



Arbitration CAS 2022/A/8709 Football Union of Russia (FUR) v. Union of European Football Associations (UEFA) *et al.*, award of 25 November 2022 (operative part of 15 July 2022)

Panel: Mrs Leanne O’Leary (United Kingdom), President; Mr Jeffrey Benz (USA); Hon. Michael Beloff KC (United Kingdom)

Football

Suspension of a member association’s right to participate in competitions

Nature of the decision

Scope of review of the CAS

Denial of the right to participate in a competition

Proportionality of the measure

Personality rights

- 1. A decision taken by a sports association can be characterised as either an administrative decision or a disciplinary decision. The decision of the UEFA Executive Committee to suspend a member association’s right of participation in UEFA competitions as a measure to deal with the consequences of a military conflict for football competitions that it organizes may be properly characterised as an administrative decision. It will have economic effects for the member association, and its players, teams and clubs that are all denied the opportunity to participate and the commercial opportunities and prestige that participation in UEFA competitions provides. But whatever its effect, its intention is not penal. It is also not a disguised sanction. A disguised sanction is a measure that is not described as a sanction but is, nonetheless, intended to punish a certain behaviour of the person to whom the measure is addressed.**
- 2. The principle of freedom of association requires a certain level of deference to be afforded to a sports association. However, the principle of deference and respect for the autonomy of a sports association is not absolute; these principles may yield when there are exceptional circumstances such as arbitrariness, a misuse of an association’s discretionary power, discrimination or breaches of any relevant mandatory legal principle. The threshold for determining those exceptional circumstances is set high, and the arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice. Although made with some deference, the review is *de novo* and anew under Article R57 of the Code, and CAS panels have and will consider evidence of violation of the relevant rules, statutes, and law *de novo* in determining whether a decision should stand.**
- 3. Denying a member association the right to participate in UEFA’s competition when that member has not violated the UEFA Statutes or regulations or a decision made under them and for which its membership has not been suspended, denies that member and its stakeholders the benefits that participation provides, e.g. financial incentives,**

commercial opportunities and prestige, amongst others, and is a decision that should not be taken lightly, and even then, only in the rarest of circumstances. However, the right of a member association to participate in competitions is not an *absolute* right, since there are likely other circumstances when the right of participation must give way to other rights or interests, such as another member's right to participate or the wider interests of the football community or a *force majeure* event.

4. A CAS panel is entitled to assess the proportionality of an administrative measure within the scope of its review of the exercise of the sports association's discretion, and arguments regarding proportionality are relevant.
5. The notion of "personality" (or of "personhood") is to be characterized by reference to the fundamental attributes which every person, and in some measure every legal entity such as an association or a corporation, has a right to see protected against external intrusion and interference. It is difficult to find definitions in the abstract as there is an indefinite number of liberties, varying from time to time and from country to country, which can be encompassed within the concept of personality rights. Examples are core rights related to privacy, name and personal identity, physical integrity, image, reputation, marriage, family life, sexual life and the like. In the case of elite sport, personality rights encompass more particularly the right to health, bodily integrity, honour, professional consideration, sporting activity and the right to economic development and fulfilment.

I. PARTIES

1. The Football Union of Russia (the "Appellant" or the "FUR") is the governing body of football in the Russian Federation. It has its seat in Moscow, Russian Federation, and is the member association for Russia of the Union of European Football Associations ("UEFA") and the Fédération Internationale de Football Association ("FIFA").
2. UEFA (the "First Respondent") is an association of European member football associations incorporated under Swiss law with its registered office in Nyon, Switzerland. UEFA is the governing body of European football and is recognised as such by FIFA.
3. The Hellenic Football Federation (the "Second Respondent") is the governing body of football in Greece. It has its seat in Athens, Greece, and is a member of UEFA and FIFA.
4. The Association Belarus Football (the "Third Respondent") is the governing body of football in Belarus. It has its seat in Minsk, Belarus, and is a member of UEFA and FIFA.
5. The Danish Football Association (the "Fourth Respondent") is the governing body of football in Denmark. It has its seat in Brøndby, Denmark, and is a member of UEFA and FIFA.

6. Luxembourgish Football (the “Fifth Respondent”) is the governing body of football in Luxembourg. It has its seat in Mondcerange, Luxembourg, and is a member of UEFA and FIFA.
7. The Austrian Football Association (the “Sixth Respondent”) is the governing body of football in Austria. It has its seat in Wien, Austria, and is a member of UEFA and FIFA.
8. The Malta Football Association (the “Seventh Respondent”) is the governing body of football in Malta. It has its seat in Ta' Qali, Malta, and is a member of UEFA and FIFA.
9. The Portuguese Football Federation (the “Eight Respondent”) is the governing body of football in Portugal. It has its seat in Cruz Quebrada – Dafundo, Portugal, and is a member of UEFA and FIFA.
10. The Football Association (the “Ninth Respondent”) is the governing body of football in England. It has its seat in London, United Kingdom, and is a member of UEFA and FIFA.
11. The Spanish Football Association (the “Tenth Respondent”) is the governing body of football in Spain. It has its seat in Las Rozas Madrid, Spain, and is a member of UEFA and FIFA.
12. The Irish Football Association (the “Eleventh Respondent”) is the governing body of football in Northern Ireland. It has its seat in Belfast, Northern Ireland, and is a member of UEFA and FIFA.
13. The French Football Association (the “Twelfth Respondent”) is the governing body of football in France. It has its seat in Paris, France, and is a member of UEFA and FIFA.
14. Collectively, Respondents 2 to 12 are referred to as the “Other Respondents”.
15. The Appellant and the Respondents are collectively referred to as the “Parties”.

II. INTRODUCTION

16. This is an appeal against a decision taken by the UEFA Executive Committee dated 28 February 2022 (the “Appealed Decision”) which suspended the participation of all Russian representative teams and clubs from UEFA competitions “*until further notice*”. The Appealed Decision states as follows:

“Since the last meeting of the UEFA Executive Committee that took place on 25 February 2022, where the topic of the situation related to Russia and Ukraine was discussed and some decisions were taken, the situation in Ukraine has continued to drastically escalate and the international community, including sport organisations, have taken a strong stance against these military interventions. UEFA, has continued evaluating the situation, especially, in the framework of its statutory values, mission and objectives.”

In addition, an increasing number of UEFA national associations publicly voiced their intention to not participate in matches against teams from the Russian Football Union (RFU).

Further, the general public's reaction has the consequence that, even if matches against Russian teams would be staged on a neutral territory, there are serious concerns about the ability to ensure the safety and security for all those involved, i.e. delegations, players, supporters etc. This is of paramount importance for UEFA.

Equally, it has become known that several governments and the EU institutions have imposed flight bans from or to the Russian territory. This would have an additional considerable impact on the smooth staging and running of UEFA competition matches.

Following the above-mentioned reasons, it becomes regrettably evident that UEFA is no longer in a position to fully achieve its objectives as stipulated in the UEFA Statutes under Article 2 par. 1(b) [“promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason”] and Article 2 par. 1(d) [“organise and conduct international football competitions and tournaments at European level for every type of football whilst respecting the players’ health”].

Therefore, the UEFA Executive Committee met today and decided that, in order to be able to achieve its statutory objectives, all Russian representative teams and clubs are suspended from taking part in UEFA competition matches, until further notice.

As far as the upcoming Round of 16 matches of the 2021/22 UEFA Europa League between the German club, RB Leipzig, and the Russian club, FC Spartak Moskva scheduled to take place on 10 and 17 March 2022 are concerned, it is uncertain when and if the suspension of Russian representative teams and clubs will be lifted.

Accordingly, in view of this uncertainty and taking into consideration that all pairings for the round of 16 of the relevant competition have been made, UEFA Executive Committee has decided that RB Leipzig is automatically qualified to the next round of the competition”.

17. The legal issues and Parties’ arguments outlined in these proceedings are similar to, and in some parts the same as, those raised in the parallel proceedings, CAS 2022/A/8708 *Football Union of Russia v. Fédération Internationale de Football (FIFA) et al.*, which concerned an appeal brought by the Appellant against FIFA’s suspension of the Appellant’s national teams from FIFA-organised competitions and involved FIFA, UEFA and the Appellant. The Panel appointed in these proceedings was also appointed to hear CAS 2022/A/8708.
18. The present proceedings primarily concern the exercise of UEFA’s discretion to remove the Appellant’s right, provided in the UEFA Statutes, to participate in UEFA-organised competitions, in circumstances which the Panel considers to be extraordinary and unforeseen. The catalyst for these circumstances was the commencement of a military conflict between Ukraine and Russia on 24 February 2022, which is still ongoing at the time of the Panel’s decision. When reaching its decision, the Panel has not taken a position on the conflict or how it is characterised or otherwise referred to. In its capacity as a Panel, it does not need to do so. The Panel needs to do no more than acknowledge that there are different views as to the

nature of the conflict in Ukraine, as illustrated by the different terms in which the Parties themselves have referred to the conflict. The Appellant describes it as “*an emergence of tensions*” or “*military operations between States*”. UEFA refers instead to “*Russia’s invasion of Ukraine*” or a “*Russian military invasion*”. Be that as it may, the Panel repeats that it considers it unnecessary in the exercise of its adjudicative role to enter the debate or to offer a view on the nature of the conflict. It is concerned only with the correctness or otherwise of the exercise of a sports federation’s discretion in the circumstances arising from the conflict by examining those circumstances at the time the decision was taken.

19. In the Panel’s view, those circumstances merit the descriptive adjectives “extraordinary” and “unforeseen”. The Panel in so describing them has in mind the rapidly evolving series of events that occurred during the period after 24 February 2022 and as existed at the time when the Appealed Decision was taken on 28 February 2022, namely: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community, including the International Olympic Committee, to the conflict; the imposition of sanctions and travel bans on Russian people and businesses; the uncertainty of the duration and scope of the conflict; and, the exceptional and widespread international public reaction against it. In addition, the Panel has been asked to bear in mind, from a football perspective: the increasing number of UEFA national associations publicly stating their intention to not participate in matches against the Appellant’s teams; serious concerns about UEFA’s ability to ensure the safety and security for all those who attended its matches; and the impact of travel bans to and from the Russian territory on the organisation of UEFA competition matches. All these circumstances provided the context in which the Appealed Decision was taken and are relevant to the Panel’s analysis.
20. The Panel also emphasises that it has not taken into consideration any events occurring since 28 February 2022 which, retrospectively and with the benefit of hindsight, may, arguably, have led to a different decision being taken had they been known at the time of the Appealed Decision itself. The Panel has focused on the Parties’ evidence and legal submissions as to the circumstances known or foreseeable on 28 February 2022, which underlay the Appealed Decision.

