

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-01/2014

FK Crvena Zvezda

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, 5th June 2014

PART I – Introduction

1. On 10 April 2014, the acting Chief Investigator of the UEFA Club Financial Control Body (the “CFCB”) referred the case of FK Crvena Zvezda (“Red Star”) to the CFCB Adjudicatory Chamber.
2. In the present Decision, the CFCB Adjudicatory Chamber considers, *inter alia*, whether Red Star 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 and employees as at 30 June 2013 and 30 September 2013.
3. Unless otherwise stated, all figures referred to in this Decision have been rounded up or down (as the case may be) to the nearest thousand.

PART II – Reference by the CFCB Chief Investigator

4. The Football Association of Serbia (the “FSS”) submitted Red Star’s completed monitoring documentation (comprising financial information as at 30 June 2013) in accordance with the 15 July 2013 deadline set by the UEFA Administration.
5. This monitoring documentation included self-declarations by Red Star indicating overdue payables towards another football club (namely FK Rad) of seven hundred and eight thousand Euros (€708,000) as at 30 June 2013 (in respect of the player Milivojevic).
6. Red Star’s monitoring documentation also indicated that the club had paid seven thousand Euros (€7,000) of this overdue amount after 30 June 2013.
7. In addition, the monitoring documentation indicated that Red Star had:
 - (a) deferred overdue payables towards other football clubs of six hundred and fifty two thousand Euros (€652,000);
 - (b) disputed overdue payables towards other football clubs of seven hundred and sixty four thousand Euros (€764,000);
 - (c) deferred overdue payables towards employees of five million, sixty four thousand Euros (€5,064,000);
 - (d) disputed overdue payables towards employees of four hundred and fifty five thousand Euros (€455,000); and
 - (e) deferred overdue payables towards social/tax authorities of two million, four hundred and eighty five thousand Euros (€2,485,000),as at 30 June 2013.
8. On 5 August 2013, Red Star confirmed the accuracy of these deferred and disputed amounts at the request of the UEFA Administration.
9. On 9 August 2013, the CFCB Investigatory Chamber met in order to assess Red Star’s monitoring documentation. The acting CFCB Chief Investigator confirmed the position regarding Red Star’s overdue payables as at 30 June 2013 (as referred to in

Paragraph 5 of this Decision) and determined that, consequently, Red Star was in breach of “indicator 4” (as defined in Article 62(3) of the CL&FFP Regulations).

10. Accordingly, on 21 August 2013, the acting CFCB Chief Investigator asked Red Star (in accordance with Articles 65(8) and 66(6) of the CL&FFP Regulations) to submit updated monitoring documentation (comprising financial information as at 30 September 2013) in order to prove that Red Star had no overdue payables towards other football clubs, employees and/or social/tax authorities as at 30 September 2013, such update to be submitted to the FSS (and, in turn, the UEFA Administration) by no later than 15 October 2013.
11. On 21 August 2013, Red Star informed the UEFA Administration that the self-declarations shown in its monitoring documentation were incorrect and the overdue payables as at 30 June 2013 disclosed in this documentation (as referred to in Paragraph 5 of this Decision) had actually been deferred. On 22 August 2013, Red Star provided the UEFA Administration with a copy of a deferral agreement dated 28 March 2013 as evidence of such deferral (the “Deferral Agreement”). Under the Deferral Agreement, the new final date for payment of the relevant amounts was 19 July 2013. The Deferral Agreement was signed by Red Star and the relevant club (FK Rad) and concerns the transfer of three players (Savic, Milivojevic and Pantic) for a total amount of one million, one hundred and sixty five thousand Euros (€1,165,000). Red Star also provided supporting documents describing the payments that it had made to FK Rad since the date of the Deferral Agreement (i.e. a total amount of six hundred and four thousand Euros (€604,000) comprising the following: a payment of one hundred and ten thousand Euros (€110,000) on 31 May 2013, a payment of one hundred thousand Euros (€100,000) on 3 July 2013 and payments totalling three hundred and ninety four thousand Euros (€394,000) on 2 August 2013).
12. On 16 October 2013, and therefore after the deadline by which Red Star was required to submit its updated monitoring documentation (comprising financial information as at 30 September 2013), Red Star submitted the relevant monitoring documentation to the FSS (and, in turn, the UEFA Administration).
13. This monitoring documentation included self-declarations by Red Star indicating overdue payables towards another football club of forty thousand Euros (€40,000) as at 30 September 2013.
14. Red Star’s updated monitoring documentation also indicated that it had paid this amount to the relevant football club after 30 September 2013.
15. In addition, the updated monitoring documentation indicated that Red Star had:
 - (a) deferred overdue payables towards other football clubs of eight hundred and eighty seven thousand Euros (€887,000);
 - (b) disputed overdue payables towards other football clubs of one million, eight hundred and twenty five thousand Euros (€1,825,000);
 - (c) deferred overdue payables towards employees of one million, nine hundred and eighty one thousand Euros (€1,981,000);
 - (d) disputed overdue payables towards employees of one million, three hundred and seventy five thousand Euros (€1,375,000); and

- (e) deferred overdue payables towards social/tax authorities of two million, four hundred and fifty seven thousand Euros (€2,457,000),

as at 30 September 2013.

16. On 11 November 2013, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of Red Star and determined that the club should be subject to a compliance audit in order to verify the accuracy and completeness of its updated monitoring documentation.
17. On 21 November 2013, the CFCB Investigatory Chamber notified Red Star and the FSS that such compliance audit would be carried out by independent auditors from PricewaterhouseCoopers ("PwC").
18. On 27 January 2014, the UEFA Administration informed Red Star of the procedures to be followed in the compliance audit and the information/documentation that had to be made available to PwC in order to validate the various deferred and disputed amounts indicated in Red Star's updated monitoring documentation.
19. From 10 to 12 February 2014, PwC performed the compliance audit at the premises of Red Star under the supervision of the UEFA Administration.
20. On 12 February 2014, Red Star signed-off on the accuracy of PwC's audit findings.
21. On 20 February 2013, PwC issued its 'No overdue payables assessment' report based on the audit findings (the "Audit Report"). A copy of the Audit Report was sent to Red Star.
22. The Audit Report noted, *inter alia*, the following matters:
 - (a) the full amount identified by Red Star as deferred overdue payables towards other football clubs as at 30 September 2013 (as referred to in Paragraph 7(a) of this Decision) was confirmed and supported by valid deferral agreements;
 - (b) out of the total amount identified by Red Star as disputed overdue payables towards other football clubs as at 30 September 2013 (as referred to in Paragraph 7(b) of this Decision), an amount of one million, sixty one thousand Euros (€1,061,000) applicable to the transfer of two players (Milivojevic and Pantic) from FK Rad was not subject to any claim or proceedings with a competent authority as at 30 September 2013. In fact, FK Rad had lodged two claims against Red Star on 27 January 2014 before the Arbitration Commission of the Serbian Super League in order to recover the overdue amounts relating to the two transfers. Furthermore, FK Rad had also claimed an additional overdue amount of nine hundred and eighteen thousand Euros (€918,000) from Red Star as a result of a sell-on clause in the Milivojevic transfer agreement (the player had subsequently been transferred to RSC Anderlecht in July 2013 thereby activating such clause);
 - (c) out of the amount identified by Red Star as deferred overdue payables towards employees as at 30 September 2013 (as referred to in Paragraph 7(c) of this Decision), an amount of one hundred and fifteen thousand Euros (€115,000) in respect of Vesovic, Petkovic, Zdenak, Sa Pinto and Ribeiro was not supported by valid deferral agreements. Additionally, the deferral agreement with coach Prosinecki was understated by twenty nine thousand Euros (€29,000);

