

UEFA CLUB FINANCIAL CONTROL BODY

Adjudicatory Chamber

DECISION

in case

AC-03/2019

Fenerbahçe Futbol A.Ş.

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, 19 July 2019

PART I – Introduction

1. On 24 May 2019, the Chief Investigator of the UEFA Club Financial Control Body (the “**CFCB**”) referred the case of Fenerbahçe Futbol A.Ş. (“**Fenerbahçe**” or the “**Club**”) to the CFCB Adjudicatory Chamber (the “**Referral Decision**”).
2. In the present Decision, the CFCB Adjudicatory Chamber examines whether Fenerbahçe has failed to comply with the terms of the settlement agreement that it entered into with the CFCB Chief Investigator on 20 May 2016 (the “**Settlement Agreement**”) in accordance with Articles 14(1)(b) and 15 of the 2015 edition of the Procedural rules governing the UEFA Club Financial Control Body (the “**Procedural Rules**”).

PART II – Reference by the CFCB Chief Investigator

3. The Settlement Agreement was concluded after the acting CFCB Chief Investigator determined that Fenerbahçe had breached the *UEFA Club Licensing and Financial Fair Play Regulations – Edition 2015* (the “**CL&FFP Regulations**”).
4. Specifically, the acting CFCB Chief Investigator considered that the Club had failed to fulfil the break-even requirement set out in Articles 58 to 63 of the 2015 edition of the CL&FFP Regulations because it had an aggregate break-even deficit for the reporting periods ending in 2013, 2014 and 2015 which exceeded the relevant acceptable deviation by [REDACTED]).
5. Under the Settlement Agreement, Fenerbahçe had, *inter alia*, to:
 - i. be break-even compliant in the meaning of the CL&FFP Regulations at the latest in the monitoring period 2019/20; i.e. the aggregate break-even result for the reporting periods ending in 2017, 2018 and 2019 must be a surplus or a deficit within the acceptable deviation in accordance with Article 63 of the CL&FFP Regulations (Article 1.2 of the Settlement Agreement); and
 - ii. report a maximum break-even deficit of thirty million Euros (€30,000,000) for the reporting period ending in 2016, twenty million Euros (€20,000,000) for the reporting period ending in 2017 and ten million Euros (€10,000,000) for the reporting period ending in 2018 (Articles 3.1 and 3.2 of the Settlement Agreement).
 - iii. specifically, under Article 3.2(iii) of the Settlement Agreement undertake that it “[would] have a maximum Break-even deficit of EUR 10 Mio for the Reporting Period ending in 2018”.
 - iv. pursuant to Article 8.1(iii) of the Settlement Agreement “if the Club has a Break-even deficit of EUR 20 Mio or more for the Reporting Period ending in 2018 [...] the Chief

Investigator shall refer the case to the CFCB Adjudicatory Chamber in accordance with Article 15(4) of the Procedural Rules”.

- v. pursuant to Article 5.2 of the Settlement Agreement, agree on the following prohibitions/restrictions to register newly signed players for UEFA club competitions:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



6. Further, as per Article 9.1 of the Settlement Agreement, Fenerbahçe remained under the monitoring of the Settlement Agreement and had therefore to comply with the operational and financial measures under the Settlement Agreement even if it did not qualify for the UEFA club competitions during the settlement regime.
7. Also under Article 8.2 and 9.3 of the Settlement Agreement, in the event of a breach of the Settlement Agreement by the Club leading to the CFCB Adjudicatory Chamber taking disciplinary measures against the Club, the Settlement Agreement expires.
8. In June 2016, Fenerbahçe qualified for the 2016/17 UEFA Champions League.
9. By 15 October 2016, Fenerbahçe submitted to the UEFA Administration via the Turkish Football Federation (“**TFF**”) its break-even information for the reporting period ending in 2016 (BE2016.09 package). The Club indicated a break-even deficit for the reporting period ending in 2016 of .
10. On 12 December 2016, the Club submitted a letter informing the CFCB Investigatory Chamber about, amongst other points, unexpected events that happened in Turkey (i.e. a coup attempt on 15 July 2016 as well as military operations in Syria on 24 August 2016) which, according to the Club, negatively affected the economic and financial situation in Turkey and led to a significant devaluation of the Turkish Lira. Considering this, the Club argued that the financial situation of Fenerbahçe was negatively influenced by these events which could not have been foreseen. The Club therefore requested the CFCB Investigatory Chamber to consider this as force majeure, to exclude the reporting period ending in 2017 from the Settlement Agreement and to extend the Settlement Agreement for one further season until the reporting period ending in 2020.
11. At its meeting on 9 March 2017, the CFCB Investigatory Chamber reviewed the Club’s break-even submission and the Club’s letter dated 12 December 2016. The CFCB Investigatory Chamber took note of the unfortunate events that happened in Turkey in 2016, but decided not to grant the Club’s requests to exclude the reporting period ending in 2017 from the Settlement Agreement and to extend the Settlement Agreement for one additional period until 2020. The CFCB Investigatory Chamber also took note that the Club’s break-even result for the reporting period ending in 2016 was within the limits set by the Settlement Agreement (e.g. below a deficit of thirty million Euros (€30,000,000)).
12. In June 2017, Fenerbahçe qualified for the 2017/18 UEFA Europa League.
13. On 15 October 2017, Fenerbahçe submitted to the UEFA Administration (via TFF) its break-even information for the reporting period ending in 2017 (BE2017.09 package) in

accordance with Article 54(2)(d) of the CL&FFP Regulations. The Club indicated a break-even deficit for the reporting period ending in 2017 of [REDACTED].