III. FACTUAL BACKGROUND

A. Background Facts

21. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the remote hearing on 5 July 2022. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

22. The First Respondent organises competitions between national representative and club teams. The following competitions are relevant to these proceedings
- a. The UEFA Women's Under-17 Championship, which was held in May 2022 in Bosnia and Herzegovina. The Appellant's team participated in the qualification matches along with the Second, Third and Fourth Respondents;
 - b. The UEFA U-17 European Championship, which was held in May and June 2022 in Israel. The Appellant's team participated in the qualification matches (elite round) together with the Fifth, Ninth and Twelfth Respondents;
 - c. The UEFA U-19 European Championship, which will be held in July and August 2022 in Slovakia. The Appellant's team participated in the qualification matches (elite round) together with the Fourth, Sixth and Tenth Respondents;
 - d. The UEFA U-21 European Championship, which is scheduled to be held in Georgia and Romania in 2023. The Appellant's team was participating in the qualification matches for the competition with the Seventh and Eleventh Respondents; and
 - e. The UEFA Women's European Futsal Championship 2022, which was held in Portugal in March 2022. Before the Appealed Decision was passed, the Appellant's team was scheduled to play in the semi-final against the Eighth Respondent.
23. On 24 February 2022, the military conflict in Ukraine started to unfold.
24. On 24 February 2022, the European Council and Council of Europe condemned the military action. The Chair of the African Union urged the parties to establish an immediate ceasefire. The Association of Southeast Asian Nations (ASEAN) also expressed concern and appealed for restraint and dialogue.
25. On 25 February 2022, the United Nations Security Council attempted to adopt a Resolution on Ending Ukraine Crisis, which was vetoed by the Russian Federation.
26. On 25 February 2022, the Executive Board of the International Olympic Committee (the "IOC") issued a statement, which included the following recommendations:
- "The IOC EB today urges all International Sports Federations to relocate or cancel their sports events currently planned in Russia or Belarus. They should take the breach of the Olympic Truce by the Russian and Belarusian governments into account and give the safety and security of the athletes absolute priority. The IOC itself has no events planned in Russia or Belarus.*
- In addition, the IOC EB urges that no Russian or Belarusian national flag be displayed and no Russian or Belarusian anthem be played in international sports events which are not already part of the respective World Anti-Doping Agency (WADA) sanctions for Russia. ..."*

27. On 25 February 2022, UEFA issued Circular No. 08/2022 in which it informed its 55 member associations, amongst other things, that: (i) the 2022 Champions League Final would be moved from St Petersburg in Russia to Paris in France; (ii) no UEFA competition match was to be played on the territories of either Russia or Ukraine until further notice; and (iii) it would continue to assess developments in the situation and that it “*may meet again in the following days to potentially take further decisions*” (the “First Decision”).
28. On various dates between 26 February 2022 and 10 March 2022, the Ninth, Eleventh and Twelfth Respondents, the Irish FA, the Football Association of Wales, the Scottish FA, the Czech Republic FA, the Norwegian FA, the Liechtenstein FA, the Polish FA, the Swedish FA, the Royal Netherlands FA, and the Icelandic FA informed publicly that their national teams would not play against the Appellant’s national teams, including in UEFA competitions.
29. On 27 February 2022, the European Union closed its airspace to Russian aircraft. The Swiss Federal Council also adopted a package of sanctions.
30. On 28 February 2022, the Executive Board of the IOC issued the following resolution (the “IOC Resolution”):

“1. In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.

2. Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.

Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.

In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.

3. The IOC EB maintains its urgent recommendation not to organise any sports event in Russia or Belarus, issued on 25 February 2022.

4. The IOC EB has, based on the exceptional circumstances of the situation and considering the extremely grave violation of the Olympic Truce and other violations of the Olympic Charter by the Russian government in the past, taken the ad hoc decision to withdraw the Olympic Order from all persons who currently have an important function in the government of the Russian Federation or other government-related high-ranking position [...]”.

31. On 28 February 2022, at an extraordinary meeting of the UEFA Executive Committee, the Appealed Decision was taken. It was communicated to UEFA's member associations by way of Circular No. 10/2022 and published on UEFA's website on the same day.
32. On 2 March 2022, the United Nations General Assembly adopted Resolution ES-11/1 which condemned Russia's actions and demanded an immediate withdrawal of Russians troops from Ukraine. The Resolution was adopted, with 141 nations in favour, 5 against (Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation and Syria) and 35 abstentions.
33. On 2 March 2022, by email to the Appellant, UEFA confirmed that the Appealed Decision with grounds was that provided in Circular No. 10/2022.
34. On 3 March 2022, at a meeting of the UEFA Executive Committee, it was decided that "*all Belarusian clubs and national teams competing in UEFA competitions will be required to play their home matches at neutral venues with immediate effect. Furthermore, no spectators shall attend matches in which the teams from Belarus feature as a host*". The decision was communicated on UEFA's website and notified to member associations by Circular No 12/2022.
35. On 7 March 2022, and in view of the Appellant's suspension, UEFA made changes to some of its competitions, including the UEFA Women's U17 European Championship, the U17 European Championship, and the U19 Championship.
36. On 8 March 2022, the sports ministers of 37 nations, including Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom signed a joint statement supporting the sporting sanctions against the Russian Federation, in particular the fact that "*teams representing the Russian or Belarusian state should be banned from competing in other countries*".
37. Other international federations, including the Fédération Internationale de Football (FIFA), Fédération Internationale de l'Automobile (FIA), World Athletics, The International Tennis Federation (ITF), the Union Cycliste Internationale (UCI), the Fédération Internationale de Ski (FIS), the International Biathlon Union (IBU), UEFA and federations representing archery, badminton, baseball, basketball, canoeing, ice hockey, rugby, swimming and volleyball, have also taken measures to suspend the participation of Russian federations and athletes.
38. On 2 May 2022, UEFA issued Circular No. 21/2022 which outlined a number of Executive Committee decisions on the impacts and consequences arising from the Appellant's Appealed Decision. Certain decisions recorded in Circular No 21/2022 relating to the effects of the suspension on the participation of Russian clubs in the Champions League and the decision to declare ineligible the Appellant's bid to host the UEFA EURO 2028/2032, are the subject of appeals against UEFA in CAS 2022/A/8865 – 8868 and CAS 2022/A/8871, respectively.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 7 March 2022, the Appellant lodged an appeal with the CAS against the Respondents with respect to the Appealed Decision. In its Statement of Appeal, the Appellant included a Request for Provisional Measures and for a Stay of the Appealed Decision (the “First Request”) pursuant to Article R37 of the Code of Sports-related Arbitration (2020 edition) (the “Code”), asking for an order to be issued by 11 March 2022. It also requested an expedited arbitration procedure and nominated Mr Jeffrey G Benz, Attorney-at-Law and Barrister in London, United Kingdom and Los Angeles, United States of America, as arbitrator.
40. On 8 March 2022, the CAS Court Office initiated the present procedure and invited the Respondents to, *inter alia*, file their comments on the First Request by 10 March 2022. It also informed the Parties that the costs provision Article R64 of the Code applied to the proceedings.
41. On 9 March 2022, the First Respondent informed the CAS Court Office that it did not agree to an expedited arbitration procedure.
42. Also on 9 March 2022, the CAS Court informed the Parties that pursuant to Article R52(4) of the Code, and in light of the First Respondent’s objection and no reply from the Other Respondents, the matter would proceed under the rules applicable to appeals proceedings.
43. On 10 March 2022, UEFA filed its Answer to the First Request. The Other Respondents did not file any comments.
44. Also on 10 March 2022, the Appellant informed the CAS Court Office of its request for the present proceedings to be consolidated with CAS 2022/A/8708 and for both proceedings to be submitted to the same Panel. It also objected to the application of Article R64 of the Code to the proceedings.
45. On 11 March 2022, the CAS Court Office acknowledged receipt of the Answer filed by UEFA and informed the Parties that the President of the CAS Appeals Arbitration Division (the “Division President”), or her Deputy, would issue an Order on the First Request in short order.
46. Also on 11 March 2022, the CAS Court Office informed the Appellant that it had not received the CAS Court Office fee and invited the Appellant to make payment no later than 15 March 2022.
47. On 14 March 2022, the CAS Court Office informed the Parties that the Appellant’s request under R52(5) of the Code for consolidation of the proceedings with CAS 2022/A/8708 was rejected because it did not meet the requirements for consolidation (i.e. different appeals against the same, under a formal point of view, decision). It invited the Respondents to comment on the proceedings being submitted to the same panel as CAS 8708/A/2022 and

informed that the Appellant's objection to the application of Article R64 of the Code would be submitted to the Panel when constituted.