- (d) out of the total amount identified by Red Star as disputed overdue payables towards employees as at 30 September 2013 (as referred to in Paragraph 7(d) of this Decision), an amount of thirty one thousand Euros (€31,000) in respect of one player (Mladenovic) was not subject to any claim or proceedings with a competent authority as at 30 September 2013. In fact, the player lodged a claim against Red Star on 1 October 2013 before the Arbitration Commission of the Serbian Super League to recover the overdue amount; and
 - (e) the full amount identified by Red Star as deferred overdue payables towards social/tax authorities as at 30 September 2013 (as referred to in Paragraph 7(e) of this Decision) was confirmed and supported by valid deferral agreements.
23. On 26 February 2014, Red Star provided its comments on the Audit Report. Regarding the transfers of Milivojevic and Pantic from FK Rad, Red Star stated that it had sent a letter to FK Rad in order to request invoices for the relevant amounts. This letter is dated 29 September 2013, however, there is no proof that it was actually sent or that FK Rad received the document.
24. On 14 March 2014, Red Star informed the UEFA Administration that the following payments had been made after the compliance audit had taken place in February 2014:
- (a) two hundred and twelve thousand Euros (€212,000) of the total amount identified by Red Star as deferred overdue payables towards football clubs as at 30 September 2013 (as referred to in Paragraph 15(a) of this Decision);
 - (b) fifty six thousand Euros (€56,000) of the total amount identified by Red Star as deferred overdue payables towards employees as at 30 September 2013 (as referred to in Paragraph 15(c) of this Decision); and
 - (c) one hundred and eighty seven thousand Euros (€187,000) of the total amount identified by Red Star as disputed overdue payables towards employees as at 30 September 2013 (as referred to in Paragraph 15(d) of this Decision).
25. On 26 March 2014, the CFCB Investigatory Chamber met in order to assess the overall overdue payables position of Red Star. The acting CFCB Chief Investigator decided that Red Star had the following overdue payables:
- (a) overdue payables towards other football clubs of seven hundred and eight thousand Euros (€708,000) as at 30 June 2013, such amount having been disclosed by Red Star in its monitoring documentation (as referred to in Paragraph 5 of this Decision);
 - (b) total overdue payables towards other football clubs of one million, one hundred and one thousand Euros (€1,101,000) as at 30 September 2013, such total amount comprising:
 - (i) forty thousand Euros (€40,000), such amount having been disclosed by Red Star in its updated monitoring documentation (as referred to in Paragraph 13 of this Decision); and
 - (ii) one million and sixty one thousand Euros (€1,061,000), such amount having been incorrectly identified as being in dispute by Red Star (as described in Paragraph 15(b) of this Decision); and

- (c) total overdue payables towards employees of one hundred and seventy five thousand Euros (€175,000) as at 30 September 2013, such total amount comprising:
 - (i) one hundred and forty four thousand Euros (€144,000), such amount having been incorrectly identified as being deferred by Red Star (as referred to in Paragraph 15(c) of this Decision); and
 - (ii) thirty one thousand Euros (€31,000), such amount having been incorrectly identified as being in dispute by Red Star (as referred to in Paragraph 15(d) of this Decision).
26. Based on the above findings, on 10 April 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 governing the UEFA Club Financial Control Body – Edition 2014* (the “Procedural Rules”) and suggested that the following disciplinary measures be imposed on Red Star by the CFCB Adjudicatory Chamber in respect of Red Star’s alleged breaches of Articles 65 and 65 of the CL&FFP Regulations as a result of having overdue payables towards other football clubs as at 30 June 2013 (as described in Paragraph 5 of this Decision), overdue payables towards other football clubs and employees as at 30 September 2013 (as described in Paragraph 25 of this Decision), the late submission of completed monitoring documentation (as described in Paragraphs 11 and 12 of this Decision) and the submission of incorrect and inaccurate financial information (as described in Paragraphs 25(b)(ii) and 25(c) of this Decision):
- (a) exclusion from the next UEFA club competition for which Red Star qualifies in the next three seasons (i.e. the 2014/15, 2015/16 and 2016/17 seasons);
 - (b) exclusion from the second UEFA club competition for which Red Star qualifies in the next three seasons (i.e. the 2014/15, 2015/16 and 2016/17 seasons), such additional exclusion to be suspended for a probationary period of three (3) years;
 - (c) a fine of one hundred thousand Euros (€100,000); and
 - (d) an additional fine of one hundred thousand Euros (€100,000), to be suspended for a probationary period of three (3) years.

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

- 27. 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.
- 28. On 11 April 2014, the CFCB Chairman informed Red Star of the opening of the judgment stage (in accordance with Article 19(3) of the Procedural Rules).
- 29. Pursuant to Article 20(1) of the Procedural Rules, Red Star was invited to submit its written observations by no later than 23 April 2014.
- 30. Red Star made its written submission in accordance with this deadline. Its submission comprised the club’s written observations and also certain supporting documents (the “Observations”).

31. Red Star requested an oral hearing which was held on 6 May 2014 in accordance with Article 21(1) of the Procedural Rules
32. The members of the CFCB Adjudicatory Chamber convened on 6 May 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. Red Star was represented by Dr. Miodrag Zečević, General Secretary; Mr. Stefan Pantović, Deputy General Secretary and Mr. Boris Bogdanović, Legal Adviser. Mr Zoran Lakovic, General Secretary of the FSS, was also in attendance as an observer.
33. 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

34. The case concerns alleged contraventions of the CL&FFP Regulations.
35. The CL&FFP Regulations establish a club licensing system for UEFA club competitions and are (inter alia) 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.”*

36. 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.”*

37. 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.”

38. 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.”*

39. 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.”*

40. 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.”

41. 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.”*

42. 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.”*

43. 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.”

44. 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”.*
45. 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

46. Having examined the evidence (in particular the findings of the CFCB Investigatory Chamber, Red Star’s monitoring documentation, the Audit Report, and the Observations), the CFCB Adjudicatory Chamber dismisses Red Star’s alleged breach of Article 65(1) of the CL&FFP Regulations, but determines that Red Star has breached Articles 56(c), 65(3), 65(8), 66(1), 66(2) and 66(6) of the CL&FFP Regulations.