14. On 9 December 2017, the CFCB Investigatory Chamber reviewed monitoring documentation submitted by the Club. The CFCB Investigatory Chamber decided to invite the Club for a meeting on 8 February 2018 and to conduct a compliance audit.
15. On 21 December 2017, the CFCB Investigatory Chamber requested a meeting with Fenerbahçe on 8 February 2018 to discuss the Club's break-even information for the reporting period ending in 2017 and budget for 2018. Moreover, the CFCB Investigatory Chamber informed the Club about its decision to conduct a compliance audit.
16. On 21 December 2017, the Club informed the UEFA administration that it was unavailable to attend the meeting on 8 February 2018. Subsequently, a new date, i.e. 8 March 2018, was agreed with the Club.
17. Between 29 and 31 January 2018, independent auditors PricewaterhouseCoopers ("PWC") conducted a compliance audit at the Club's premises regarding the reporting period ending in 2017.
18. On 8 March 2018, a meeting took place at the House of European Football between the CFCB Investigatory Chamber and the Club. Fenerbahçe presented to the CFCB Investigatory Chamber its legal group structure which showed that:
 - i. [REDACTED]
 - ii. The Club outlined that the Association faced difficulties to get bank loans (to finance other sports); this has led Fenerbahçe to take on loans from banks to finance the Association (via intra-group loans). By doing this, Fenerbahçe generated a net interest income as they charged the Association with a mark-up over what they had to pay to the banks.
 - iii. Fenerbahçe also presented the significant negative effects that the coup attempt in July 2016 had on the financing of the Club in terms of increase in interest rates and devaluation of the Turkish Lira ("TRY"). For example, the exchange rates in reporting period 2017 varied approximately by 21% for the Euro and US Dollar compared to previous reporting period. This variation is significantly higher than the average of the devaluation of the TRY over the last 10 years of 6.5%.
 - iv. The Club also presented its break-even result for the reporting period ending in 2017, which showed a deficit of [REDACTED]).

19. On the same day, the CFCB Investigatory Chamber agreed for the reporting period ending in 2017 that the Club had to neutralize all finance income and expenses in relation to its parent entity (via intra-group loans with the Association). They further agreed to consider the mitigating factor (Annex XI (1) (f) of the CL&FFP Regulations "*major and unforeseen changes in the economic environment*") due to the coup attempt in Turkey in July 2016 and to allow the neutralization of extraordinary foreign exchange losses above a devaluation rate of 13%, i.e. being the double of the average devaluation of the TRY in the previous 10 years ($2 \times 6.5\% = 13\%$). The CFCB Investigatory Chamber requested the Club to prepare a calculation of the above-mentioned adjustments/neutralisations for the reporting period ending in 2017.
20. On 27 April 2018, after having been informed of the CFCB Investigatory Chamber's position, the Club submitted the requested calculation for the adjustments/neutralisations for the reporting period ending in 2017. The total adjustment/neutralisation of the extraordinary foreign exchange losses and the finance income and expenses in relation to its parent entity amounted to eight million Euros (€8,000,000).
21. At its meeting on 11 May 2018, the CFCB Investigatory Chamber reviewed the PWC compliance report and the corresponding Club's letter. PWC did not highlight any findings in their report that would have led the CFCB Investigatory Chamber to request the Club to update its break-even submission for the reporting period ending in 2017. The CFCB Investigatory Chamber accepted the Club's calculation for the adjustments/neutralisations for the reporting period ending in 2017, including an adjustment of the extraordinary effect of the Turkish Lira devaluation, and the neutralization of intra-group loans with the Association.
22. On 28 May 2018, the Club submitted its revised break-even information for the reporting period ending in 2017 (BE2017.09 package) in the CL/FFP IT solution whereby the allowed neutralisations/adjustments were reflected. The revised break-even information for that reporting period showed a break-even deficit for the reporting period ending in 2017 of [REDACTED].
23. On 13 June 2018, based on the Club's revised break-even submission for the reporting period ending in 2017, the CFCB Investigatory Chamber confirmed to the Club the following:
 - i. the transactions related to the financing of the Association (parent entity) were considered as non-football operations not related to the football club and therefore had to be neutralized in the break-even calculation. As a result, the finance income from intra-group loans as well as the corresponding finance expenses related to the intra-group balances had to be excluded from the break-even calculation for the reporting period ending in 2017;