48. On 15 March 2022, the Operative Part of the Order on the Appellant's First Request was issued by the Division President. The Appellant's First Request was rejected.
49. On 17 March 2022, the First Respondent informed the CAS Court Office of its agreement to the proceedings being submitted to the same panel as CAS 2022/A/8708. It also recorded its disagreement with the Appellant's claim that Articles R65.1 and R65.2 of the Code applied to the proceedings.
50. On 21 March 2022, the Appellant requested a seven-day extension of time to file its Appeal Brief, *inter alia*, to align with the deadline in CAS 2022/A/8708, which was granted on the same day.
51. On 22 March 2022, the CAS Court Office informed the Parties that the proceedings would be submitted to the same Panel as CAS 2022/A/8708.
52. Also on 22 March 2022, the First Respondent requested an extension until 29 March 2022 to nominate an arbitrator in order to align with deadlines in CAS 2022/A/8708 and CAS 2022/A/8717, and in view of the need to liaise with multiple Respondents. The request was granted on the same day.
53. Also on 28 March 2022, in accordance with Article R51 of the Code and within a previously agreed extension, the Appellant filed its Appeal Brief.
54. On 29 March 2022, the First Respondent informed the CAS Court Office that it appointed The Honourable Mr Michael Beloff K.C. as arbitrator.
55. On 4 April 2022, the First Respondent requested that the time limit to file its Answer be fixed after receipt of the advance of costs.
56. On 5 April 2022, the CAS Court Office set aside the First Respondent's time limit to file its Answer.
57. On 8 April 2022, the Division President issued the reasoned Order on the First Request.
58. On 25 April 2022, the CAS Court Office informed that the Appellant had paid its share of the advance of costs and set the time limit for the First Respondent to file its Answer, noting also that the Other Respondents had not requested an extension of time and had not filed Answers to the Appeal Brief under Article R55 of the Code. The Other respondents took no active part in these proceedings.
59. On 12 May 2022, the Appellant wrote to the CAS Court Office informing that certain UEFA Regulations provided for a "mandatory" expedited procedure and requested CAS implement an expedited procedure so that an award could be rendered by 14 June 2022.

60. On 16 May 2022, the CAS Court Office informed the Parties that, as at this stage of the procedure an expedited procedure would only impact the hearing in the proceedings, any discussion regarding the hearing could follow after the exchange of submissions and the constitution of the Panel.
61. Also on 16 May 2022, and in accordance with Article R55 of the Code, the First Respondent filed its Answer
62. On 20 May 2022, the CAS Court Office invited the Parties to inform whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.
63. On 24 May 2022, the CAS Court Office issued, pursuant to R54 of the CAS Code and on behalf of the Division President, the Notice of Formation of a Panel, constituted as follows:

President: Dr Leanne O'Leary, Solicitor and Senior Lecturer in Liverpool, United Kingdom

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom and Los Angeles, United States of America

Hon. Michael J. Beloff K.C., Barrister in London, United Kingdom
64. On 25 May 2022, the First Respondent notified the CAS Court Office of its preference for the matter to be decided on the written submissions and without a hearing.
65. On 28 May 2022, the Appellant filed a Second Request for Provisional Measures (the "Second Request").
66. On 1 June 2022, the CAS Court Office invited the Respondents to comment on the Appellant's Request by 10 June 2022. It also asked the Appellant to confirm by 3 June 2022 whether its request for disclosure outlined in the Appeal Brief and UEFA's comments in response and document disclosure, satisfied its request.
67. On 3 June 2022, the Appellant informed the CAS Court Office that the disclosure request had been satisfied.
68. On 8 June 2022, the CAS Court Office informed the Parties that pursuant to Article R57 of the Code, the Panel had decided to hold a hearing together with CAS 2202/A/8708 *Football Union of Russia v. Fédération Internationale de Football (FIFA) et al.* by videoconference on either 24 June 2022 or 5 July 2022. The Appellant was invited to confirm whether it maintained its Second Request should one of the hearing dates be confirmed and the Operative Part of the Award issued shortly thereafter, a request to which the Appellant did not reply.
69. On 10 June 2022, the First Respondent filed its Answer to the Second Request.

70. On 13 June 2022, the CAS Court Office confirmed that the hearing date was set for 5 July 2022 and invited the Parties to confirm those witnesses and other people attending no later than 20 June 2022.
71. On 14 June 2022, the Operative Part of the Order on the Appellant's Second Request was issued. The Appellant's Second Request was rejected.
72. On 20 June 2022, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Appellant on 28 June 2022, by the First Respondent on 27 June 2022, and by the Fifth and Ninth Respondents on 27 June 2020. There was no objection received to the Fifth and Ninth Respondents filing signed copies of the Order of Procedure.
73. On 5 July 2022, a hearing in these proceedings, together with CAS 2022/A/8708, took place by videoconference. Besides the Panel and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following people attended the hearing:

For the Appellant:

Mr Yury Zaytsev, Legal Counsel
Mr Mikhail Prokopets, Legal Counsel
Mr Alexandre Zen-Ruffinen, Legal Counsel
Mr Ilya Chicherov, Legal Counsel
Mr Yury Yakhno, Legal Counsel
Mr Denis Rogachev, Football Union of Russia In-House Legal Counsel

For the First Respondent (and Second Respondent in CAS 2022/A/8708):

Mr Antonio Rigozzi, Legal Counsel
Ms Brianna Quinn, Legal Counsel
Ms Michaela Clicque, UEFA Senior Lawyer

For the Fédération Internationale de Football (FIFA) (the First Respondent in CAS 2022/A/8708):

Mr Miguel Liétard Fernández-Palacios, Director of Litigation
Mr Alexander Jacobs, Senior Legal Counsel

For the Polish Football Association (the Third Respondent in CAS 2022/A/8708)

Mr Grzegorz Knap, Legal Counsel

74. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the Panel. The Panel's jurisdiction over the present dispute was also confirmed. The Parties

were each given the opportunity to present their oral submissions and reiterated the substance of the arguments already put forward in their written submissions. The Appellant and First Respondent, FIFA and the Polish Football Federation were also heard with regards to the procedure in CAS 2022/A/8708.

75. Before the hearing concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.
76. On 13 September 2022, the Panel issued the reasoned Order on the Second Request.

V. SUBMISSIONS OF THE PARTIES

77. The Appellant's submissions, in essence, may be summarized as follows:

a) Jurisdiction, Admissibility and Applicable Law

- The Appealed Decision was communicated to the Appellant on 28 February 2022 by UEFA Circular No. 10/2022. The ten-day time limit for appeal to CAS that is provided in Article 62.3 of the UEFA Statutes expired on 10 March 2022. The Appellant filed its Statement of Appeal on 8 March 2022, and within a previously granted extension of time, filed the Appeal Brief on 28 March 2022. The appeal was filed in due form and time and is admissible.
- Pursuant to Article R58 of the Code the law to apply is primarily UEFA regulations and subsidiarily, where relevant, Swiss law.

b) Consequences of the Appealed Decision

- The Appealed Decision deprives the Appellant of the right to take part in UEFA competitions with its representative teams and to enter its clubs in UEFA competitions, whilst maintaining all other rights and obligations arising from its UEFA membership.
- The most important and profitable right of a UEFA member is the right to enter its national teams and clubs to participate in UEFA-organised competitions because it generates income, prestige, and competitive opportunities.

c) Essence and Nature of the Appealed Decision

- The Appealed Decision is a "*purely disciplinary decision*". Relying on CAS 2008/A/1583 and 1584, the Appellant submitted that the Appealed Decision pronounced a sanction against the Appellant and should be construed as a decision of a disciplinary nature or as "*having at least an inherent disciplinary aspect*". UEFA action led to the suspension of the Appellant's representative teams and imposed adverse consequences on the Appellant.

d) *Alleged Procedural Flaws with the Appealed Decision*

- UEFA denied the Appellant fundamental procedural rights e.g., the right to be heard, the right to be served process in a fair and timely manner, the right to inspect evidence leading to a decision, and the right to access files when rendering the Appealed Decision. It is a general principle of sports law and consistently recognized by CAS jurisprudence that the right to be heard must be respected (CAS 2021/A/7220). UEFA never invited the Appellant to provide its position on the matter. It adopted the Appealed Decision in the absence of the Appellant and any written or oral submissions by it.

e) *Alleged Material Flaws of the Appealed Decision*

- It lacks a legal basis because there is no superior decision or order to justify it. The IOC Resolution served as an additional basis for UEFA to pronounce the Appealed Decision. It is a recommendation that has no binding effect on UEFA. Neither the Olympic Charter nor the UEFA Statutes and regulations provide that the IOC Resolution has binding effect. UEFA should have assessed compliance with the IOC Resolution based on political neutrality principles.
- The Appealed Decision violates the UEFA Statutes, specifically Articles 1.1, 2.1, 7, 7bis, and 9.1.
- UEFA views the decisions of several member associations not to compete with the Appellant's team and the "foreseeable" similar positions of the other member associations as obstacles to achieving its statutory objectives, particularly Article 2.1(b) and Article 2.1(d). This argument is legally untenable.
- Article 9.1 of the UEFA Statutes provides the UEFA Executive Committee with the power to suspend a member association for "serious breach of these Statutes or regulations or decisions made under them". A member can only be suspended immediately if it has seriously violated its obligations. The Appellant, however, did not violate any obligation. By suspending the Appellant when it had done nothing wrong, UEFA acted in contravention of its Statutes.
- Article 7(e) of the UEFA Statutes provides a member association with the right "to take part in UEFA competitions with their representative teams and to enter their clubs for these competitions". The Appealed Decision violates Article 7(e). The UEFA Statutes do not contain any provision that permits UEFA to limit the Appellant's right to participate in UEFA competitions.
- Article 1.1 of the UEFA Statutes provides that "UEFA shall be neutral, politically and religiously". Article 2.1(b) of the UEFA Statutes provides that "[the] objectives of UEFA shall be to...promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason...". Article 7bis.2 provides that member associations "shall manage their affairs independently and with no undue

influence from third parties". The Appellant's Statutes contain the same provisions. UEFA does not allege that the Appellant is in breach of its obligation to act independently and be neutral from political influence, however, some UEFA member associations couch their refusal to play against the Appellant's teams in political terms. The Appellant submitted that UEFA breached political neutrality when adopting the Appealed Decision because it was under pressure from member associations that publicly announced a refusal to play against the Appellant's teams.

