Body;*
- g) decision by the UEFA Club Financial Control Body as specified in the relevant provisions of the Procedural rules governing the UEFA Club Financial Control Body.”*

26. 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.”*

27. 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.”

28. 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."*

29. 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.”*

30. 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.”

31. 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.”*

32. 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.”*

33. 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.”

34. 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”.*

35. 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

36. Having examined the evidence, in particular the findings of the CFCB Investigatory Chamber, Ekranas' monitoring documentation and the Observations, the CFCB Adjudicatory Chamber determines that Ekranas has breached Articles 54(2)(b), 56(a), 56(b), 65(1), 65(3), 65(8), 66(1), 66(2) and 66(6) of the CL&FFP Regulations.

Breach of Articles 54(2)(b), 56(a), 56(b), 65(3) and 66(2) of the CL&FFP Regulations

37. The facts of the case show that Ekranas has not complied with Articles 54(2)(b), 56(a) and 56(b) of the CL&FFP Regulations. Indeed, no completed monitoring documentation was submitted to the LFF during the monitoring process.
38. Given that Ekranas failed to submit any monitoring documentation at all, it also follows that the Club has breached Articles 65(3) and 66(2) of the CL&FFP Regulations which require compliance with the deadlines set by the UEFA Administration. These breaches have been admitted by the Club:

"KF Ekranas acknowledges having failed to duly comply with the monitoring process set out by the UEFA CL&FFP Regulations, more in particular the requirement to complete its monitoring documentation with the deadlines set out in aforementioned regulations. In this respect our club wishes to emphasise that it fully acknowledges its responsibility for the lack of compliance."

Accordingly, the CFCB Adjudicatory Chamber is satisfied that Ekranas' breach of Articles 65(3) and 66(2) is established.

39. The CFCB Adjudicatory Chamber wishes, in particular, to draw attention to the following statement made by Ekranas in the Observations as justification for not submitting its monitoring documentation:

"...in our view it was better to submit the monitoring documentation with the correct data rather than filing documentation being incorrect or incomplete by nature."

It must be stressed that compliance with the monitoring requirements set out in the CL&FFP Regulations is mandatory. Clubs are given ample time and opportunity to collate correct and accurate data and to submit such data in a complete form. It is not appropriate for a club to ignore a deadline because it considers that it will be better placed to comply with the requirement at a later date. A failure to submit any information at all during the monitoring process must be viewed as a serious breach of the CL&FFP Regulations. In this case, Ekranas ought to have submitted as much complete and accurate information as it could in accordance with the relevant deadlines.

40. In the Observations, Ekranas states that it finally submitted its monitoring documentation (comprising financial information at both 30 June 2014 and 30 September 2014) to the LFF on 14 November 2014, well after the conclusion of the monitoring process. However, at no point (whether in the Observations, at the hearing or otherwise) has the Club demonstrated that it has complied with all of the "key steps" as identified in Article 54(2) of the CL&FFP Regulations. The Club has only informed the CFCB Adjudicatory Chamber at the hearing that it had overdue payables towards employees and/or social/tax authorities totalling eighteen thousand Euros (€18,000) as at 30 June 2014 and one hundred and thirty-eight thousand Euros (€138,000) as at 30 September 2014.
41. In any event, the CFCB Adjudicatory Chamber considers that submissions of monitoring documentation cannot be accepted if they come so late after the conclusion

of the monitoring process. Both the CFCB Adjudicatory Chamber and the Court of Arbitration for Sport (the “CAS”) have stressed on several occasions that the disclosure obligations under the CL&FFP regulations are essential to assess the financial situation of the clubs which take part in UEFA club competitions (see in this regard CAS, 2012/A/2702, *Györi ETO FC v. UEFA*, paragraph 115). Therefore, disclosures have to be “timely”, otherwise the whole Club Licensing and Financial Fair Play system would be undermined (CFCB, 14 January 2013, case AC-09/2012, *FK Vojvodina Novi Sad*, paragraph 32; CFCB, 26 June 2013, case AC-04/2013, *PAS Giannina*, paragraph 51; CFCB, 5 June 2014, case AC-01/2014, *FK Crvena Zvezda*, paragraph 138). In the present case, the CFCB Adjudicatory Chamber does not consider Ekranas to have made its disclosures in a timely manner.