- ii. the mitigating factor “major and unforeseen changes in the economic environment” was taken into account. This consideration followed the coup attempt in Turkey in July 2016 (i.e. within the reporting period ending in 2017), which was acknowledged by the CFCB Investigatory Chamber as “[...] extraordinary national economic events which are temporary and considered to be beyond the general fluctuation of the economic environment [...]”. As a result, the financial impact of the extraordinary changes in foreign exchange rates were allowed to be adjusted from the Club’s break-even calculation for the reporting period ending in 2017; and
 - iii. the Club’s final break-even position of [REDACTED] was above the annual target stipulated in the Settlement Agreement (break-even deficit of twenty million Euros (€20,000,000)), but within the maximum allowable limit (break-even deficit of thirty million Euros (€30,000,000)). As a result, the conditional measures stipulated in the Settlement Agreement were applied by the CFCB Investigatory Chamber (i.e. financial contributions of two million Euros (€2,000,000) plus sporting restrictions for the following season).
24. In June 2018, Fenerbahçe qualified for the 2018/19 UEFA Champions League.
25. On 15 October 2018, the Club submitted to the UEFA Administration (via TFF) its break-even information for the reporting period ending in 2018 in accordance with Article 54(2)(d) of the CL&FFP Regulations.
26. On 7 December 2018, the CFCB Investigatory Chamber met to discuss the Club’s break-even information for the reporting period ending in 2018. The submitted figures clearly showed that the Club suffered again heavy foreign exchange losses given the continuing devaluation of the Turkish Lira.
27. On 21 December 2018, the CFCB Investigatory Chamber sent a letter to Fenerbahçe requesting a meeting at the House of European Football in order to mainly discuss the following matters:
 - i. the Club’s break-even information for the reporting period ending in 2018 as well as its latest projections for the reporting period ending in 2019; and
 - ii. the concrete measures to be implemented at national level to overturn the Club’s financial situation.
28. On 14 January 2019, the CFCB Investigatory Chamber sent a letter to the TFF requesting a meeting at the House of European Football to present concrete measures initiated by the TFF to enhance the financial situation of the Turkish clubs.
29. On 31 January 2019, a meeting took place at the House of European Football between the CFCB Investigatory Chamber and TFF. The TFF delegation stated that several meetings took place between November 2018 and January 2019 between TFF, some Turkish clubs, the Turkish Banking Association (“**BAT**”) and the Turkish Minister of

- ii. detailed information on the terms and conditions of the Club's debt restructuring, with an estimate of the corresponding advantages for Fenerbahçe; and
 - iii. detailed information on the Club's recent capital increase and expected results of the upcoming donations campaign that is reflected in the reporting period ending in 2019.
33. On 15 March 2019, TFF submitted the requested information. In its letter, the Turkish Football Federation stated (amongst others) that:
- i. a working group consisting of professional football clubs was formed and that an agreement with all stakeholders was reached to implement a new financial system which should include ex-ante and ex-post controls. A draft version of the regulations was attached to the letter. TFF added that these new regulations would be presented to the Congress members at its Elective Congress on 1 June 2019 for approval.
 - ii. several meetings took place with the BAT regarding the debt restructuring. TFF was informed by the BAT that individual meetings with clubs were held and that the process should be finalized by April 2019 with the establishment of individual financial restructuring plans per club. A letter from the BAT President was provided which confirmed that the BAT was in contact with TFF and Turkish clubs to take joint actions regarding the restructuring of the clubs' debts.
34. On the same day, Fenerbahçe submitted the requested information and informed (amongst others) the CFCB Investigatory Chamber that:
- i. negotiations between Fenerbahçe and the largest State-owned bank were ongoing which would reduce the Club's burden of interest expenses on debts and reduce the exposure to risks of currency devaluation effects;
 - ii. 
 - iii. the donation campaign was due to start in April 2019. The Club expected 5 million participants and total donations of fifty million Euros (€50,000,000). The donation campaign was run at the level of the Association and subsequently the generated donations were planned to be pushed down to the reporting entity; and,
 - iv. its projected break-even deficit for the reporting period ending in 2019 was four million Euros (€4,000,000).
35. On 29 March 2019, the CFCB Investigatory Chamber met to assess the information previously submitted by the Club. As the debt restructuring process as well as the new

TFF national financial monitoring regulations were not finalised, the Club was requested to submit a status update for the next CFCB Investigatory Chamber meeting.