- The Appealed Decision breaches the prohibition on discrimination in Article 2.1(b) of the UEFA Statutes because, on a clearly political basis, UEFA has sided with member associations that have attributed the actions of the Russian State to the Appellant. The member associations that refuse to play the Appellant's teams are also violating the obligation provided in Art 7(e) of the UEFA Statutes which requires a UEFA member association to play in official UEFA competitions. By issuing the Appealed Decision, UEFA supports and endorses the violations.
- The concept of *force majeure* is not applicable. Relying on CAS 2018/A/5779, the Appellant asserts that neither UEFA nor the Respondents are prevented from fulfilling their obligations and duties towards the Appellant. The matches can be played on neutral grounds. If security concerns exist, matches should be played behind closed doors. For this concept to be relevant, the party invoking it must have been prevented from doing something, which is not the present situation.

f) *The Decision Ignores Fundamental Principles of Disciplinary Proceedings*

- The Appealed Decision is disproportionate. In sports disciplinary matters, the doctrine provides that the competent bodies must weigh up the individual interest of the member and the general interest of the federation. The individual is entitled to the mildest possible measure that is still likely to achieve the intended goal. There are many less incisive measures than suspensions available to UEFA e.g., organizing the Appellant's matches behind closed doors. The Appellant submitted that the suspension is "*an extreme measure*" which is not justified and that it "*suffers a real boycott and is forced to bear the responsibility for an unfortunate situation*" which it did not create.
- The Appealed Decision breaches the principles of equal treatment. Relying on CAS 2013/A/3297, the Appellant submits that when deciding the matter, UEFA was required to react in a similar manner to previous situations of conflict between States. It asserts that UEFA is aware of and has taken steps to address the conflict between Russia and Ukraine "*for years*". Since 2014, a Russia/Ukraine team match has been prohibited for political reasons in all tournaments except for the playoffs of the final stage of tournaments. The escalation of tension between the two countries is not a "*new argument*" on which UEFA can rely to adopt the Appealed Decision.
- There have been other examples of States involved in military action which have not resulted in the suspension of a sports federation or representative teams. For example,

the Vietnam War between 1955 – 1975, Iran/Iraq War in 1980 – 1988, and military operations in Afghanistan in 1979-1989 and 2001-2021 did not result in suspension of the involvement of representative teams or sports federations. There is no act of any competent international body obliging States and other entities to suspend Russian sports teams from international competitions such as, for example, a United Nations resolution. There have been rare occasions when athletes of certain nationalities were banned from participation in international competitions. For example: in 1948 German athletes were not allowed to compete in the Munich Games following the decision of the International Military Tribunal at Nuremberg in 1946; and in 1992, paragraph 8(b) of Resolution 757 of the United Nations Security Council resulted in the expulsion of Yugoslav athletes from international competitions. There is no similar resolution or decision of an international body that demands the expulsion of Russian athletes currently.

- Belarusian teams are not suspended from UEFA competitions. They are required only to play on neutral fields without spectators.
- The Appealed Decision violates the fundamental principle of *nulla poena sine lege clara*. Relying on CAS 2017/A/5272 and CAS 2017/A/5086 and the cases mentioned therein, the Appellant contended that there should be a certain level of predictability of the sanction. When political circumstances exist to prevent a match being held in a particular country, the standard practice of UEFA is to transfer the match to a neutral pitch. UEFA erred in construing its regulations as permitting it to impose a sanction against the Appellant when its regulations: a) do not mention a sanction for these circumstances; b) liability for the Russian State's actions cannot be transferred to the Appellant; and c) the Appellant is not in breach of UEFA Statutes and regulations.
- Established CAS jurisprudence requires a sanction to be proportionate (CAS 2017/A/5031, para 72). UEFA refers to safety and security, and the need to “*guarantee the smooth staging and running of UEFA competition matches*” as grounds for the application of the suspension. In the Appellant's view, UEFA overreacted and should have considered milder consequences rather than an immediate suspension e.g., changes to the schedule. Regarding safety and security, the Appealed Decision does not consider in detail the possibility of holding matches on a neutral pitch or other measures which could secure these objectives. The Appealed Decision does not provide specific grounds for the imposition of suspension instead of other measures. In the absence of specific grounds for the Appellant's suspension, the Appellant submitted that the burden of proof now shifts, and it is for UEFA to prove the sanction's validity (CAS 2014/A/3621, para 76).
- The Appealed Decision violates the Appellant's personality rights under Article 28 of the Swiss Civil Code (“SCC”), particularly its rights to economic development and fulfilment, and to honour (ATF 134 III 193, 4.3 to 4.6). The suspension deprives the Appellant of important bonuses and implies that the Appellant's qualification would bring the world of football into disrepute. The Appellant's right to play in UEFA competitions has been violated, the decision infringes the Appellant's right to its own economic development

and there is no overriding UEFA interest to justify the serious violation of the Appellant's personality rights.

g) *Alleged Violation of Swiss Competition Law*

- The Appealed Decision infringes Swiss competition law. UEFA is an association within the meaning of Article 60 ff of the SCC and an enterprise within the meaning of the Swiss Cartel Act (IC VD, CM11.033798 dated 5 October 2011, para 6 b) bb)). It has a dominant position on the market for professional football activities in Europe and occupies a dominant position within the meaning of Article 4 of the Swiss Cartel Act because it is the only organiser of the sport at European level. An entity occupying a dominant position in a market has a special responsibility when exercising their functions. It must be careful not to impose “disciplinary obstacles” or adopt behaviour that can be qualified as “abusive retaliation” (CLERC E., CR-Concurrence, Art 7, N 71 and 75).
- The Appealed Decision constitutes a serious violation of Article 7 of the Swiss Cartel Act for which UEFA cannot rely on any justification.
- UEFA has excluded the Appellant from the European football competition market in a wholly abusive manner, and in violation of its Statutes, the Appellant's right to participate in competitions, the Appellant's personality rights, and Swiss law. Removing the Appellant's national teams from competitions in which they are involved, is tantamount to a refusal to maintain commercial relations. The decision was made in violation of all fundamental procedural safeguards as the Appellant was at no time consulted or invited to present its views. It establishes a real boycott because the Appellant and its affiliates by the sole fact of their nationality are declared *non grata* by UEFA in its competitions. The situation is similar to UEFA's reaction to the clubs and players who announced their participation in the European Super League and against whom UEFA threatened with a boycott. A Spanish judge was required to order UEFA to refrain from taking disciplinary action against the clubs and players and excluding them from competitions.
- The Appealed Decision violates the rule of the prevalence of sporting results, according to which only sports results determine the right of access to competitions. It negates the Appellant's efforts to improve the results of its affiliated teams. To provide UEFA with the right to remove a competitor from the market to influence a government to adopt a certain position, when it has no competence in the area, and when the competitor has no responsibility or power to influence, “would be to open the door to all kinds of abuse”.

h) *Requests for Relief*

The Appellant submits the following requests for relief:

- “1. *Set aside the decision of the UEFA Executive Committee dated 28 February 2022.*

2. *Reinstate all Russian teams, whether national representative teams or club teams, for participation in UEFA competitions, including, but without limitation, in the competitions mentioned in the Statement of Appeal.*
3. *Order UEFA to bear all costs incurred with the present procedure.*
4. *Order UEFA to pay FUR a contribution towards its legal and other costs, in the amount to be determined at the Panel's discretion.*

The Appellant explicitly reserves the right to claim from UEFA any and all losses incurred by the Appealed Decision in a separate procedure before the competent jurisdictional body or a state court, as the case may be”.

78. The First Respondent's submissions may be summarized as follows:

a) *Jurisdiction, Admissibility and Applicable Law*

- The Parties do not dispute the jurisdiction of the Panel or the admissibility of the appeal. The rules of law applicable to the merits of the proceedings are determined by Article R58 of the Code. It is not disputed that the Panel shall decide the matter according to the UEFA Statutes and subsidiarily Swiss law.

b) *Consequences of the Appealed Decision*

- The first sporting consequence of the Appealed Decision was a UEFA Europa League match scheduled to take place between FC Spartak Moskva and RB Leipzig on 10 March 2022 and in which FC Spartak Moskva was unable to participate. UEFA also made changes to the UEFA Women's U17 Championship, the UEFA U17 European Championship, UEFA U19 European Championship, UEFA U21 Championship, UEFA Women's European Futsal Championship, and the UEFA U19 Futsal Championship. UEFA also replaced the Russian club MFK Tyumet with ACCS Asnières Villeneuve 92 in the UEFA Futsal Champions League. It also issued Circular No 21/2022 to deal with the impact and consequences of the Appealed Decision on the UEFA Nations League 2022/23 (UNL) and the UEFA Women's Euro 2022 (WEURO). It also declared the Appellant's bid to host the 2028/2032 EURO competitions ineligible.
- On 3 March 2022, the UEFA Executive Committee decided that all Belarusian clubs and national teams competing in UEFA competitions would be required to play their home matches at neutral venues and that no spectators would attend matches in which the teams from Belarus feature as host. The decision was confirmed in Circular No. 12/2022 dated 3 March 2022. UEFA agrees that it took a different approach regarding the Belarusian teams and the primary factor for that approach was the genuine concern that UEFA had with requiring member association teams to travel to a country that was facilitating access to a military conflict, and to travel against some governments' advice to their citizens not to travel to Belarus.

c) *Competence to take Appealed Decision*

- The Appellant does not challenge the competence of the UEFA Executive Committee to take the Appealed Decision. The First Respondent submitted that Article 65 of the UEFA Statutes provided the UEFA Executive Committee with the competence to render the Appealed Decision. The wording of Article 65 provides UEFA with a broad discretion and the First Respondent submitted that the Panel should interfere with the Appealed Decision only if the discretion was “*somehow abused or exercised for improper reasons*” (CAS 2012/A/2831, para 19; also CAS 2011/A/2590, para 34; CAS 96/157, para 22; and CAS OG 02/002, para 3.2). Within the limits of mandatory law, a Swiss association also enjoys a wide discretion when it comes to determining their affairs and regulations under Swiss law (Article 63 of the SCC).
- The Appealed Decision was a fully valid exercise of UEFA’s statutory prerogatives in very extraordinary circumstances and not the exercise of its disciplinary power; it was necessary for UEFA to achieve its statutory objectives; and the most appropriate and proportionate course of action at that moment, in the face of the military conflict.
- The First Respondent submitted that the Panel had the full power to review the facts and the law pursuant to Article R57 of the Code, but that even in the context of a *de novo* power of review, a level of deference should be afforded to an association when assessing the proportionality of the measure (CAS 2019/A/6665, para 157). It further contended that while such principles were normally discussed in cases concerning sanctions, which the present case did not involve, the Panel should apply the same principles in the case of a measure taken to address objectively unforeseen circumstances

d) *Essence and Nature of the Appealed Decision*

- The Appealed Decision is not a “*purely disciplinary decision*” or a disguised sanction i.e., a measure that is not called a sanction but is intended to punish a certain behaviour of the person to whom the measure is addressed (CAS 2011/O/2422). It does not seek to punish the Appellant’s behaviour but rather addresses an objective situation that has arisen because of the military conflict. The reasoning in CAS 2008/A/1583 & 1584 is not relevant to the present case. The specific rule in CAS 2008/A/1583 & 1584 was held to be disciplinary in nature or to have had “*an inherent disciplinary aspect*” because its purpose “*was to sanction the relevant club for past conduct where a violation of UEFA’s values had been established*”.