Alleged breach of Article 65(1) of the CL&FFP Regulations

47. In its Observations, Red Star argues that it did not have any overdue payables as at 30 June 2013 because of the Deferral Agreement. On this basis, the club suggests that it was not in breach of “indicator 4” (as set out in Article 62(3)(iv) of the CL&FFP Regulations) and therefore should not have had to submit any updated monitoring documentation (as at 30 September 2013) to the UEFA Administration. On these grounds, Red Star questions the validity of any breaches of the Regulations identified by the acting CFCB Chief Investigator as a consequence of its review of such updated monitoring documentation.
48. With regard to the Deferral Agreement, the CFCB Adjudicatory Chamber stresses that there is no provision in the CL&FFP Regulations that prevents a club from correcting or adding to the information that it submits as at 30 June (even if subsequent disclosures contradict an earlier position). In fact, Article 56(c) of the CL&FFP Regulations requires clubs to cooperate and “*promptly*” notify the licensor about any changes to their information. Similarly, there is no provision in the CL&FFP Regulations which allows the CFCB Adjudicatory Chamber to exclude relevant evidence from its considerations.
49. However, the CFCB Adjudicatory Chamber considers that on the evidence submitted it is not proved that the relevant amounts owed to FK Rad in respect of Milivojevic, Pantic and Savic were overdue as at 30 June 2013. Accordingly, it cannot be concluded that Red Star was in breach of Article 65(1) of the CL&FFP Regulations.
50. Notwithstanding the foregoing, the CFCB Adjudicatory Chamber does not accept Red Star’s arguments contesting the validity of the acting CFCB Chief Investigator’s decision to request updated monitoring documentation (as at 30 September 2013) and the breaches of the CL&FFP Regulations identified as a consequence of the review of this documentation.

51. The CFCB Adjudicatory Chamber notes that Red Star does not contest that the Deferral Agreement was only submitted to the UEFA Administration after the decision to request updated monitoring documentation had already been taken. It cannot be argued that the acting CFCB Chief Investigator was wrong to identify a breach of “indicator 4” at the assessment date because all evidence (notably the club’s own submissions) pointed to the club having overdue payables as at 30 June 2013.
52. The CFCB Adjudicatory Chamber refers in this respect to Articles 65(8) and 66(6) of the CL&FFP Regulations which are explicit in providing that where a club has breached “indicator 4” then the further requirement to prove the absence of overdue payables as at 30 September is imposed. The requirement is not triggered by proof that there are actually overdue payables as at 30 June, but by reference to the breach of an “indicator”.
53. The CFCB Adjudicatory Chamber observes that Red Star agreed to submit its updated monitoring documentation in October 2013 without raising any dispute as to the requirement to do so. Once submitted that information must be considered by the UEFA administration. Indeed, the whole monitoring process is reliant on self-declaration by the clubs. This is evidence of the trust that UEFA places in the clubs and national associations, but it must also be acknowledged that this reliance on information submitted by clubs carries with it a great responsibility for clubs to act openly and accurately with regard to their disclosures.
54. The CFCB Adjudicatory Chamber considers it unreasonable to suggest that the CFCB should ignore potential breaches of the CL&FFP Regulations once evidence has been brought to its attention (particularly, when it has been willingly provided by the clubs themselves). Such an approach would be open to abuse and run contrary to the underlying principles of the CL&FFP Regulations.
55. In any event, even if Red Star had not triggered “indicator 4” as at 30 June 2013, the acting CFCB Chief Investigator could still have requested to see updated monitoring documentation under the CL&FFP Regulations. In particular, Article 54(2)(f) of the CL&FFP Regulations provides that additional information may be requested “where appropriate”. Such a request would almost certainly have been appropriate in this case given the large amounts that Red Star disclosed as being deferred or in dispute as at 30 June 2013 (as referred to in Paragraph 7 of this Decision). Even in the absence of overdue payables, such large amounts of deferred and disputed overdue payables would have been concerning.
56. Furthermore, it is clear to the CFCB Adjudicatory Chamber that Red Star did, in fact, have other overdue payables as at 30 June 2013 that are unrelated to the various FK Rad transfers. Details of these overdue payables are set out below in the CFCB Adjudicatory Chamber’s analysis of Red Star’s breach of Article 66(1) of the CL&FFP Regulations. The existence of such overdue payables means that, had Red Star’s disclosures in its monitoring documentation (as at 30 June 2013) been accurate and correct, “indicator 4” would have been triggered regardless of whether the amounts referred to in the Deferral Agreement are taken into consideration.

Breach of Article 66(1) of the CL&FFP Regulations

57. Having now had the opportunity to consider information which came to light following the submission of Red Star’s monitoring documentation (as at 30 June 2013), in particular, the Audit Report, Red Star’s updated monitoring documentation (as at 30 September 2013) and the Observations, the CFCB Adjudicatory Chamber concludes

that Red Star actually had overdue payables towards employees totalling at least one hundred and twenty nine thousand Euros (€129,000) as at 30 June 2013.

58. Such overdue payables comprised: (a) thirty eight thousand Euros (€38,000) owed to Vesovic; (b) fifteen thousand Euros (€15,000) owed to Sa Pinto; (c) sixty three thousand Euros (€63,000) owed to Petkovic; (d) ten thousand Euros (€10,000) owed to Zdenak; and (e) three thousand Euros (€3,000) owed to Ribeiro.

With regard to the thirty eight thousand Euros (€38,000) owed to Vesovic:

59. In its monitoring documentation (as at 30 June 2013), Red Star stated that this payable had been deferred. However, having analysed the club's updated monitoring documentation (as at 30 September 2013) and the Observations, it is clear that this was incorrect.
60. Indeed, in its updated monitoring documentation (as at 30 September 2013), Red Star stated that a payable of seventy five thousand Euros (€75,000) in respect of Vesovic had been deferred until 31 December 2013. However, in the Observations, the club suggests that this was a mistake and instead claims that the amount was actually in dispute. As evidence of such dispute, Red Star provided a copy of a decision of the Arbitration Commission of the Serbian Super League dated 16 December 2013 (the "Vesovic Decision"). The CFCB Adjudicatory Chamber notes that the proceedings in question were initiated by Vesovic on 11 June 2013 and relate to the player's request that his contract be terminated because he was not getting paid.
61. Under Paragraph 2(d) of Annex VIII of the CL&FFP Regulations, for the payable to be considered in dispute, Red Star must demonstrate to "*the reasonable satisfaction*" of the CFCB Adjudicatory Chamber that it "*has established reasons for contesting the claim or proceedings which have been opened*". However, if the CFCB Adjudicatory Chamber considers "*the reasons for contesting the claim or proceedings*" to be "*manifestly unfounded*", the amount will still be considered to be an overdue payable.
62. Based on the Vesovic Decision, there is no question that Red Star owed Vesovic various amounts under the employment contract (including salary payments, appearance bonuses and rent allowances). In this regard, the CFCB Adjudicatory Chamber underlines that the Vesovic Decision states that "*it is indisputable that FC "Red Star" was in default regarding payment of earnings and was in default regarding payment of matured instalments....*" and also contains various references to the fact that Red Star does not dispute such payment obligations. It is therefore unclear why Red Star decided not to pay Vesovic and the club has provided no evidence as to why this position was justified. The Vesovic Decision only suggests minor counter-claims from Red Star with regard to the quantum of certain amounts owed to Vesovic.
63. Accordingly, the CFCB Adjudicatory Chamber considers that Red Star's reasons for contesting the claim were manifestly unfounded and the amounts owed to Vesovic as at 30 September 2013 should not be considered as being in dispute under the CL&FFP Regulations. By extension, and having regard to the start date of the Vesovic proceedings, it is clear that the amounts owed to Vesovic had not been deferred as at 30 June 2013 (as initially suggested by the club) and were, in fact, subject to the same proceedings at that date. As a result, the CFCB Adjudicatory Chamber does not consider the amounts owed to Vesovic to have been validly in dispute under the CL&FFP Regulations as at 30 June 2013.
64. Based on the Vesovic Decision, it appears that approximately eighty eight thousand Euros (€88,000) was owed to Vesovic as at 11 June 2013. However, since the

Vesovic Decision does not include a full break down of how such amounts were calculated, the CFCB Adjudicatory Chamber decides to give the benefit of the doubt to Red Star and only classify the thirty eight thousand Euros (€38,000) initially identified by the club in its monitoring documentation (as at 30 June 2013) as having actually been overdue as at 30 June 2013.

With regard to the fifteen thousand Euros (€15,000) owed to Sa Pinto:

65. The CFCB Adjudicatory Chamber observes that this amount was not referred to in Red Star's monitoring documentation (as at 30 June 2013). However, a letter provided by the club in its Observations states that Sa Pinto's employment contract was terminated on 19 June 2013 and payment of this amount was required within five (5) days of such termination.
66. Furthermore, Red Star's updated monitoring documentation (as at 30 September 2013) indicates that this amount was still unpaid as at 30 September 2013 (as discussed in Paragraphs 108 to 110 below).
67. This amount was therefore clearly an overdue payable as at 30 June 2013.

With regard to the sixty three thousand Euros (€63,000) owed to Petkovic:

68. In its monitoring documentation (as at 30 June 2013), Red Star stated that this amount had been deferred until 1 January 2014. However, having analysed the club's updated monitoring documentation (as at 30 September 2013) and the Observations, the CFCB Adjudicatory Chamber considers that this was incorrect.
69. In its updated monitoring documentation (as at 30 September), Red Star stated that a payable of twelve thousand Euros (€12,000) in respect of Petkovic had been deferred. In its Observations, Red Star attempts to rely on an oral agreement to evidence the deferral of the amount owed to Petkovic (as at 30 September 2013).
70. Under Paragraph 2(b) of Annex VIII of the CL&FFP Regulations, for the payable to be considered as deferred, Red Star must demonstrate that it "*has concluded an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline*" (emphasis added). Oral agreements therefore do not satisfy the requirements of the CL&FFP Regulations, meaning that the amount in question must be considered an overdue payable as at 30 September 2013.
71. Given the club's self-declaration in its monitoring documentation (as at 30 June 2013) and the absence of any written evidence, it is clear that the club was also relying on the same oral agreement with Petkovic as evidence of deferral as at 30 June 2013. For this reason, the sixty three thousand Euros (€63,000) identified by the club in its monitoring documentation (as at 30 June 2013) as deferred was, in fact, an overdue payable as at 30 June 2013.

With regard to the ten thousand Euros (€10,000) owed to Zdenak:

72. In its monitoring documentation (as at 30 June 2013), Red Star stated that this amount had been deferred until 1 January 2014. However, having analysed the club's updated monitoring documentation (as at 30 September 2013) and the Observations, the CFCB Adjudicatory Chamber considers that this was incorrect.
73. In its updated monitoring documentation (as at 30 September), Red Star stated that a payable of ten thousand Euros (€10,000) in respect of Zdenak had been deferred. In

the Observations, the club attempts to rely on an oral agreement and a declaration signed by Zdenak's agent to evidence the deferral of this amount. The CFCB Adjudicatory Chamber refers to the position described in Paragraph 70 of this Decision with regard to the inadmissibility of oral agreements as evidence of valid deferral under the CL&FFP Regulations.

74. With regard to the declaration, the CFCB Adjudicatory Chamber observes that the document was only executed on 16 April 2014 (i.e. long after the relevant deadlines). In any event, the document simply declares the existence of an oral agreement and is not itself a written deferral agreement under the CL&FFP Regulations. Further, the document is only signed by an agent and is not an agreement between Red Star and Zdenak.
75. Given the club's self-declaration in its monitoring documentation (as at 30 June 2013) and the absence of any valid written evidence, it is clear that the club was also relying on the same oral agreement with Zdenak as evidence of deferral as at 30 June 2013. For this reason, the ten thousand Euros (€10,000) identified by the club in its monitoring documentation (as at 30 September 2013) as deferred was, in fact, an overdue payable as at 30 June 2013.

With regard to the three thousand Euros (€3,000) owed to Ribeiro:

76. Red Star did not refer to this amount in its monitoring documentation (as at 30 June 2013). However, having analysed the club's updated monitoring documentation (as at 30 September 2013) and the Observations, it is clear that Red Star was wrong to omit this figure from its disclosures.
77. In its updated monitoring documentation (as at 30 September), Red Star stated that a payable of three thousand Euros (€3,000) in respect of Ribeiro had been deferred from May 2013. In the Observations, the club attempts to rely on an oral agreement to evidence the deferral of the amount owed to Ribeiro (as at 30 September 2013). The CFCB Adjudicatory Chamber refers to the position described in Paragraph 70 of this Decision with regard to the inadmissibility of oral agreements as evidence of deferral under the CL&FFP Regulations.
78. Given the club's self-declaration in its monitoring documentation (as at 30 September 2013) and the absence of any written evidence, it is clear that the club was also relying on the same oral agreement with Ribeiro as at 30 June 2013. For this reason, the three thousand Euros (€3,000) identified by the club in its monitoring documentation (as at 30 September 2013) was actually also an overdue payable as at 30 June 2013.

Breach of Article 65(8) of the CL&FFP Regulations

79. The CFCB Adjudicatory Chamber concludes that Red Star had overdue payables totalling one million, seven hundred and fifty thousand Euros (€ 1,750,000) towards other football clubs as at 30 September 2013.
80. Such overdue payables comprised: (a) forty thousand Euros (€40,000) owed to FK Borac in respect of Mladenovic and Lazovic; (b) three hundred and sixty thousand Euros (€360,000) owed to FK Rad in respect of Milivojevic and four hundred and thirty two thousand Euros (€432,000) owed to FK Rad in respect of Pantic; and (c) nine hundred and eighteen thousand Euros (€918,000) owed to FK Rad in respect of the sell-on clause in the Milivojevic transfer agreement.