Breach of Articles 65(1), 65(8), 66(1) and 66(6) of the CL&FFP Regulations

42. Since Ekranas did not submit any monitoring documentation in accordance with the deadlines set by the UEFA Administration, it logically follows that the Club was unable to prove that it had no overdue payables towards other football clubs, employees and/or social/tax authorities as at 30 June 2014 and 30 September 2014. Moreover, according to the Club’s own admission, it had overdue payables at the relevant assessment dates (as described at Paragraph 40 of this Decision). For these reasons, the CFCB Adjudicatory Chamber considers that Ekranas has breached Articles 65(1), 65(8), 66(1) and 66(6) of the CL&FFP Regulations.
43. The CL&FFP Regulations require the existence of overdue payables to be proved or disproved at certain assessment deadlines. As CAS has stated, “[t]he matter of the deadlines has to be considered under the principle of equality of treatment; it is a must to treat all clubs (...) the same way. (...)it is the Clubs’ duty of diligence to respect the deadlines set by the UEFA Rules” (CAS, 2008/A/1579 *Fubalski Zemun v. UEFA*, paragraph 4.5). Thus, if clubs were allowed to present their financial data at individual and inconsistent deadlines throughout the year, then this would run contrary to the principle of equal treatment and also frustrate the underlying objectives of the CL&FFP Regulations which include the aim of introducing “more discipline and rationality in club football finances”. If such behaviour was allowed, there would quite simply be no valid and legitimate system of assessment.

Ekranas’ explanation of its breaches of the CL&FFP Regulations

44. In the Observations, Ekranas argues that it was prevented from submitting its monitoring documentation to the LFF because of the club’s “financially distressing situation”, “lack of skilled personnel” and “limited resources”.
45. In particular, Ekranas states that major problems were caused by the deterioration in the political relationship between the European Union (the “EU”) and Russia. According to the Club, a key club sponsor (with Russian links) decided not to renew a sponsorship arrangement because of such political problems and this in turn had a negative impact on the Club’s finances and ability to retain/hire staff.
46. With regard to Ekranas’ financial position, it must be stressed that it is an established principle that a Club’s lack of financial means cannot be used as a justification for breaching the CL&FFP Regulations (see in this regard CAS 2006/A/110, *PAOK FC v. UEFA*, paragraph 43).
47. The CFCB Adjudicatory Chamber considers that a club’s lack of skilled personnel and resources cannot justify a failure to submit any information at all to the licensor in accordance with the deadlines set by the UEFA Administration. The CFCB

Adjudicatory Chamber recognises that clubs of many different sizes and with varying levels of staff and resources are subject to the CL&FFP Regulations, nevertheless the overwhelming majority of such clubs comply with the monitoring requirements without issue. It would be contrary to the principle of equal treatment to allow Ekranas to behave differently because of operational and staffing issues.

48. The CFCB Adjudicatory Chamber is also not convinced by Ekranas' suggestion that the political problems arising between the EU and Russia have contributed to its breach of the CL&FFP Regulations. Whilst the CFCB Adjudicatory Chamber is entitled to *"take into account extraordinary events or circumstances beyond the control of the club which are considered as a case of force majeure"* under Annex XI(1)(f) of the CL&FFP Regulations, the CFCB Adjudicatory Chamber stresses that according to CAS force majeure *"implies an objective, rather than a personal, impediment, beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible. In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation"* (CAS 2006/A/1110 PAOK FC v. UEFA, paragraph 41).
49. Further, as CAS has also stated, *"the mere reference to a general situation of troubles in a concrete place is not enough to justify a breach on the basis of exceptional circumstances as the force majeure. The party asking for its application shall duly identify and accredit which specific and precise fact prevented it to perform a certain activity."* (CAS 2008/A/1621 Iraqi Football Association v. FIFA & Qatar Football Association, paragraph 22).

Overall position regarding the factual and legal appreciation

50. The explanations put forward by the Club in the Observations do not justify the breaches of the Regulations outlined above, nor do they legally absolve the Club of responsibility for them. Accordingly, the CFCB Adjudicatory Chamber determines that Ekranas has breached Articles 54(2)(b), 56(a), 56(b), 65(1), 65(3), 65(8), 66(1), 66(2) and 66(6) of the CL&FFP Regulations.