e) *Alleged Procedural Flaws with the Appealed Decision*

- The alleged procedural flaws are denied and in any event are irrelevant because of the Panel’s *de novo* power of review.

f) *Alleged Material Flaws of the Appealed Decision*

- The Appealed Decision was based on UEFA's exercise of its own prerogatives and its own Statutes. The IOC Resolution was considered by UEFA but did not serve as an additional basis on which to make the decision. The First Respondent submits that it was not the only international sports governing body to take such a decision. The 4th and 5th Fundamental Principles of Olympism are embedded in the UEFA Statutes. The First Respondent denies that it has prohibited Russian athletes from practicing sport; athletes have been suspended from international competitions "*in view of the risk that their participation would create to the viability, integrity, safety and security of such competitions*". There is no limit on the ability of Russian athletes to continue practising sport, including football, generally.
- The Appealed Decision does not violate the UEFA Statutes. The First Respondent submitted that the Appealed Decision did not violate Article 2.1 of the UEFA Statutes because the Appellant's teams have been suspended because of an objective situation created by the military conflict and not because UEFA politically agrees with Ukraine. It further submitted that the Appellant had focused on the moral objections of certain of the member associations in its Appeal Brief and did not address the security concerns of, for example, the Swedish FA. The Appealed Decision also did not violate Article 9 of the UEFA Statutes and the Appellant's contention can be summarily dismissed because the UEFA Executive Committee did not suspend the Appellant's membership under Article 9; the decision to suspend participation was made under Article 65 of the UEFA Statutes.
- The Appellant's right to participate in UEFA competitions provided in Article 7 of the UEFA Statutes is not an absolute right. The national teams of UEFA member associations can be denied the right to participate in any of UEFA's competitions for several legitimate reasons. The First Respondent submitted that the present case is a situation where the Appellant's right to participate in UEFA competitions can be legitimately limited. The Appellant has not substantiated that such right is absolute and inalienable.
- The Appealed Decision did not violate the duty of political neutrality in Articles 1.1, 2.1(b) and 7bis.2. The Appellant is also wrong to imply that some UEFA member associations refused to play the Appellant's teams solely on political grounds. The Swedish FA, for example, expressly stated that its position was based not only on moral reasons, but on security concerns as well. The First Respondent denied that it breached the UEFA Statutes by acting under pressure from member associations, and while it shared the concerns of member associations (and many other football stakeholders), irrespective of its member associations' intentions, it submitted that it arrived independently at the same result.
- The Appealed Decision did not breach the prohibition on discrimination on a "*clearly political basis*" and the Appellant's reliance on the principle of non-discrimination set out in Article 2.1(b) of the UEFA Statutes is misguided. Even if the Panel were to consider

that discrimination had occurred (*quod non*), that is not the end of the Panel's legal analysis and it would have to consider whether the measure "*was a necessary, reasonable and proportionate means of attaining a legitimate objective*" (CAS 2018/O/5794 & 5798, para 548). Whilst it was regrettable, the First Respondent submitted that such a measure was a necessary, reasonable, and proportionate means of attaining a legitimate objective.

- The Appealed Decision does not "*ignore*" Article 7(e) of the UEFA Statutes. The Appellant's suggestion that member associations should be sanctioned for refusing to participate against its teams is "*untenable*". Member associations have the right to participate; they do not have the obligation to do so.
- The Appealed Decision is based on unforeseen circumstances, not *force majeure*. The Appellant's argument regarding *force majeure* is irrelevant. It is UEFA's position that there was, and remains, an objective impediment.

g) The Decision Ignores Fundamental Principles of Disciplinary Proceedings

- The Appealed Decision is not disproportionate. The First Respondent submitted that it was "*impossible to apply*" jurisprudence regarding proportionality that was established in the context of a disciplinary offence because the Appellant had not committed such an offence. Nonetheless, it submitted that the Appealed Decision was taken with reference to a legitimate objective i.e., the need to ensure the viability and safety of UEFA competitions and protect the best interests of all European football's stakeholders. When taking the Appealed Decision, UEFA considered all options available to it, namely: limiting its decision to matches only in Russia (which is what it initially did); holding competition matches in neutral venues or behind closed doors (which it considered and concluded that it did not adequately protect the competitions or the relevant stakeholders); suspending the Appellant's teams from international competition; or suspending the membership of the Appellant entirely (as some other international federations have done). Having considered the range of measures, it concluded that the most proportionate and effective measure at that moment was a suspension from international competition.
- The Appealed Decision did not violate the fundamental principle of equal treatment. The Appellant's examples of global responses to other conflicts are not examples of "*similar occasions*". The different treatment of Belarus and Russia was because Belarus has not faced the same degree of backlash that Russia had, and the countries were involved in the conflict to different extents. The participation of Belarusian teams did not present the same kind of challenges as the participation of Russian teams, although that could change in the future as the situation evolved.
- The Appealed Decision did not violate the Appellant's personality rights that derive from Article 28 of the SCC. The Appellant's allegation is misconceived to the extent that they are based on the assumption that the Appealed Decision is imposing a sanction because it is not. The First Respondent does not challenge that the Appealed Decision affects the

Appellant's personality rights, however, such infringement is illicit under Swiss law only if it is not justified by an overriding public or private interest (Article 28(2) SCC). The First Respondent submitted that its legitimate interest of protecting the integrity and safety of its competitions is an overriding interest (ATF 134 III 193). Furthermore, the way in which the safeguard of those legitimate interests is implemented is not a matter for judicial scrutiny but should be left to the governing body, which is in a better position to make the assessment (ATF 134 III 193).

h) *Alleged Violation of Swiss Competition Law*

- The Appealed Decision is not in breach of Swiss competition law. The Appellant has not conducted a serious competition law analysis to substantiate a competition law case, in any event. The First Respondent submits that the Panel should summarily dismiss the competition law claim. Should the Panel decide to consider the claim, the First Respondent submits that the Appellant has not discharged its burden of establishing an effect on the relevant market in Switzerland. The Appellant has presented no evidence to support its claim that UEFA holds a dominant position in the market and failed to establish an abuse of such a dominant position.

i) *Requests for Relief*

The First Respondent submitted the following requests for relief:

“Based on the foregoing developments, UEFA respectfully requests the Panel to issue an award:

- i) Dismissing the FUR's Appeal and all prayers for relief.*
- ii) Upholding in full the Decision of the UEFA Executive Committee on 28 February 2022.*
- iii) Condemning FUR to pay the costs of the arbitration as well as a contribution towards UEFA's legal fees and other expenses, in light of the circumstances of this case”.*

VI. JURISDICTION

79. Article R47 of the Code provides that:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

80. Pursuant to 62.1 of the UEFA Statutes (2021 edition):

“1. Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other Court of Arbitration.

...”.

81. The Appellant relies on Article 62.3 of the UEFA Statutes, as conferring jurisdiction on the CAS. The Respondents agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer their views by the Panel and the jurisdiction is further confirmed by the Parties’ signatures on the Order of Procedure. The Panel considers that the more appropriate section of the UEFA Statutes that confers jurisdiction on CAS to adjudicate the present dispute is 62.1, and not 62.3 of the UEFA Statutes as contended by the Appellant. Nevertheless, on the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY

82. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

83. According to Article 62.3 and 62.4 of the UEFA Statutes (2021 edition):

“3. The time limit for appeal to the CAS shall be ten days from the receipt of the decision in question.

4. An appeal before the CAS may only be brought after UEFA’s internal procedures and remedies have been exhausted”.

84. The Panel observes that the UEFA Executive Committee rendered the Appealed Decision, which included grounds, on 28 February 2022.

85. The Appellant submits that the UEFA Statutes provide a time limit of ten days, which expired on 10 March 2022. It submits that the Statement of Appeal was filed in time on 8 March 2022 and that the Appeal Brief was filed within a previously agreed extension and in due form and time on 28 March 2022. It submits that the appeal is admissible. The Respondents do not contest the admissibility of the appeal.

86. The Panel notes that the UEFA Statutes prescribe a deadline of 10 days to file an appeal against a decision made by a UEFA organ and therefore the 10 day time limit prevails over the default 21 day time outlined in Article R49 of the Code. It observes that the Appellant in fact filed its Statement of Appeal on 7 March 2022 (and not 8 March 2022 as it submitted) within the deadline of 10 days and that there appears to have been no other channels for appeal internally. The Statement of Appeal also complies with the requirements of Article R48 of the Code.

87. Accordingly, on the basis of the above, the Panel is satisfied that the Appeal was filed in time and is admissible.

VIII. APPLICABLE LAW

88. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

“[According] to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

89. The Appellant submits that the Panel should primarily apply the “*various UEFA regulations and subsidiarily, when relevant, Swiss law*”. The First Respondent submits that the UEFA Statutes are applicable, with Swiss law applying subsidiarily.
90. The Panel notes that the Appealed Decision was rendered by the UEFA Executive Committee on 28 February 2022 and that at the time the appeal was filed, the 2021 edition of the UEFA Statutes was in effect.
91. Accordingly, on the basis of the Parties’ agreement to the applicable law, the Panel considers that the UEFA Statutes (2021 edition) constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

IX. MERITS

92. On the basis of the Parties’ respective submissions, the Panel considers that there are three main issues for determination:
- a. What is the nature of the Appealed Decision insofar as it affects the scope of the Panel’s review?
 - b. Did the UEFA Executive Committee have the competence or power to take the Appealed Decision?
 - c. If so, was the Appealed Decision an improper use of power?