With regard to the forty thousand Euros (€40,000) owed to FK Borac in respect of Mladenovic and Lazovic:

81. This amount was identified by Red Star as an overdue payable in its updated monitoring documentation (as at 30 September 2013). The club did not present any evidence in its Observations to suggest that this disclosure was incorrect. Accordingly, such amount was an overdue payable as at 30 September 2013.
82. The CFCB Adjudicatory Chamber notes that Red Star paid such amount after the relevant assessment deadline had passed (as referred to in Paragraph 13 of this Decision).

With regard to the three hundred and sixty thousand Euros (€360,000) owed to FK Rad in respect of Milivojevic and four hundred and thirty two thousand Euros (€432,000) owed to FK Rad in respect of Pantic:

83. In its updated monitoring documentation (as at 30 September 2013), Red Star identified an amount of one million, sixty one thousand Euros (€1,061,000) in respect of the transfers of Milivojevic and Pantic as being in dispute. However, the Audit Report states that the club was incorrect to classify this amount as in dispute and such amount was actually an overdue payable as at 30 September 2013 (as described in Paragraph 22 of this Decision).
84. In its Observations, Red Star clarifies that it arrived at this amount by adding the six hundred thousand Euros (€600,000) plus VAT owed to FK Rad in respect of Milivojevic to the three hundred and sixty thousand Euros (€360,000) plus VAT owed to FK Rad in respect of Pantic, and then deducting an overpayment of seven thousand Euros (€7,000) that it had made to FK Rad in respect of Savic.
85. The CFCB Adjudicatory Chamber observes that Red Star used a VAT rate of eighteen per cent (18%) in respect of the Milivojevic amount but does not indicate an applicable rate of VAT in respect of the Pantic amount. However, it must be noted that a VAT rate of twenty per cent (20%) has been applicable in Serbia since 1 January 2012 and so this figure is applicable to all of the amounts owed to FK Rad.
86. Red Star claims that it made a mistake in its updated monitoring documentation (as at 30 September 2013) and the overdue payables in respect of Milivojevic should have been reduced by three hundred thousand Euros (€300,000) plus VAT. Based on the evidence provided by the club, this is accepted by the CFCB Adjudicatory Chamber. The overdue amount in respect of Milivojevic as at 30 September 2013 is therefore three hundred thousand Euros (€300,000) plus VAT.
87. Based on the foregoing, the CFCB Adjudicatory Chamber confirms that the actual amount owed to FK Rad by Red Star as at 30 September 2013 in respect of the Milivojevic and Pantic transfers was in fact seven hundred and ninety two thousand Euros (€792,000) inclusive of VAT, such amount comprising:
 - three hundred and sixty thousand Euros (€360,000) in respect of Milivojevic, such amount including sixty thousand Euros (€60,000) of VAT calculated at twenty per cent (20%); and
 - four hundred and thirty two thousand Euros (€432,000) in respect of Pantic, such amount including seventy two thousand Euros (€72,000) of VAT calculated at twenty per cent (20%).

88. With regard to the seven thousand Euros (€7,000) that Red Star claims it has overpaid to FK Rad, this small amount actually appears to simply be a consequence of Red Star converting the currency on two payments in respect of Savic (from Dinars to Euros) and is not an overpayment that can be offset against the overall debt owed to FK Rad. Thus, the overdue amounts due to FK Rad in respect of Milivojevic and Pantic as at 30 September 2013 should not be reduced to take account of this amount.
89. As referred to in Paragraph 22(b) of this Decision, FK Rad lodged a claim on 27 January 2014 before the Arbitration Commission of the Serbian Super League in order to recover the amounts owed to it in respect of the Milivojevic and Pantic transfers.
90. In its Observations, the club attempts to convince the CFCB Adjudicatory Chamber that such overdue payables were in dispute (within the meaning of the CL&FFP Regulations) as at 30 September 2013, even though it acknowledges that the relevant disputes were not subject to *“open proceedings before competent authorities”*.
91. Paragraphs 2(c) and (d) of Annex VIII of the CL&FFP Regulations are clear on this point, a payable will not be considered an overdue payable if a club can show that either *“(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 (...) or (d) it has contested (...) 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”* (emphasis added).
92. Applying these provisions to Red Star’s arguments, the fact that FK Rad had not issued any invoice(s) in respect of the relevant sums is insufficient to render these overdue payables in dispute under the CL&FFP Regulations. Similarly, the decision by FK Rad not to execute any promissory notes in respect of the relevant sums does not render such overdue payables in dispute under the CL&FFP Regulations.
93. The CFCB Adjudicatory Chamber also notes that, as at 30 September 2013, neither Red Star nor FK Rad had initiated any claim or proceedings in respect of such amounts.
94. As a general point, much is made by Red Star of its issue of promissory notes to FK Rad in connection with the Deferral Agreement. Whilst the delivery of such notes has little bearing on the existence of overdue payables, the good faith of the club with regard to the promissory notes might be called into question. The notes were not properly prepared by Red Star until long after the Deferral Agreement was entered into, even though the Deferral Agreement calls for their immediate preparation. In fact, under the letter of authorisation from Red Star, the earliest that the promissory notes could actually have been activated by FK Rad was 23 August 2013. It is clear then that such notes could not have been activated by FK Rad on or around the final date for payment of 19 July 2013 under the Deferral Agreement (since this would have required a valid authorisation from Red Star and also registration at the relevant bank, neither of which were in place at that time).

95. In addition, publicly available information shows that Red Star's bank accounts were actually frozen from the 26 August 2013. Accordingly, even if the correct formalities for the promissory notes had been taken care of, at best FK Rad only had a limited, one day window of opportunity to present the notes. In fact, even if FK Rad had used this day to present the notes, it might still not have been able to secure payment because other creditors would almost certainly have been entitled to take their money out of the Red Star accounts first (since the payment of debts from frozen accounts operates on a "first come, first served" basis in Serbia). It appears that it was not until November 2013 that the accounts were unfrozen, at which point there would again have been a number of other unpaid creditors. The promissory notes therefore had little value to FK Rad.