PART VI – Disciplinary Measures

51. In the Observations, Ekranas puts forward several arguments relating to the case law of the CFCB Adjudicatory Chamber, the proportionality of the disciplinary measures suggested by the CFCB Chief Investigator (as set out in Paragraph 15 of this Decision) and the validity of the conservatory measure referred to in Paragraph 9(c) of this Decision.

Jurisprudence

52. Ekranas argues that only clubs that have breached the "licensing requirements" of the CL&FFP Regulations (i.e. Articles 4 to 52) can face "immediate" exclusion from UEFA club competitions and not clubs that have breached the "monitoring requirements" of the CL&FFP Regulations (i.e. Articles 53 to 68).
53. In order to respond to this argument, it is necessary to first explain the difference between the two sets of requirements. To be able to participate in the UEFA club competitions, a club must first obtain a licence issued by the competent national body (in Ekranas' case, this is the LFF). Accordingly, such requirements are assessed in advance of the coming UEFA club competition season. Where a club is not granted a licence, it cannot compete in the approaching UEFA club competitions (and, for this

reason, the licensing requirements are often referred to as forming part of the “admission procedure”). After a club has been granted a licence, it is assessed throughout the UEFA club competition season to ensure that it complies with the monitoring requirements set out in the CL&FFP Regulations. These provisions include the “no overdue payables requirements” pursuant to which clubs must prove that they have no overdue payables towards football clubs, employees and/or social/tax authorities at certain defined reporting dates throughout the football season. Where a club does not comply with the monitoring requirements, it can face sanctions which impact on its eligibility to participate in future UEFA club competitions.

54. Contrary to Ekranas’ suggestion, there is nothing in the previous case law to suggest that a distinction must be drawn between the two sets of requirements when determining the “severity of the sanction” to be applied, nor is there anything to suggest that an immediate, or “automatic”, exclusion cannot be imposed on a club which has breached the monitoring requirements. Indeed, there are several recent cases where clubs have been found to have breached Articles 65 and 66 of the CL&FFP Regulations and have been immediately excluded (see in this regard CFCB, 14 January 2013, case AC-01/2012, *Malaga CF*; CFCB, 5 June 2014, case AC-01/2014, *FK Crvena Zvezda*).

Proportionality

55. Ekranas argues that the disciplinary measures suggested by the acting CFCB Chief Investigator (as set out in Paragraph 15 of this Decision) are disproportionate by comparison with the disciplinary measures imposed on other clubs for “similar breaches” of the CL&FFP Regulations.
56. Generally speaking, a wide range of disciplinary measures may be imposed on clubs under Article 29(1) of the Procedural Rules. The CFCB Adjudicatory Chamber therefore has flexibility to impose a sanction which properly meets the seriousness of the relevant contravention(s), taking into account the purposes of the CL&FFP Regulations.
57. In cases such as this, it is particularly important to note 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). Articles 65 and 66 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.
58. The disciplinary measures imposed must also be fair to those clubs who participate in UEFA competitions in full compliance with the CL&FFP Regulations. In this regard, the requirement for proportionality and consistency with other decisions on similar facts and circumstances is always applied, as reflected in the CAS decision in *Bursaspor* (CAS 2012/A/2821 *Bursaspor Kulübü Derneği v. UEFA*, paragraph 144).
59. In *Bursaspor*, CAS recognised that the CL&FFP Regulations do not provide for standard sanctions (see Paragraph 143). Moreover, in *Gyori*, CAS underlined that the sanctions regime in respect of club licensing is established within the discretionary powers of UEFA based on its assessment of the facts and circumstances of each case (see CAS 2012/A/2702 *Györi ETO FC v. UEFA*, paragraph 160). Finally, in *Besiktas*, CAS held that simply because a different disciplinary measure might have been

imposed in another case, that would not make the disciplinary measure selected in a case disproportionate (CAS 2012/A/2824 *Beşiktaş JK v. UEFA*, paragraph 127).

60. Under the Procedural Rules, it is for the CFCB Adjudicatory Chamber to decide on the appropriate disciplinary measures to impose, taking into account the circumstances of the particular case. It needs to be borne in mind that the Club Licensing and Financial Fair Play regime is a developing area, so that the requirement for disciplinary measures to provide a real incentive to ensure compliance may require the type and seriousness of disciplinary measures to change over time.