36. On 3 April 2019, the UEFA Administration sent an email to Fenerbahçe requesting an update on: the debt restructuring, the current donation campaign and the latest forecast for FY2019.
37. On 9 April 2019, the Club submitted a letter to the CFCB Investigatory Chamber, in which it informed (amongst others) that:
- i. the debt restructuring was still in progress, but the Club expected the process to be completed by the end of May 2019;
 - ii. the new national financial monitoring regulations were planned to be finalized by the end of May 2019;
 - iii. the donation campaign was launched on 4 April 2019 and already five million five hundred thousand Euros (€5,500,000) were collected. Furthermore, an additional three million Euros (€3,000,000) from various corporations and business people were committed; and
 - iv. the projected break-even deficit for the reporting period 2019 remained at four million Euros (€4,000,000).
38. On 12 April 2019, the CFCB Investigatory Chamber met to assess all provided documentation by Fenerbahçe. On the basis of the Club's submission, the break-even deficit for the reporting period ending in 2018 is [REDACTED], which is above the Settlement Agreement target of ten million Euros (€10,000,000). The Settlement Agreement foresees to refer the Club's case to the CFCB Adjudicatory Chamber in case of a break-even deficit above twenty million Euros (€20,000,000) for the reporting period ending in 2018. As such, the Club is exceeding the maximum foreseen break-even deficit by twelve million Euros (€12,000,000) as follows.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

39. Based on the above gathered findings and evidence, the CFCB Chief Investigator decided, after having consulted with the other members of the CFCB Investigatory Chamber, that the Club had failed to comply with the operational and financial measures as stated in Article 3.2 (iii) of the Settlement Agreement as a result of having a break-even deficit of [REDACTED] for the reporting period ending in 2018 that exceeds the defined maximum break-even deficit of twenty million Euros (EUR 20,000,000).
40. At the same time, the CFCB Chief Investigator noted that a number of positive actions were initiated by the Club's new President since his election in June 2018, in order to significantly improve the Club's financial situation for the reporting period ending in 2019:
- i. increasing gate receipts and merchandising income;
 - ii. signing new sponsors;
 - iii. [REDACTED];
 - iv. starting a donation campaign; and
 - v. working alongside TFF and Turkish financial institutions to finalize the debt restructuring plan and implementing the new TFF financial monitoring regulations.
41. However, the CFCB Chief Investigator considered that these initiatives were initiated only in the reporting period ending in 2019 and, as a result, did not generate sufficient financial impact for the Club to comply with the primary purpose of the Settlement Agreement within the 2018/19 monitoring period.
42. Accordingly, on 24 May 2019, the CFCB Investigatory Chamber issued its Referral Decision and recommended the imposition of the following disciplinary measure:

For failing to comply with the break-even target as stated in Articles 3.2(iii) and 8.1(iii) of the Settlement Agreement, the CFCB Chief Investigator suggests that the CFCB Adjudicatory Chamber imposes, in accordance with Articles 27 (c) and 29 (1) of the Procedural rules, and in line with conditional measures foreseen in the Settlement Agreement, the following disciplinary measures on Fenerbahce:

- i. a permanent withholding of revenues from UEFA competitions of EUR 2.5mio;*
- ii. a prohibition on registering new players in the next two seasons (i.e. the 2019/20 and 2020/21 seasons), as detailed in Article 5.2 (i) of the Settlement Agreement; and*
- iii. a restriction on the number of players that the Club may register for participation in the next two seasons (i.e. the 2019/20 and 2020/21 seasons), i.e. 23 players instead of the maximum number allowed for the List A.*

The above-mentioned withholding of revenues from UEFA competitions shall be reduced if the two following cumulative conditions are fulfilled:

- i. the debt restructuring plan with financial institutions is agreed and signed by all relevant parties in June 2019; and*
- ii. the new TFF financial monitoring regulations are agreed by the Club in June 2019 and implemented as from the 2019/20 season.*

The Club shall be subject to the break-even requirement within the meaning of the UEFA CL&FFP in the monitoring period 2019/20.

For the sake of clarity and having regard to Article 8.2 of the Settlement Agreement considering UEFA has to initiate new measures because of the Club's above-mentioned breaches of the Settlement Agreement, the latter shall expire with the final decision of the CFCB Adjudicatory Chamber.

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

43. 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.
44. On 27 May 2019, the CFCB Chairman informed Fenerbahçe of the opening of the judgment stage in accordance with Article 19(3) of the Procedural Rules.
45. Pursuant to Article 20(1) of the Procedural Rules, the Club was asked to submit its written observations by no later than 6 June 2019.
46. On 31 May 2019, the Club submitted its written submission and supporting documents (the “**Observations**”). In particular, the Club (i) provided information about a share capital increase from the President of the Club (ii) provided the interim results of a fundraising campaign; (iii) gave an update on a debt restructuring process with a state-owned bank and (iv) gave an update on new financial monitoring regulations being implemented by the Turkish Football Federation.
47. The Club did not request an oral hearing.
48. On 19 June 2019, the members of the CFCB Adjudicatory Chamber convened and considered the case of the Club.
49. 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

50. The case concerns an alleged failure to comply with a break-even target set out in the Settlement Agreement.

51. 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.”*

52. Article 53 (2) of the CL&FFP Regulations determines that

“In carrying out these responsibilities, the UEFA Club Financial Control Body ensures equal treatment of all licensees and guarantees full confidentiality of all information provided”.