With regard to the nine hundred and eighteen thousand Euros (€918,000) owed to FK Rad in respect of the sell-on clause in the Milivojevic transfer agreement:

96. In its Observations, Red Star explained that the agreement between FK Rad and Red Star for the transfer of Milivojevic contained a sell-on clause, entitling FK Rad to forty per cent (40%) of any fee received by Red Star from a subsequent sale of the player.
97. The CFCB Adjudicatory Chamber notes that Milivojevic was transferred to RSC Anderlecht in July 2013 for two million, seven hundred thousand Euros (€2,700,000). Red Star did not disclose any amount related to this sell-on clause in its updated monitoring documentation (as at 30 September 2013), even though the transfer agreement with FK Rad requires payment to be made within seven (7) days of the transfer.
98. In the Audit Report, PwC identified that nine hundred and eighteen thousand Euros (€918,000) was owed to FK Rad in respect of the sell-on clause. In its Observations, Red Star suggests that it was in dispute with FK Rad as at 30 September 2013 regarding the payment of this amount.
99. As referred to in Paragraph 22(b) of this Decision, FK Rad lodged a claim on 27 January 2014 before the Arbitration Commission of the Serbian Super League in order to recover this amount.
100. The CFCB Adjudicatory Chamber stresses that, as at 30 September 2013, neither Red Star nor FK Rad had initiated any claim or proceedings in respect of such amount and so, applying Paragraphs 2(c) and (d) of Annex VIII of the CL&FFP Regulations, the amount owed to FK Rad in respect of the sell-on clause cannot be said to have been in dispute under the CL&FFP Regulations at that time. Accordingly, the CFCB Adjudicatory Chamber concludes that the nine hundred and eighteen thousand Euros (€918,000) owed to FK Rad in respect of the sell-on clause in the Milivojevic transfer agreement was not in dispute as at 30 September 2013 and was therefore an overdue payable.
101. In its Observations, Red Star also appears to suggest that the fact that it disputes the sell-on clause amount is further evidence that the other sums owed to FK Rad in respect of the Milivojevic transfer (as described above) are also in dispute. The CFCB Adjudicatory Chamber rejects this contention. Even if the sums due to FK Rad in connection with the sell-on clause were considered to be in dispute under the CL&FFP Regulations, this would not have the effect of rendering in dispute the amounts due to FK Rad in connection with the initial transfer of the player to Red Star. These are two separate issues. The original transfer fee is due whether or not the sell-on clause is valid/enforceable. It is clear, therefore, that Red Star is simply attempting to use its opposition to the sell-on clause as an excuse to stop paying all of its debts to FK Rad.

Breach of Article 66(6) of the CL&FFP Regulations

102. The CFCB Adjudicatory Chamber concludes that Red Star had overdue payables totalling one hundred and forty six thousand Euros (€146,000) towards employees as at 30 September 2013, such amount comprising: (a) seventy five thousand Euros (€75,000) owed to Vesovic; (b) fifteen thousand Euros (€15,000) owed to Sa Pinto; (c) twelve thousand Euros (€12,000) owed to Petkovic and three thousand Euros (€3,000) owed to Ribeiro; (d) ten thousand Euros (€10,000) owed to Zdenak; and (e) thirty one thousand Euros (€31,000) owed to Mladenovic.

With regard to the seventy five thousand Euros (€75,000) owed to Vesovic:

103. The CFCB Adjudicatory Chamber's reasoning for treating this amount as an overdue payable as at 30 September 2013 is set out in detail in Paragraphs 59 to 64 of this Decision.
104. The CFCB Adjudicatory Chamber further notes that the figure of seventy five thousand Euros (€75,000) was highlighted by the club in its updated monitoring documentation (as at 30 September 2013) and also by PwC in the Audit Report.
105. However, based on the Vesovic Decision, it would appear that the amount owed to Vesovic as at 30 September 2013 may actually have been greater than this. As mentioned in Paragraph 64 of this Decision, the Vesovic Decision suggests that eighty eight thousand Euros (€88,000) was owed to Vesovic in June 2013 and other salary payments, etc. arose before 30 September 2013.
106. Nevertheless, because the Vesovic Decision does not include a full break down of the monies owed to Vesovic, the CFCB Adjudicatory Chamber has decided to classify only the seventy five thousand Euros (€75,000) initially identified by Red Star in its monitoring documentation (as at 30 September 2013) as having been overdue.

With regard to the fifteen thousand Euros (€15,000) owed to Sa Pinto:

107. In its updated monitoring documentation (as at 30 September 2013) and Observations, Red Star claims that its obligation to pay this amount was deferred. However, the CFCB Adjudicatory Chamber deems that the letter provided by the club in its Observations as evidence of such deferral is not actually a deferral agreement.
108. As explained in Paragraph 65 of this Decision, the obligation to pay this amount actually arose in June 2013. The letter urges Red Star to make the relevant payment by 22 October 2013, however, this is not "*an agreement which has been accepted in writing by the creditor to extend the deadline for payment beyond the applicable deadline*" as required by Paragraph 2(b) of Annex VIII of the CL&FFP Regulations. It is essentially a final demand for payment in respect of a long overdue debt (i.e. a last warning that payment is overdue).
109. In any event, the letter is dated 15 October 2013 (i.e. after the relevant assessment deadline) and therefore it has no bearing on whether or not the relevant amount was an overdue payable as at 30 September 2013.
110. For these reasons, the CFCB Adjudicatory Chamber considers that this amount of fifteen thousand Euros (€15,000) is an overdue payable as at 30 September 2013.

With regard to the twelve thousand Euros (€12,000) owed to Petkovic and the three thousand Euros (€3,000) owed to Ribeiro:

111. The CFCB Adjudicatory Chamber's reasoning for treating these amounts as overdue payable as at 30 September 2013 is set out in detail in Paragraphs 68 to 71 and 76 to 78 of this Decision.

With regard to the ten thousand Euros (€10,000) owed to Zdenak:

112. The CFCB Adjudicatory Chamber's reasoning for treating this amount as an overdue payable as at 30 September 2013 is set out in detail in Paragraphs 72 to 75 of this Decision.
113. It is also noted that the "bill" dated 30 September 2013 referred to in the declaration provided by Red Star would have been of little value to Zdenak (or Zdenak's agent) until 1 November 2013, since publicly available information indicates that Red Star's bank account was actually frozen for this period.

With regard to the thirty one thousand Euros (€31,000) owed to Mladenovic:

114. Red Star identified this amount as being in dispute in its updated monitoring documentation (as at 30 September 2013). According to its Observations, the club states that *"it is undisputed that Filip Mladenovic initiated formal proceedings ... on 1 October 2013"*. The club further explains that it considered the amount in dispute, even though formal proceedings were not initiated until after the assessment deadline, because it had been notified by Mladenovic in advance that proceedings would be initiated.
115. The CFCB Adjudicatory Chamber underlines that no evidence of this advanced notification has been provided by Red Star.
116. This amount was an overdue payable as at 30 September 2013 since neither Red Star nor Mladenovic had initiated any claim or proceedings in respect of such amounts before the assessment deadline. Accordingly, the requirements of Paragraphs 2(c) and (d) of Annex VIII of the CL&FFP Regulations were not fulfilled.
117. For completeness, the CFCB Adjudicatory Chamber acknowledges that Red Star indicated a deferred amount in respect of Mladenovic in its monitoring documentation (as at 30 June 2013). Based on the above findings, there was some doubt as to whether this amount had been correctly deferred by Red Star as at 30 June 2013. However, due to the uncertainty, the CFCB Adjudicatory Chamber decides to give the benefit of the doubt to the club and does not include any amounts in respect of Mladenovic in its findings concerning Red Star's overdue payables position as at 30 June 2013.