A. What is the nature of the Appealed Decision insofar as it affects the scope of the Panel’s review?

a) The Nature of the Appealed Decision

93. The Appellant submitted that the Appealed Decision was a “*purely disciplinary decision*” that had deprived it of the right to enter its national teams and clubs in competitions organised by

UEFA and thereby profit from all “*income, prestige and competitive opportunities*” that participation in such competitions provides. In its view the decision imposed a sanction that was penal in nature and should be variously but properly characterised as a decision of a disciplinary nature, a disguised disciplinary sanction or, relying on the reasoning in CAS 2008/A/1583 & 1584, a decision that had “*an inherent disciplinary aspect*”.

94. The First Respondent rejected the Appellant’s submission that the Appealed Decision was a disciplinary decision. It submitted that the concept of a disguised disciplinary sanction stemmed from CAS 2011/O/2422 or the so-called “Osaka Decision” where a measure taken by the IOC to deny an athlete’s eligibility to participate in the Olympic Games for previous infringement of anti-doping rules was classified as a sanction. However, the measure in the Osaka Decision was imposed because of an athlete’s past behaviour, whereas by material contrast the Appealed Decision did not seek to punish the Appellant for its past behaviour, but was taken to address an objective situation being the consequences that had arisen from a military conflict. The First Respondent submitted that the reasoning of the CAS Panel in CAS 2008/A/1583-84 where the specific rule in question excluded a club from participation in the Champions League was also irrelevant. In that particular case, the rule was held to be disciplinary in nature because its purpose was to sanction the relevant club for a particular past conduct, which was not the purpose of the Appealed Decision.
95. The Panel recalls that a decision taken by a sports association can be characterised as either an administrative decision or a disciplinary decision (CAS 2008/A/1583 & 1584, para 35). In the present case, the Panel finds that the Appealed Decision is clearly not a disciplinary decision, a disguised sanction or a decision that has an inherent disciplinary aspect. There is no evidence or suggestion that the Appellant breached any UEFA regulation or a provision of the UEFA Statutes or engaged in misconduct such as could attract a disciplinary process or a disciplinary sanction imposed to penalise such conduct. The Panel accepts the uncontradicted evidence of the First Respondent that the suspension was not imposed to sanction past conduct. The Panel also notes that the decision was taken by the UEFA Executive Committee, which in turn is an executive decision-making body in the UEFA governance structure, and not taken by the UEFA Control, Ethics and Disciplinary Committee or any other UEFA judicial body, as is normally the case for a disciplinary decision. For all the foregoing reasons, the Panel finds that the Appealed Decision is not a disciplinary measure imposed on the basis of past conduct.
96. The Panel recognizes that suspending a member association’s right of participation in UEFA competitions, will have economic effects for a member association, and its players, teams and clubs that are all denied the opportunity to participate and the commercial opportunities and prestige that participation in UEFA competitions provides. The Panel was not presented with any specific evidence of the extent of the economic effect that the Appealed Decision has had or will have in the future, but it accepts that there will necessarily be an adverse effect on the Appellant, its players, teams, clubs and the entirety of Russian football albeit the Appellant bears no responsibility for the situation that has led to its suspension. But whatever its effect, its intention was not penal. In that context, the Panel agrees with the submissions of the First

Respondent that the reasoning in CAS 2008/A/1583 & 1584 does not apply to the present case; there is no disciplinary aspect inherent to the Appealed Decision.

97. The Panel finds that the Appealed Decision is also not a disguised sanction. A disguised sanction is a measure that is not described as a sanction but is, nonetheless, intended to punish a certain behaviour of the person to whom the measure is addressed, as was the measure under consideration in CAS 2011/O/2422. As the Panel has found above, the Appealed Decision is not designed as a punishment for the Appellant's previous conduct.
98. The Panel determines that, in the circumstances of the present case, the Appealed Decision may be properly characterised as an administrative decision taken by the UEFA Executive Committee to impose a measure to deal with the consequences of a military conflict for football competitions that it organises. On that basis, the Panel finds that the Appellant's claims that it was denied fundamental procedural rights that apply to a disciplinary process (such as the right to be heard) or that the First Respondent allegedly breached other legal substantive principles that apply to disciplinary decisions (such as non-discrimination) or disciplinary sanctions (such as proportionality) are misdirected and have no application.

b) *Scope of the Panel's Review*

99. The Panel finds that the Appellant's allegations of procedural failings, would in any event, have been cured by the present proceedings. The Panel observes that its duty pursuant to Article R57 of the Code is to decide the case *de novo*, which means that any denial of due process at the lower-level proceedings (if any) is cured by the CAS proceedings, a principle that is well-established in CAS jurisprudence (CAS 2016/A/4648, para 74; CAS 2012/A/2913, para 87; CAS 2009/A/1880-1881 paras 142-146; CAS 98/208, para 10; TAS 2009/A/1879, para. 71; CAS 2008/A/1394, para. 21; TAS 2008/A/1582, para. 54; CAS 2008/A/1594, para. 109; CAS 2006/A/1153, para. 53; and CAS 2003/O/486, para 50).
100. In any event and for the sake of clarity, the Panel finds that insofar as the Appellant alleges that it was not heard or was not invited to put its position to the Executive Committee before the Appealed Decision was taken, the evidence submitted to the Panel showed that the Appellant's President, Mr Alexander Dyukov, an elected member of the UEFA Executive Committee since April 2021, was present at the UEFA Executive Committee extraordinary meeting on 25 February 2022 at which the Committee discussed the effect of the military conflict for its competitions and took the First Decision, albeit the Panel notes that Mr Dyukov abstained from voting on the First Decision because of the conflict of interest. The Panel accepts that Mr Dyukov was absent from the extraordinary meeting on 28 February 2022 at which the Appealed Decision was taken, but nonetheless finds that the Appellant would have been aware through Mr Dyukov that its involvement in UEFA competitions was to be discussed further at that meeting. The Panel notes the Appellant's submission that the Appealed Decision was taken "*in the absence of the Appellant*" but observes that Mr Dyukov appears to have chosen voluntarily not to attend since there was no evidence before the Panel that Mr Dyukov was barred from attending or that he would have been prevented from putting the Appellant's position had he chosen to attend.

101. On the basis that the Appellant considered the Appealed Decision to be disciplinary in nature, it submitted that the suspension was disproportionate (CAS 2017/A/5031, para 72). Given that as the Panel has found above, the Appealed Decision was not a disciplinary decision, nor imposed a disciplinary sanction, the CAS approach to review of a sports association's disciplinary decision is not engaged or in issue.
102. The First Respondent submitted that a sports association had autonomy to make decisions and a level of deference should be extended to an association when assessing the proportionality of a measure (CAS 2019/A/6665, para 157; CAS 2018/A/5800, para 73). It submitted that although such principles had primarily been considered by CAS in cases concerning disciplinary sanctions, it nonetheless, invited the Panel to apply the same principles to measures taken by a sports association to address objectively unforeseen circumstances as occurred in the present case. The First Respondent also submitted that within the limits of mandatory law (Article 63 SCC), and in accordance with the principle of autonomy of the association, Swiss associations enjoy a wide discretion when it comes to determining their affairs and regulations (CAS 2010/A/2188, para 40). It further contended that the Panel should only interfere with the decision if there was a clear indication that the discretion was somehow abused or exercised for improper reasons (CAS 2012/A/2831, paras 10-12; CAS 2011/A/2590, para 35).
103. The Panel recalls that in determining the scope of review for an administrative decision such as the one in the present case, under Article 69 of the SCC, the board of an association "*is entitled and obliged to manage and represent the association*"; and that in accordance with the Swiss law of private associations, a sports association has a high degree of autonomy to regulate its own affairs and make decisions that are in line with its statutory objectives and in accordance with its statutes (CAS 2018/O/5830, para 118; CAS 2017/O/5264, 5265 & 5260, para 193). Nonetheless, the Panel emphasises that the administrative decisions of a sports association are not immune to review and observes that under Article 75 of the SCC a decision can be challenged if there is a violation of the association's statutes or mandatory legal rules.
104. The Panel also notes that when reviewing the decisions of a sports association similar to one adopted in the present case, it is not engaged in an exercise of evaluating the merits or the substantive value of the decision, nor of substituting its own view for that of the sports association. The Panel is mindful of the principle well-established in CAS jurisprudence, even taking account of the *de novo* review enjoyed under Article R57, that a sports association is best placed to make decisions that further its statutory objectives, and that respect for the principle of freedom of association requires a certain level of deference to be afforded to a sports association.
105. CAS jurisprudence establishes that the principle of deference and respect for the autonomy of a sports association is not absolute, and that these principles "*may yield when there are exceptional circumstances*" such as arbitrariness, a misuse of an association's discretionary power, discrimination or breaches of any relevant mandatory legal principle (CAS 2020/A/7090, para 150). The threshold for determining those exceptional circumstances is set high, and "[t]he arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice" (CAS

2020/A/7090, para 150). The Panel therefore concludes that in the present case, in which it is reviewing the exercise of a sports association's discretion, it is concerned not with the merits or substantive value of the decision made but with whether the decision and the measure it imposed violates the association's statutes or mandatory legal rules or amounts to an improper use of the association's discretionary power. In weighing up whether the decision amounts to an improper use of the association's discretion, the Panel considers that the reasonableness and proportionality of the sports association's actions are also factors for consideration. It addresses the application of such approach to the present appeal in paragraphs 117 to 163 of this award.

106. The Panel emphasises that its deference to the decisions of sports decisions is not in conflict with the principle of *de novo* review; both can and do coexist under CAS jurisprudence. Even though CAS panels may review sporting decisions made by sporting bodies with some deference, that review is *de novo* and anew and CAS panels have and will consider evidence of violation of the relevant rules, statutes, and law *de novo* in determining whether a decision should stand.