53. Article 58 of the CL&FFP Regulations states that:

“1 Relevant income and relevant expenses are defined in Annex X.

2 Relevant income and expenses must be calculated and reconciled by the licensee to the audited annual financial statements and/or underlying accounting records and to the projected break-even information if applicable.

3 Relevant income and expenses from related parties must be adjusted to reflect the fair value of any such transactions”.

54. Pursuant to Article 59 of the CL&FFP Regulations:

“A monitoring period is the period over which a licensee is assessed for the purpose of the break-even requirement. As a rule it covers three reporting periods:

- a) the reporting period ending in the calendar year that the UEFA club competitions commence (hereinafter: reporting period T), and*
- b) the reporting period ending in the calendar year before commencement of the UEFA club competitions (hereinafter: reporting period T-1), and*
- c) the preceding reporting period (hereinafter: reporting period T-2)*

As an example, the monitoring period assessed in the licence season 2015/16 covers the reporting periods ending in 2015 (reporting period T), 2014 (reporting period T-1) and 2013 (reporting period T-2)”

55. Article 60 of the CL&FFP Regulations is worded as follows:

- “1 The difference between relevant income and relevant expenses is the break-even result, which must be calculated in accordance with Annex X for each reporting period.*
- 2 If a licensee’s relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club’s relevant expenses are greater than relevant income for a reporting period, then the club has a break-even deficit.*
- 3 If a licensee’s financial statements are denominated in a currency other than euros, then the break-even result must be converted into euros at the average exchange rate of the reporting period.*
- 4 The aggregate break-even result is the sum of the break-even results of each reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2).*
- 5 If the aggregate break-even result is positive (equal to zero or above) then the licensee has an aggregate break-even surplus for the monitoring period. If the aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period.*
- 6 In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4).”*

56. Article 61 of the CL&FFP Regulations provides that:

- “1 The acceptable deviation is the maximum aggregate break-even deficit possible for a club to be deemed in compliance with the break-even requirement as defined in Article 63.*
- 2 The acceptable deviation is EUR 5 million. However, it can exceed this level up to EUR 30 million if such excess is entirely covered by contributions from equity participants and/or related parties. A lower amount may be decided in due course by the UEFA Executive Committee.*
- 3 Contributions from equity participants and/or related parties (as specified in Annex X E) are taken into consideration when determining the acceptable deviation if they have occurred and been recognised:*

- a) *in the audited financial statements for one of the reporting periods T, T-1 or T-2; or*
- b) *in the accounting records up until the deadline for submission of the break-even information for the reporting period T.*

The onus is on the licensee to demonstrate the substance of the transaction, which must have been completed in all respects and without any condition attached. An intention or commitment from owners to make a contribution is not sufficient for such a contribution to be taken into consideration.

- 4 *If contributions from equity participants and/or related parties occurring until the deadline for submission of the break-even information for the reporting period T are recognised in a club's reporting period T+1 and have been taken into consideration to determine the acceptable deviation in respect of the monitoring period (T-2, T-1 and T) assessed in the licence season commencing in that same calendar year, then for later monitoring periods the contributions will be considered as having been recognised in reporting period T.*
- 5 *For a monitoring period containing a reporting period of greater than or less than 12 months, the acceptable deviation will be adjusted up or down according to the length of the monitoring period."*

57. According to Article 62 of the CL&FFP Regulations:

"1 By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit:

- a) *the break-even information for the reporting period T-1;*
- b) *the break-even information for the reporting period T-2, if not already previously submitted;*
- c) *the break-even information for the reporting period T, if it has breached any of the indicators defined in paragraph 3 below.*

2 The break-even information must:

- a) *concern the same reporting perimeter as that for club licensing as defined in Article 46bis;*
- b) *be approved by management, as evidenced by way of a brief statement confirming the completeness and accuracy of the information, and signature on behalf of the executive body of the licensee.*

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

- i) *Indicator 1: Going concern*

The auditor's report in respect of the annual financial statements (i.e. reporting period T-1) and/or interim financial statements (if applicable) submitted in accordance with Articles 47 and 48 includes an emphasis of matter or a qualified opinion/conclusion in respect of going concern.

ii) *Indicator 2: Negative equity*

The annual financial statements (i.e. reporting period T-1) submitted in accordance with Article 47 disclose a net liabilities position that has deteriorated relative to the comparative figure contained in the previous year's annual financial statements (i.e. reporting period T-2), or the interim financial statements submitted in accordance with Article 48 disclose a net liabilities position that has deteriorated relative to the comparative figure at the preceding statutory closing date (i.e. reporting period T-1).

iii) *Indicator 3: Break-even result*

The licensee reports a break-even deficit as defined in Article 60 for either or both of the reporting periods T-1 and T-2.

(...)"