Amounts not taken into account by the CFCB Adjudicatory Chamber:

118. With regard to the twenty nine thousand Euros (€29,000) amount identified in the Audit Report in respect of Prosinecki (as referred to in Paragraph 22(c) of this Decision), the CFCB Adjudicatory Chamber confirms that this amount is not considered to be an overdue payable as at 30 September 2013. It appears that the club understated the debt in its updated monitoring documentation (as at 30 September), however, the deferral agreement correctly provides for the deferral of the full amount owed to Prosinecki meaning that there were no overdue payables in respect of Prosinecki as of 30 September 2013.

Red Star's overall overdue payables position as at 30 June 2013 and 30 September 2013

119. Based on the above findings, the CFCB Adjudicatory Chamber observes that the club had overdue payables towards employees totalling one hundred and twenty nine thousand Euros (€129,000) as at 30 June 2013 and overdue payables towards employees and other football clubs totalling one million, eight hundred and ninety six thousand Euros (€1,896,000) as at 30 September 2013.
120. The CFCB Adjudicatory Chamber stresses the large total amount of overdue payables as at 30 September 2013 and the limited remedial taken by Red Star in respect of such overdue payables once they were identified at the assessment dates (as described in Paragraph 24 of this Decision).

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

121. The CFCB Adjudicatory Chamber underlines that the club has been systematically late in submitting key documentation and information throughout the monitoring process.
122. With regard to the breach of Article 65(3) and Article 66(2) of the CL&FFP Regulations, the CFCB Adjudicatory Chamber notes that Red Star submitted its updated monitoring documentation after the relevant deadline (as described in Paragraph 12 of this Decision).
123. The CFCB Adjudicatory Chamber also considers that even though the Deferral Agreement was entered into on 28 March 2013, it was not submitted to the UEFA Administration until 22 August 2013 (i.e. many weeks after the deadline for submission of Red Star's monitoring documentation, as described in Paragraph 11 of this Decision). Given the importance of the Deferral Agreement to the club's overdue payables position as at 30 June 2013, the CFCB Adjudicatory Chamber considers it remarkable that such information was submitted so late and stresses in this respect that clubs are encouraged to hold themselves to high standards of punctuality with regard to their submissions. On this matter, Article 56(c) of the CL&FFP Regulations specifically requires "*significant changes*" in the club's reported financial position to be "*promptly*" notified. This requirement has clearly not been satisfied by Red Star in respect of the Deferral Agreement, nor the many errors made by Red Star in its disclosures which only came to light in the club's Observations and were not previously notified by the club in the monitoring process.
124. It follows from the foregoing that the club has breached Articles 65(3), 66(2) and 56(c) of the CL&FFP Regulations.

Breaches of the CL&FFP Regulations in the present case

125. For all these reasons, the CFCB Adjudicatory Chamber determines that Red Star has breached:
- (a) Articles 65(8), 66(1) and 66(6) of the CL&FFP Regulations, as a result of having overdue payables towards employees totalling one hundred and twenty nine thousand Euros (€129,000) as at 30 June 2013 and overdue payables towards employees and other football clubs totalling one million, eight hundred and ninety six thousand Euros (€1,896,000) as at 30 September 2013;

- (b) Articles 65(3) and 66(2) of the CL&FFP Regulations, as a result of failing to submit its updated monitoring documentation (comprising financial information as at 30 September 2013) in accordance with the relevant deadline; and
- (c) Article 56(c) of the CL&FFP Regulations, as a result of failing to promptly notify significant changes to its financial submissions throughout the monitoring process (in particular, with regard to the existence of the Deferral Agreement).

PART VI – Disciplinary Measures

- 126. 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.
- 127. In cases such as this, it is particularly important to note the objectives of the CL&FFP Regulations which include, *inter alia*, the protection of creditors by ensuring that clubs settle their liabilities punctually and, thus, the protection of the long-term viability and sustainability of European football (in this regard, see CAS 2013/A/3453 *FC Petrolul Ploiesti v. UEFA*, paragraph 79).
- 128. 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.
- 129. The disciplinary measures imposed must also be fair to those clubs who participate in UEFA competitions in full compliance with the CL&FFP Regulations.
- 130. The CFCB Adjudicatory Chamber bears in mind the requirement for proportionality and consistency with other decisions on similar facts and circumstances, as reflected in the CAS decision in *Bursaspor* (CAS 2012/A/2821 *Bursaspor Kulübü Derneği v. UEFA*, paragraph 144).
- 131. 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).
- 132. 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.
- 133. The CFCB Adjudicatory Chamber views this case as a serious contravention of the overdue payables rules. It is not just the size of the overdue payables as at 30 September 2013 which is relevant, but the overall context of the financial state of affairs of the club. The CFCB Adjudicatory Chamber is particularly concerned by the repeated and serious inaccuracy of key financial information and the lack of timely disclosures.

134. The CFCB Adjudicatory Chamber underlines in this respect that Red Star has systematically provided incorrect and inaccurate information throughout the monitoring process. In particular:

- (i) in its monitoring documentation (as at 30 June 2013), Red Star declared its payables in respect of Savic to be “closed” (i.e. thereby indicating that the full amount due in respect of the Savic transfer had been paid in full). However, in its Observations, Red Star indicated that it made payments to FK Rad in respect of Savic on 31 May 2013 and 3 July 2013, meaning that the full fee cannot have been paid in full as at 30 June 2013;
- (ii) as described in Paragraphs 59 to 64 of this Decision, in its monitoring documentation (as at 30 June 2013), Red Star incorrectly identified a payable in respect of Vesovic as having been deferred even though such payable was not validly deferred under the CL&FFP Regulations and should not have been identified as such;
- (iii) as described in Paragraphs 65 to 67 of this Decision, Red Star failed to disclose a payable which was due to Sa Pinto in its monitoring documentation (as at 30 June 2013);
- (iv) as described in Paragraphs 76 to 78 of this Decision, Red Star failed to disclose a payable which was due to Ribeiro in its monitoring documentation (as at 30 June 2013);
- (v) as described in Paragraphs 68 to 75 of this Decision, in its monitoring documentation (as at 30 June 2013), Red Star indicated that certain payables in respect of Petkovic and Zdenak had been deferred (principally in reliance on oral agreements) even though such payables were not validly deferred under the CL&FFP Regulations and should not have been identified as such;
- (vi) as described in Paragraphs 89 to 93 of this Decision, in its updated monitoring documentation (as at 30 September 2013), Red Star indicated that the amounts owed to FK Rad in respect of Milivojevic and Pantic were in dispute even though such payables were not validly in dispute under the CL&FFP Regulations and should not have been identified as such;
- (vii) as described in Paragraph 86 of this Decision, Red Star forgot to take account of a payment that it had made to FK Rad in respect of Milivojevic in its updated monitoring documentation (as at 30 September 2013);
- (viii) as described in Paragraph 88 of this Decision, in its Observations, Red Star attempted to attribute a small sum that arose in respect of currency conversion to the monies owed to FK Rad in respect of Milivojevic;
- (ix) as described in Paragraphs 96 to 101 of this Decision, Red Star failed to mention any amount in respect of the sell-on clause in the Milivojevic transfer agreement in its updated monitoring documentation (as at 30 September 2013). Later, in its Observations, the club attempted to argue that such amount was in dispute even though such payable was not validly in dispute under the CL&FFP Regulations and cannot be treated as such;
- (x) as described in Paragraphs 103 to 106 of this Decision, with regard to Vesovic:

- in its Observations, Red Star states that it wrongly indicated the relevant payable as being deferred when it was in fact in dispute; and
 - in any event, such payable was not validly in dispute under the CL&FFP Regulations and should not have been identified as such;
- (xi) as described in Paragraphs 107 to 110 of this Decision, the amount that Red Star identified as having been deferred in respect of Sa Pinto as at 30 September 2013 was not validly deferred under the CL&FFP Regulations and should not have been identified as such;
- (xii) as described in Paragraphs 111 to 113 of this Decision, Red Star identified various amounts in respect of Zdenak, Petkovic and Ribeiro as having been deferred (principally in reliance on oral agreements) even though such payables were not validly deferred under the CL&FFP Regulations and should not have been identified as such; and
- (xiii) as described in Paragraphs 114 to 117 of this Decision, Red Star indicated that a payable due to Mladenovic was in dispute as at 30 September 2013 even though such payable was not validly in dispute under the CL&FFP Regulations and should not have been identified as such.

This means that one hundred and twenty nine thousand Euros (€129,000) of overdue payables as at 30 June 2013 and one million eight hundred and fifty six thousand Euros (€1,856,000) of overdue payables as at 30 September 2013 were wrongly disclosed as being deferred or in dispute or simply not disclosed by Red Star at all. In fact, only forty thousand Euros (€40,000) of Red Star's total overdue payables as at 30 September 2013 were correctly disclosed by the club.

135. The CFCB Adjudicatory Chamber is therefore concerned that Red Star has often wrongly classified amounts as being deferred or in dispute with only tenuous justification and with complete disregard for the wording of the CL&FFP Regulations.
136. Against this background, it is difficult for the CFCB Adjudicatory Chamber to be persuaded by Red Star's statement that *"at no time did Red Star try to hide outstanding payments...all amounts were disclosed by Red Star and qualified, in good faith, as amounts as in "dispute/deferred", but Red Star did not hide these amounts from UEFA"*.
137. As a general principle, clubs should not be encouraged to classify overdue payables as deferred or in dispute as a way to avoid further scrutiny by the CFCB, with the expectation that if enquiries are made they can claim to have made a mistake. The responsibilities imposed on licensees under Article 56 of the CL&FFP Regulations must be respected.
138. The CFCB Adjudicatory Chamber has 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. Therefore, such disclosures have to be correct, accurate and 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, 20 December 2013, case AC-05/2013, *SIA Skonto FC*, paragraph 31).

139. In the present case, the CFCB Adjudicatory Chamber does not consider Red Star to have made its disclosures in a correct, accurate and timely manner for the reasons set out above.
140. Reference is also made to the Court of Arbitration for Sport (“CAS”), which has been highly critical of clubs who contravene the disclosure requirements of the CL&FFP Regulations by disclosing misleading information (e.g. CAS 2012/A/2821, *Bursaspor Kulübü Derneği v. UEFA*, paragraph 115 and CAS 2012/A/2702 *Györi ETO FC v. UEFA*, paragraph 146).
141. As a general point, the CFCB Adjudicatory Chamber considers that matters such as the ill health of employees and problematic ownership/governance structures are poor excuses for the absence of timely notifications and the disclosure of inaccurate information. Similarly, although the CFCB Adjudicatory Chamber acknowledges Red Star’s statements regarding its efforts to address its financial problems, the 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). Further, the CFCB Adjudicatory Chamber does not view Red Star’s arguments regarding the (social/economic) status and importance of the club in Serbian football to be a good reason to treat Red Star’s breach of the CL&FFP Regulations lightly. In addition, the possibility of future sporting success (in UEFA competitions or otherwise) and a club’s “solidarity” with another club in financial difficulty is irrelevant when assessing breaches of the CL&FFP Regulations.
142. The CFCB Adjudicatory Chamber also underlines that this is not the first time that proceedings have been engaged against Red Star with regard to overdue payables. Red Star was found to have breached Articles 65 and 66 of the CL&FFP Regulations by the UEFA Control & Disciplinary Body (“CDB”) on 1 May 2012. On that occasion, the club had significant overdue payables (two million, three hundred and twenty one thousand Euros (€2,321,000) and two million, seven hundred and twenty nine thousand Euros (€2,729,000) in June and September 2011 respectively) and a suspended exclusion was imposed by the CDB. The CFCB Adjudicatory Chamber acknowledges that Red Star complied with the condition(s) attached to this suspended exclusion and so the exclusion did not take effect. Nevertheless, it is clear that these earlier disciplinary measures were not enough of a deterrent to prevent Red Star from committing further breaches of the CL&FFP Regulations.
143. Having due regard to the circumstances of the present case and in view of the seriousness of Red Star’s breaches of the CL&FFP regulations, the CFCB Adjudicatory Chamber considers that an exclusion from the next UEFA club competition for which the club would qualify in the next three (3) seasons (i.e. the 2014/15, 2015/16 and 2016/2017 seasons) is required in order to serve as an adequate deterrent.
144. In addition, costs of three thousand Euros (€3,000) are required to be paid by Red Star, in accordance with Article 32(2) of the Procedural Rules.

PART VII – Operative part

145. The CFCB Adjudicatory Chamber hereby decides:
- 1. Red Star has breached Articles 56(c), 65(3), 65(8), 66(1), 66(2) and 66(6) of the CL&FFP Regulations.**

2. To exclude Red Star from participating in the next UEFA club competition for which it would otherwise qualify on its results or standing in the next three (3) seasons (i.e. the 2014/15, 2015/16 and 2016/17 seasons).
3. Red Star is to pay three thousand Euros (€3,000) towards the costs of these proceedings.
4. The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of the reasoned Decision to Red Star.
5. This Decision is final and shall be notified to:
 - a) Red Star;
 - b) the Football Association of Serbia;
 - c) the CFCB Investigatory Chamber; and
 - d) the UEFA administration.

146. 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 the reasoned Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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