B. Did the UEFA Executive Committee have the competence or power to take the Appealed Decision?

107. Having established that the Appealed Decision was an administrative decision and the nature of the Panel's scope of review, the Panel now turns first to the issue of competence and whether the First Respondent had the power to take the decision.
108. The Appellant submitted that there was no legal basis for the Appealed Decision because: (i) no situation of *force majeure* arose; and (ii) there was no superior decision or order that justified taking the decision e.g. an IOC recommendation.
109. The First Respondent submitted that the Appellant has not challenged the competence of the UEFA Executive Committee to render the Appealed Decision. It submitted that the First Respondent had not addressed Article 65 of the UEFA Statutes at all, which was the provision that UEFA expressly relied upon to adopt the Appealed Decision. It contended that the UEFA Executive Committee relying on Article 65 was competent to render the Appealed Decision. The First Respondent confirmed that the IOC Resolution was considered by the UEFA Executive Committee but "*did not serve as an additional legal basis*" upon which to pronounce the Appealed Decision. The First Respondent submitted that *force majeure* was irrelevant, although its position was that there existed, and still exists, "*an objective impediment*".
110. The Panel recalls that a private sports association established in Switzerland, such as UEFA, must act within the powers conferred on it by its statutes, and in line with its statutory objectives and mandatory legal rules under Swiss law. In that regard, the Panel notes UEFA's objectives in Article 2 of the UEFA Statutes, which provide as follows:

“The objectives of UEFA shall be to:

- a) deal with all questions relating to European football;*
- b) promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason;*
- ...*
- d) organise and conduct international football competitions and tournaments at European level for every type of football whilst respecting the players’ health;*
- ...*
- i) promote unity among Member Associations in matters relating to European and world football;*
- j) safeguard the overall interests of Member Associations;*
- k) ensure that the needs of different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account;*
- l) act as a representative voice for the European football family as a whole;*
- ...*
- o) respect the interests of Member Associations, settle disputes between Member Associations and assist them in any matter upon request”.*

111. The Panel observes that the UEFA Executive Committee is tasked with managing UEFA and its duties are outlined in Article 24 of the UEFA Statutes. Furthermore, pursuant to Article 65 of the UEFA Statutes, the Executive Committee is empowered to:

“...decide on all matters not covered in these Statutes, such decisions to be made in accordance with relevant FIFA regulations. If no such regulations exist, the Executive Committee shall decide according to right and justice”.

112. The Panel finds that the UEFA Statutes did not provide expressly for the situation in which the First Respondent considered that it needed to respond urgently namely the military conflict in Ukraine and its consequences for UEFA competitions and football in Europe. The majority accepts the First Respondent’s submission that the UEFA Executive Committee was competent on the basis of Article 65 to take the Appealed Decision *as a matter not covered by* the UEFA Statutes, a submission that is not contradicted by the Appellant.

113. Furthermore, insofar as the Appellant argues that the concept of *force majeure* is not expressly relevant to the issue of whether the Executive Committee was competent to take the Appealed Decision, the majority agrees. Article 65 does not refer to *force majeure* as providing the basis

upon which the UEFA Executive Committee could act, in contrast to the FIFA regulations which expressly refer to *force majeure*. In the present proceedings, the First Respondent has referred to the circumstances as “*matters that are unforeseen*” and used the term “*objective impediment*” to describe the circumstances which it contends necessitated the suspension of the Appellant’s teams from participation in UEFA-organised competitions and is relevant to an interpretation of Article 65, which the majority accepts would be an apt description.

114. In view of the foregoing, the Panel finds that the First Respondent did not require an order from the IOC or another international organisation such as the United Nations to provide it with the competence to act because the competence already existed within its own Statutes and regulations.

115. The Appellant also referred to the fundamental principles of Olympism, specifically paragraphs 4 and 5 which provide that:

“4. The practise of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.

5. Recognising that sport occurs within the framework of society, sport organisations within the Olympic movement shall apply political neutrality ...”.

116. Since the Appellant did not provide sufficient explanation in its Appeal Brief or at the hearing as to the relevance of its reference to these, the Panel does not find it necessary to consider the relevance of the fundamental principles of Olympism further, other than to say that it is not therefore to be taken as endorsing any suggestion of discrimination in the Appealed Decision. The First Respondent is not a member of the IOC nor is it recognised by the IOC to enjoy any formal status, so how pronouncements of the IOC might apply to it is a debatable matter which the Panel is not called upon to resolve. Suffice it to say, that the Panel observes that the First Respondent acknowledged, and the Panel accepts, that while the Appealed Decision was in line with the IOC Recommendation and also with decisions taken by other sports organisations, it was not taken on the basis of either the IOC Recommendation or the stance adopted by other international sports organisations.

C. Was the Appealed Decision an improper use of power?

117. The majority having found that the Appealed Decision was within the UEFA Executive Committee’s competence to take, the issue for the Panel to determine is whether the Appealed Decision violated the UEFA Statutes, mandatory rules of Swiss law or otherwise amounted to an improper use of a sports association’s power, bearing in mind also the sports association’s statutory objectives and the margin of discretion afforded to a sports association’s decision-making.

118. The Appellant submitted that the Appealed Decision:

- a. violated the UEFA Statutes, specifically Articles 1.1, Article 2.1(b), Articles 7, 7bis.2 and 9.1;
 - b. was disproportionate;
 - c. breached the principle of equal treatment;
 - d. violated the Appellant's personality rights recognised in Article 28 of the SCC; and
 - e. violated Swiss competition law.
119. The First Respondent rejected the allegations. The First Respondent submitted that the Appealed Decision was a valid exercise of its power and fully justified considering its statutory objectives outlined in Article 2 of the UEFA Statutes, including to promote football in Europe “*in a spirit of peace, understanding and fair play*”, to organise and conduct international football competitions “*whilst respecting the players' health*”, and to safeguard the overall interests of its member associations and take the needs of all its stakeholders into account. These statutory objectives were expressly referred to in the Appealed Decision. The First Respondent further submitted that UEFA considered that these objectives could not be met because: i) an increasing number of UEFA member associations had publicly voiced their intention to not participate in matches against Russian teams, putting the viability of its competitions in jeopardy; ii) the general public's reaction to the conflict, even if matches were to be staged on neutral territory, raised serious concerns about safety and security for all those involved which was of paramount importance to UEFA; and iii) flight bans from and to Russia would have a considerable impact on the “*smooth staging and running of the UEFA competition matches*”. The Appealed Decision was taken, therefore, to give effect to UEFA's statutory objectives and in the best interests of the game.

a) *Alleged Violation of the UEFA Statutes*

120. The Appellant submitted that the Appealed Decision “*violates the duty of political neutrality*” provided under Articles 1.1, 2.1(b) and 7bis.2 of the UEFA Statutes. It further submitted that UEFA breached political neutrality when adopting the Appealed Decision because it did so under pressure from its member associations. Furthermore, the Appellant submitted that UEFA discriminated against it on a “*clearly political basis*” by upholding the decisions of certain member associations.
121. The Panel observes that Article 1.1 of the UEFA Statutes provides:
- “The Union des Associations Européennes de Football (UEFA) shall be a society entered into in the register of companies under the terms of Art. 60 et seq. of the Swiss Civil Code. UEFA shall be neutral, politically and religiously”.*
122. Pursuant to Article 2.1(b) of the UEFA Statutes, UEFA shall:

“promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reasons”.

123. Article 7bis.2 states that:

“Member Associations shall manage their affairs independently and with no undue influence from third parties. Member Associations shall provide in their statutes for a democratic procedure guaranteeing that their executive body is freely elected and that their other bodies are elected or appointed in a completely different way. Any body or decision from a body that has not been elected or appointed in compliance with such a procedure, even on an interim basis, shall not be recognised by UEFA”.

124. The Panel observes that Article 7bis.2 places an obligation on a UEFA member association and not on UEFA and requires a member association to ensure that its decision-making is independent and not influenced by external parties, such as e.g. a national government. The Panel considers that it is not required to determine whether any member association is in breach of Article 7bis.2 because such an allegation falls outside the scope of these proceedings. The Panel also considers that it is not required to make findings as to whether any of the Other Respondents have in fact breached Article 7bis.2.

125. On the issue of whether by taking the Appealed Decision, UEFA breached the principle of political neutrality outlined in Article 1 of the UEFA Statutes, the Panel finds that there is no definition of *“political neutrality”* in the UEFA Statutes, other than the reference in Article 1.1 to the requirement for UEFA to *“be neutral politically and religiously”*. Based on the information available to it, the Panel finds no evidence that the UEFA Executive Committee arrived at the Appealed Decision other than by its own independent decision-making. There is no evidence, for example, that the Committee took the Appealed Decision because of the IOC Resolution or because of a direction from another external third party.

126. As the grounds for the Appealed Decision provided in Circular No. 10/2022 show, the Executive Committee took into consideration a number of factors when taking the Appealed Decision. Those factors included the escalation of the conflict in Ukraine, the refusal of other member associations to play against the Appellant’s teams, security concerns, flight bans, and the widespread public reaction against the military conflict.

127. Whilst the position adopted by the associations was clearly a consideration in the Executive Committee’s decision, the majority accepts the First Respondent’s submission that the Executive Committee did not arrive at the Appealed Decision because of pressure from member associations. The majority finds that the refusal by some member associations to play against the Appellant’s teams was one of many considerations that the UEFA Executive Committee took into account because the evidence before the Panel showed that other consequences of the military action and their impact on UEFA competitions were also considered. The majority considers that the UEFA Executive Committee acted as it did in response to a set of extraordinary and unforeseen circumstances and not because it favoured a particular political position. While the Panel accepts that the effect of that decision may lend

itself to the perception that UEFA favoured a political position, that was an unavoidable consequence of the decision that it took having considered all of the circumstances.