58. Article 63 of the CL&FFP Regulations provides that:

"1 The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1.

2 The break-even requirement is fulfilled, even if an indicator (as defined in Article 62(3)) is breached, if:

a) the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or

b) the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)).

3 The break-even requirement is not fulfilled if the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6))."

59. Article 68 of the CL&FFP Regulations establishes that:

"If one of the monitoring requirements is not fulfilled, then the UEFA Club Financial Control Body makes a decision, including the possibility to conclude a settlement agreement with the licensee, taking into consideration other factors as defined in Annex XI, and takes the appropriate measure(s) without delay in accordance with the

procedure defined in the Procedural rules governing the UEFA Club Financial Control Body.”

60. According to Annex XI of the CL&FFP Regulations:

“ Other factors within the meaning of Article 68 to be considered by the UEFA Club Financial Control Body include, but are not limited to, the following:

a) *The quantum and trend of the break-even result*

The larger the quantum of a break-even deficit relative to a licensee’s relevant income, in a reporting period or in aggregate for a monitoring period, the less favourably it will be viewed. An improving trend in the annual break-even results will be viewed more favourably than a worsening trend.

b) *Projected aggregated break-even result*

As part of its assessment, the UEFA Club Financial Control Body may review the projected aggregated break-even result for reporting periods T-1, T and T+1. A projected aggregated break-even result that is within the acceptable deviation for reporting periods T-1, T and T+1 will be viewed favourably.

Additionally, the UEFA Club Financial Control Body may also review the licensee’s long-term business plan (including future break-even information up to reporting period T+4) in order to better assess the strategy of the club.

As part of its assessment, the UEFA Club Financial Control Body may consider the budgeting accuracy, i.e. licensee’s break-even result for a reporting period may be compared to the projected break-even information as previously submitted. (...)”

61. Article 14(1) of the Procedural Rules provides that:

“1 At the end of the investigation, the CFCB chief investigator, after having consulted with the other members of the investigatory chamber, may decide to:

a) *dismiss the case; or*

b) *conclude, with the consent of the defendant, a settlement agreement; or*

c) *apply, with the consent of the defendant, disciplinary measures limited to a warning, a reprimand or a fine up to a maximum amount of €100,000; or*

d) *refer the case to the adjudicatory chamber”*

62. Article 15 of the Procedural Rules determines that:

“1 Settlement agreements pursuant to Article 14(1)(b) shall take into account, in particular, the factors referred to in Annex XI of the UEFA Club Licensing and Financial Fair Play Regulations. Such agreements may be deemed appropriate in circumstances which justify the conclusion of an effective, equitable and dissuasive settlement without referring the case to the adjudicatory chamber.

- 2 *Settlement agreements may set out the obligation(s) to be fulfilled by the defendant, including the possible application of disciplinary measures and, where necessary, a specific timeframe.*
- 3 *If a defendant proves that it has fulfilled the obligations set out in a settlement agreement in advance of the established timeframe, the CFCB chief investigator may, on reasoned request by the defendant, decide to amend the terms of the settlement agreement for the following sporting season.*
- 4 *The CFCB chief investigator monitors the proper and timely implementation of the settlement agreement.*
- 5 *If a defendant fails to comply with the terms of a settlement agreement, the CFCB chief investigator shall refer the case to the adjudicatory chamber.”*

63. 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.”*

64. 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.”

65. 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”.*

66. 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

67. In its Observations, the Club did not dispute that, on the basis of the break-even information submitted by the Club under Article 62 of the CL&FFP Regulations in respect of the monitoring period ending in 2018, it was in breach of Clauses 3.2(iii) and 8.1(iii) of the Settlement Agreement.

68. Having examined the evidence, in particular the findings of the CFCB Chief Investigator and the Observations, the CFCB Adjudicatory Chamber determines that the Club has failed to comply with Clauses 3.2(iii) and 8.1(iii) of the Settlement Agreement as a result of having a break-even deficit of [REDACTED] for the reporting period ending in 2018 that exceeds the defined maximum break-even deficit of twenty million Euros (EUR 20,000,000).

PART VI – Disciplinary Measures

69. The CFCB Adjudicatory Chamber stresses the importance of the objectives of the CL&FFP Regulations which include the encouragement of clubs to operate on the basis of their own revenues and, thus, the protection of the long-term viability and sustainability of European football. It must be remembered that the Break-even Requirement is the cornerstone of UEFA’s monitoring requirements. As explained in the Joint statement by European Commission Vice-President Joaquín Almunia and UEFA President Michel Platini of 21st March 2012 “[t]he central principles of FFP (namely, that clubs should “live within their own means” or “break even”) is based on the notion that football related income should at least match football related expenditure. No business can lay solid foundations for the future by continually spending more than it earns, or reasonably could expect to earn. Thus, the “break even” rule reflects a sound economic principle that will encourage greater rationality and discipline in club finances and, in so doing, helps to protect the wider interests of football.”