Conservatory measure

61. Finally, Ekranas argues that the imposition by the CFCB Investigatory Chamber of the conservatory measure referred to in Paragraph 9(c) of this Decision lacked “regulatory basis” and also that such measure had been imposed for longer than is allowed under the *UEFA Disciplinary Regulations – Edition 2014* (the “Disciplinary Regulations”). The Club therefore considers that the conservatory measure should be lifted with immediate effect.
62. The very nature of conservatory measures is to conserve or protect the position, so as not to prejudice any future disciplinary measure or judgment (see in this regard, CAS 2011/O/2574, *UEFA v. Olympique des Alpes SA/FC Sion*, paragraph 208). Given the short time frame between the imposition of such conservatory measures (in the present case, 18 September 2014) and the issuing of a final decision (in the present case, in December 2014), such measures are seldom in force for a significant period of time. In this sense, they represent both a proportional and equitable means of maintaining the status quo.
63. Ekranas argue that this creates legal uncertainty. However, the reality is quite the opposite. For clubs in financial difficulty, there would be an evident risk any fine imposed would not be paid. This would be contrary to the principle of equal treatment, since some clubs might escape without paying their fines. It is therefore appropriate in circumstances where clubs are in financial difficulties and/or where no financial information is available (as in the present case) to withhold revenues in order to ensure that any fine can be honoured.
64. Ekranas’ reference to the time limits for provisional measures set out in the Disciplinary Regulations is irrelevant since such regulations do not apply to CFCB proceedings. In this regard, we refer to Article 2(1) of the Disciplinary Regulations which states that:

“These regulations apply to any breach of UEFA’s Statutes, regulations, directives or decisions, with the exception of any breach of the UEFA Club Licensing and Financial Fair Play Regulations which may be penalised by the Club Financial Control Body in accordance with the Procedural rules governing the UEFA Club Financial Control Body.”

65. The fact that the acting CFCB Chief Investigator did not impose any time-limit on a conservatory measure, does not make this a case “not provided for in these rules” that would justify the application of Article 42 of the Procedural Rules. This provision specifically targets “unforeseen cases” (i.e. matters that are not covered by any provision of the Procedural Rules). The imposition of conservatory measures in CFCB cases is specifically provided for in the Procedural Rules, at Article 41. It follows that this Article grants full discretion to the CFCB to impose, and establish the duration of, the measures in question.

66. On this basis, the imposition of the conservatory measure referred to in Paragraph 9(c) did not “lack regulatory basis”.

Overall position regarding disciplinary measures

67. Given that Ekranas did, belatedly, submit its monitoring documentation to the LFF, the CFCB Adjudicatory Chamber is prepared to give the benefit of the doubt to the Club and accept that the Club did not deliberately or dishonestly seek to hide relevant information with regard to the existence of overdue payables.
68. Having due regard to the circumstances of the case and the seriousness of the breach, the CFCB Adjudicatory Chamber considers an exclusion from the next UEFA club competition for which Ekranas qualifies in the next two (2) seasons (i.e. the 2015/16 and 2016/17 seasons) and a fine of fifteen thousand Euros (€15,000) to be appropriate penalties.
69. Costs of three thousand Euros (€3,000) are required to be paid by Ekranas, in accordance with Article 32(2) of the Procedural Rules.
70. 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 68 of this Decision.

PART VII – Operative part

71. The CFCB Adjudicatory Chamber hereby decides:
1. **Ekranas has breached Articles 54(2)(b), 56(a), 56(b), 65(1), 65(3), 65(8), 66(1), 66(2) and 66(6) of the CL&FFP Regulations.**
 2. **To exclude Ekranas from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. the 2015/16 and 2016/17) seasons.**
 3. **To impose a fine of fifteen thousand Euros (€15,000) on Ekranas.**
 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. **Ekranas is to pay three thousand Euros (€3,000) towards the costs of these proceedings.**
 6. **The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Ekranas.**
 7. **This Decision is final and shall be notified to:**
 - a) **Ekranas;**
 - b) **the Lithuanian Football Federation;**
 - c) **the CFCB Investigatory Chamber; and**

d) the UEFA Administration.

72. 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 appeal to CAS is ten days from the receipt of the reasoned Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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