70. As set out in Article 1(3)(b) of the CL&FFP Regulations, the monitoring requirements must be fulfilled by clubs that qualify for UEFA club competitions. Article 2 of the

CL&FFP Regulations goes on to provide that the aim of the CL&FFP Regulations is to achieve financial fair play in competitions by, *inter alia*, improving the economic and financial capability of clubs and introducing more discipline and rationality in club football finances.

71. The CFCB Adjudicatory Chamber has made it clear in a number of cases concerning breaches of the no overdue payables requirements in Articles 65 and 66 of the CL&FFP Regulations that the CL&FFP Regulations are underpinned by the principle that all of the clubs that compete in UEFA's club competitions must be treated equally (CFCB, 14 January 2013, case AC-01/2102, *Malaga CF*, paragraph 51; CFCB, 19 December 2014, case AC-06/2014, *Panevėžio Futbolo Klubas Ekranas*, paragraph 47).
72. As was stated by the CFCB Adjudicatory Chamber, 19 June 2015, in the case AC-02/2015, *CSJC Football Club Dynamo Moscow*, paragraph 80, *"This principle has even greater force in relation to the Break-even Requirement because a breach of this requirement (for example, because of excessive spending on player acquisitions and employee benefits expenses in order to attract 'star players') may directly affect the competitive position of a club, to the detriment of the vast majority of clubs who comply with the CL&FFP Regulations. So, in general, it would be unfair to allow a club which is in serious breach of the Break-even Requirement to compete in a UEFA club competition. The power to impose disciplinary measures exists not just to encourage compliance with the rules by deterring breaches of the monitoring requirements, but also to protect the integrity of UEFA's club competitions by ensuring that all of the clubs that compete are subject to the same requirements."*
73. The CFCB Chief Investigator proposed the imposition of (i) a permanent withholding of revenues from UEFA competition in the amount of two million five hundred thousand Euros (€2,500,000); (ii) a prohibition of registering new players in the next two seasons (i.e. the 2019/20 and 2020/2021 seasons); and (iii) a restriction to 23 players on the number of players that Fenerbahçe may register in the next two seasons (i.e. the 2019/20 and 2020/2021 seasons). The CFCB Investigatory Chamber additionally proposed that the above withholding of revenues be reduced if Fenerbahçe fulfilled two conditions (set out above at para. 42).
74. In its Observations, Fenerbahçe submitted that progress was being made with respect to the fulfilment of the two proposed conditions and provided further information about its share capital increase.
75. It results from the file that Fenerbahçe failed to comply with the break-even target as stated in Articles 3.2(iii) and 8.1(iii) of the Settlement.
76. Having due regard to the circumstances of the case and the scale of the Club's failure to comply with the break-even target provided in the Settlement Agreement for the financial year 2018, the CFCB Adjudicatory Chamber accepts the disciplinary measures

proposed by the CFCB Chief Investigator, fixing the revenues to be withheld in the amount of two million Euros (€2,000,000).

77. The Chief Investigator proposed that the two conditions concerning the withholding of revenues should be fulfilled at the end of June at the latest.
78. The break-even deficit of the Club having been determined on 12 April 2019, the fulfilment of the conditions in such a short time (debt restructuring plan with financial institutions agreed and signed by all relevant parties in June 2019 and new TFF financial monitoring regulations agreed by the Club in June 2019 and implemented as from the 2019/20 season) would need to be evaluated through updated information before referring the case.
79. The CFCB Adjudicatory Chamber emphasizes the paramount importance of the objective and full assessment of the factual circumstances of the cases namely in order to assure the equality of the clubs.
80. The CFCB Adjudicatory Chamber recognises that a number of positive actions were initiated by the Club's new President since his election in June 2018, in order to significantly improve the Club's financial situation for the reporting period ending in 2019:
 - i. increasing gate receipts and merchandising income;
 - ii. signing new sponsors;
 - iii. [REDACTED];
 - iv. starting a donation campaign; and
 - v. working alongside TFF and Turkish financial institutions to finalize the debt restructuring plan and implementing the new TFF financial monitoring regulations.
81. Accordingly, the CFCB Adjudicatory Chamber considers appropriate to set the date of 15 October 2019, by when it should be possible to evaluate whether the conditions have been satisfied. Should Fenerbahce demonstrate that it has satisfied the conditions the CFCB Adjudicatory Chamber considers appropriate that the amount of revenues to be withheld be reduced to one million Euro (€1,000,000)
82. With regard to the sporting measure prohibiting Fenerbahce from registering in UEFA club competitions any new player, this prohibition will apply for each of the seasons 2020/21 (including the summer 2020 and winter 2021 transfer windows) and 2021/22 (including the summer 2021 and winter 2022 transfer windows), at each applicable deadline for the submission of List A and concern any new player who has been transferred and/or registered after the date of this decision, except if the Club demonstrates a positive transfer balance in conformity with the following conditions:

- a. For each season, one (1) "Designated Player" for a maximum committed transfer fee equivalent to the total proceeds due to the Club from the permanent transfer of players that were under contract with the Club at the date of this decision but who were not listed on the previous List A or List B for UEFA club competitions as from the 2018/19 season.
- b. For the same season and in any given transfer window, additional players for a maximum committed transfer fee equivalent to the total proceeds due to the Club from the transfer (permanent or temporary) of players that were registered with the Club and that were listed on the previous List A or List B for UEFA club competitions as from the 2018/19 season. For the avoidance of doubt, players for whom the committed transfer fee is zero (e.g. players returning from loan to the Club or out of contract players recruited by the Club) can be registered on the List A or List B.
- c. With regards (a) and (b) above, the maximum committed transfer fee includes the total unconditional fee for the transfer (permanent or temporary) of the incoming player and any conditional amounts irrespective of them being realised or unrealised as well as all training compensations/solidarity contributions due from the Club, but excludes agent fees.
- d. With regards to (a) and (b) above, the total proceeds is defined as the total unconditional fee for the transfer (permanent or temporary, as applicable) of the outgoing player to another club and any conditional amounts which are realised as well as training compensations/solidarity contributions that the Club is entitled to, but excludes agent fees. For the avoidance of doubt, if the Club is not entitled, directly or indirectly, to 100% of the proceeds from the transfer of the relevant outgoing player, the relevant transfer proceeds will be reduced proportionally.
- e. With regards to (a) and (b) above, any new player's registration resulting from a loan agreement which contains an obligation to purchase the player in the future whether conditionally or unconditionally will be considered as a permanent transfer (rather than a temporary transfer/loan). Therefore, the maximum possible committed amount will be taken into account as soon as the incoming player is registered with the Club for the first time.
- f. Any transfer surplus (calculated as the difference between the maximum transfer fee committed and the total proceeds) generated in the summer transfer window in one particular season, can be carried forward to the following winter transfer window of the same season. For the avoidance of doubt any transfer surplus generated under (a) cannot be added to the transfer balance calculated under (b) and vice-versa.

83. With regard to the proposed sporting measure restricting the number of players that Fenerbahce may register for participation in UEFA club competitions, the CFCB Adjudicatory Chamber considers appropriate to apply the restriction to 23 players instead of the maximum number allowed for the List A for the 2020/21 and 2021/22 seasons.

PART VII – Operative part

84. For failing to comply with the break-even target as stated in Articles 3.2(iii) and 8.1(iii) of the Settlement Agreement, the CFCB Adjudicatory Chamber determines, as final decision, in accordance with Articles 27(c) and 29(1) of the Procedural Rules:

- 1. Fenerbahce has failed to comply with the break-even target for the reporting period ending in 2018 in the Settlement Agreement.**
- 2. To withhold revenues from UEFA competitions to Fenerbahce of two million Euro (€2,000,000) during the two seasons (i.e. the 2020/21 and 2021/22 seasons).**
- 3. To prohibit Fenerbahce from registering in UEFA club competitions for each of the seasons 2020/21 (including the summer 2020 and winter 2021 transfer windows) and 2021/22 (including the summer 2021 and winter 2022 transfer windows), at each applicable deadline for the submission of List A, any new player who has been transferred and/or registered after the date of this decision, except if the Club demonstrates a positive transfer balance in conformity with the conditions mentioned in par. 82 of this Decision.**
- 4. To restrict the number of players that Fenerbahce may register for participation in UEFA competitions in the two seasons (i.e. the 2020/21 and 2021/22 seasons), i.e. 23 players instead of the maximum number allowed for the List A.**
- 5. The above-mentioned withholding of revenues from UEFA competitions shall be reduced to one million Euro (€1,000,000) if, by 15 October 2019, the two following cumulative conditions are fulfilled:**
 - a. The Club will have signed up to the debt restructuring plan with financial institutions if such plan has been agreed; and**
 - b. The Club will have implemented any new TFF financial monitoring regulations if such regulations have been entered into force.**
- 6. Fenerbahce shall be subject to the break-even requirement within the meaning of the CL&FFP Regulations in the monitoring period 2019/20.**

7. **For the sake of clarity and having regard to Article 8.2 of the Settlement Agreement, considering UEFA had to initiate new measures because of the Club's breach of the Settlement Agreement, the Settlement Agreement shall expire upon notification of this decision.**
8. **Fenerbahce is to pay three thousand Euros (€3,000) towards the costs of these proceedings.**
9. **The costs of proceedings must be paid into the bank account indicated below within thirty (30) days of communication of this Decision to Fenerbahce.**
10. **This Decision is final and shall be notified to:**
 - a) **Fenerbahce;**
 - b) **the Turkish Football Federation;**
 - c) **the CFCB Investigatory Chamber; and**
 - d) **the UEFA Administration.**

85. 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 this Decision.



J. N. Cunha Rodrigues
CFCB Chairman

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