128. The Panel further finds that while the Appealed Decision may have been consonant with the views implicit in the IOC Resolution or the views of European governments or even the views of the general public, there is no evidence that it was taken only or substantially because of those views or that it was taken in support of those positions or again that it would not have been the same decision irrespective of those views. In the majority's opinion the Appealed Decision was taken to further UEFA's statutory objectives, specifically those of Articles 2(b), (d), (j) and (k), which, the majority finds was within the UEFA Executive Committee's margin of discretion in the situation with which the Executive Committee was faced. The majority accordingly finds that on the evidence available to it, no breach of Article 1.1 occurred.
129. The Appellant alleges that the First Respondent discriminated on a political basis against the Appellant contrary to the prohibition on discrimination contained in Article 2.1(b) of the UEFA Statutes, "*to promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason*". The Panel finds that the First Respondent has not discriminated against the Appellant on a political basis. There is no evidence that the decision was taken because of the political opinion of the Appellant or that it was taken because of UEFA's view of the military conflict or any other entity's view of the conflict. Whether the Appealed Decision discriminated on account of race or national origin was not an issue for consideration before the Panel. Accordingly, the Panel finds there was no breach of Article 2.1(b).
130. Article 9 of the UEFA Statutes empowers the Executive Committee to suspend a football association's membership in certain circumstances and provides:
- "If in the opinion of the Executive Committee, a Member Association has committed a serious breach of these Statutes or regulations or decisions made under them, the Executive Committee shall be entitled to suspend the membership of the Member Association with immediate effect.*
- A Member Association may in particular be suspended if state authorities interfere in its affairs in such a significant way that:*
- a) it may no longer be considered as fully responsible for the organisation of football-related matters in its territory;*
 - b) it is no longer in a position to perform its statutory tasks in an appropriate manner;*
 - c) the smooth running of a competition organised under its auspices is no longer guaranteed; or*
 - d) the free election of its executive body or the totally independent election or appointment of its other bodies is no longer ensured.*

Any suspension shall be submitted to the next Congress for consideration as to whether or not the Member Association should be excluded, or the suspension lifted or continued. If the Congress does not consider the matter, the suspension shall cease”.

131. The Panel finds that there is no evidence that the Appellant seriously breached its obligations under the UEFA Statutes, regulations or any decision made under them, and also, no evidence that UEFA relied on this provision to suspend the Appellant. On the contrary, the Panel finds that the Appellant is still a UEFA member with all the rights and obligations that that entails, excepting, of course, the right to participate in UEFA competitions (discussed further in the following paragraphs) which has been temporarily suspended. The Panel finds no breach of Article 9.1 has occurred.
132. Article 7(e) provides a UEFA Member Association with the right “*to take part in UEFA competitions with their representative teams and to enter their clubs for these competitions*”. The Appellant states that the Appealed Decision violates this right and that the UEFA Statutes do not permit UEFA to limit this right or to otherwise suspend the Appellant from participation. The Panel accepts that UEFA has a legitimate interest in ensuring that its competitions run smoothly (Order on First Request, para 83). UEFA’s interest, however, must be balanced against other interests as well, which in the circumstances of this case in particular is the Appellant’s right to participate in UEFA competitions and to enter its clubs in UEFA competitions provided in Article 7(e) of the UEFA Statutes.
133. The Panel accepts that the Appealed Decision temporarily denies the Appellant the right to participate in UEFA competitions. Neither Article 7 nor any other provision of the UEFA Statutes expressly state the circumstances in which a member association may be denied the right to participate, although the majority accepts that this would be implicit in the exercise of the power under Article 9.1, which in the present case has not been invoked. The majority observes that the rights contained in Article 7 are not stated to be *absolute* and the Appellant did not make any submissions that they were. The majority finds that it would be practically difficult or even impossible for a member’s right to participate in competitions to be an *absolute* right, since there are likely other circumstances when the right of participation must give way to other rights or interests, such as another member’s right to participate or the wider interests of the football community or a *force majeure* event.
134. The Panel accepts that denying a member association the right to participate in UEFA-organised competitions when that member has not violated the UEFA Statutes or regulations or a decision made under them, and for which its membership has not been suspended under Article 9.1, denies that member and its stakeholders the benefits that participation provides e.g. financial incentives, commercial opportunities and prestige, amongst others, and is a decision that should not be taken lightly, and even then, only in the rarest of circumstances. Nevertheless, in the case of these unique and unprecedented circumstances, the majority finds that the Appellant’s right of participation was surpassed by UEFA’s interest of ensuring that its competitions, from which considerable income is generated to support the wider football community in Europe, ran smoothly and safely, with minimum disruption in light of the

prevailing circumstances. Accordingly, the majority finds that UEFA did not breach Article 7(e) when it took the Appealed Decision.

135. The Appellant also submits that the member associations that refused to play it were themselves in violation of Article 7(e) of the UEFA Statutes and that the First Respondent supported and endorsed the member associations' decisions thereby breaching its obligation to remain politically neutral. The Panel observes that Article 7(e) does not create a mandatory obligation on a member association to participate in a UEFA competition but rather creates a right which a member association is entitled to exercise, subject in certain cases to another prevailing right or interest. The Panel considers that the refusal of some member associations to play against the Appellant's teams did not breach Article 7(e) of the UEFA Statutes.
136. The Panel was not referred to any other UEFA Statute provision or regulation that creates an obligation on a national member association to play in a UEFA competition. It observes, however, that UEFA competition regulations create duties on member national associations that apply when the national association enters a UEFA competition, and include a duty on a member association to play in a competition until eliminated. Non-compliance with UEFA competition regulations may in certain circumstances lead to disciplinary proceedings under the UEFA Disciplinary Regulations. More specifically, if a national association refuses to play or is responsible for a match not taking place, then the UEFA Control, Ethics and Disciplinary Body may declare the match forfeit by the association concerned, and may impose further disciplinary measures if appropriate (see for example, Article 25 of the UEFA European U-19 Championship Regulations). The Panel considers that whether a refusal by a UEFA member association was in fact a breach of a provision in a UEFA competition regulation is an issue more properly addressed through disciplinary proceedings, if any – none having to date been taken – than in these proceedings, and in any event such breach would not render the Appealed Decision invalid.
137. The Panel accepts that, ordinarily, a refusal to play by one member against another in a UEFA competition should expose the former to the risk of sanction and should not result in any form of detriment to the latter, in particular not its exclusion from the competition, and the Panel's Award should not be construed to contrary effect. Nonetheless, the Panel can only repeat that the circumstances of this particular case are to date unique. Even if UEFA were able to impose immediate sanctions on a number of recalcitrant member associations, that would not itself have guaranteed that those associations would have agreed to subsequently play against the Appellant's team in a UEFA competition. The uncertainty of what was to come, coupled with the necessity to make an immediate decision, contributed to the suspension from participation being imposed. On that basis, the majority accepts that given the information available on 28 February 2022, and the extraordinary and unforeseen circumstances that the First Respondent was faced with, the Executive Committee's decision to suspend the Appellant's participation despite the refusal of member associations to play against the Appellant's team was a reasonable decision to take.

b) *The Appealed Decision was disproportionate*

138. The Appellant submitted that in disciplinary matters the principle of proportionality requires the competent decision-making body to weigh up the individual interest of the member and the general interest of the federation. It contends that the individual is entitled to the mildest possible measure that is still likely to achieve the intended goal. In the Appellant's view, the suspension is "*an extreme measure*" in response to a situation with which the Appellant had nothing to do and UEFA could have taken a less draconian measure e.g., it could have organised the Appellant's matches behind closed doors or on neutral territory, or made changes to its competition schedules. As to safety and security, the Appellant submitted that the Appealed Decision did not give detailed or sufficient consideration to the possibility of holding matches on a neutral pitch or other measures which could secure these objectives.
139. The First Respondent submitted that safety and security of UEFA competitions is *paramount*. Permitting the Appellant's athletes to participate in competitions would be irresponsible and dangerous for them and for other stakeholders that UEFA is statutorily obliged to protect. Irrespective of age, UEFA considered it irresponsible to put Russian athletes in a position where they were likely to face significant backlash, not only physically but also in other forums, including on social media. It also had an obligation to ensure that other people were protected (e.g., opposing team's players and staff, all relevant officials, security, and hospitality personnel, amongst others) and to consider the security of individuals who may be impacted not only in the stadium but also in the city and country hosting the event. In the First Respondent's view, it was doubtful enhanced security measures would be sufficient to guarantee the security of all interested stakeholders because the safety issue goes beyond the boundaries of the playing pitch (reasoned First Order on Provisional Measures dated 8 April 2022). Holding matches on a neutral pitch or without spectators did not ameliorate security concerns and the Appellant had not suggested another measure that was appropriate, feasible or effective.
140. The First Respondent further submitted that the Appellant had not considered seriously the heightened safety and security risks were the Appellant's teams to participate in UEFA competitions. UEFA's position regarding the safety and security of all stakeholders at its matches was not an "*overreaction*" but a real and legitimate concern. It submitted that there had been protests against the military conflict across the world which had attracted hundreds of thousands of people. There had also been reports of a minority of people in certain European cities protesting in support of the conflict. Including the Appellant's teams in UEFA competitions was "*simply asking for trouble*".
141. The First Respondent also submitted that it had an obligation to ensure that its competitions were viable and took place. The disruption of air connections to and from Russia and the risk to the competition's integrity of a member association's refusal to play against the Appellant's team, posed a serious risk to the viability of whether a UEFA competition took place or not, and had financial implications. Since the Order on the First Request, the travel situation to and from Russia had worsened. Member associations who had publicly refused to play against Russian teams initially based their refusal on moral grounds but also had significant concerns

regarding security risks. The financial risks included the withdrawal of players, teams, fans and sponsors, and the possibility that host cities and countries would refuse to host matches based on legitimate security concerns or other concerns. The First Respondent also submitted that it had an obligation to protect the interests of its member associations. The Appellant's insistence that matches be played at a neutral venue disregarded the impact such a measure had on the opposing teams and its fans. The First Respondent submitted that it understood that those affected by the Appealed Decision would be understandably disappointed and it was extremely regretful that the decision was required in the first place. The Appealed Decision was not taken lightly but, in the circumstances, "*there was simply no possible alternative*".

142. The Panel notes that while the Appealed Decision is not a disciplinary decision, as it has found above, the Panel is entitled to assess the proportionality of the measure within the scope of its review of the exercise of UEFA's discretion, and arguments regarding proportionality are relevant. The majority finds that at the time the Appealed Decision was taken, the Appealed Decision was a proportionate response to the situation as the UEFA Executive Committee appraised it to be on 28 February 2022, taking into consideration the Appellant's interest, UEFA's interest and the interests of other European football stakeholders.
143. The majority observes that UEFA had already, on 25 February 2022, taken the First Decision, which was confirmed in Circular No. 08/2022 and informed member associations that, *inter alia*, no match was to be played in Russia or Ukraine until further notice and that UEFA would continue to assess developments of the situation. The majority accepts UEFA's view that maintaining that earlier position became untenable because of the security concerns, travel restrictions, the reaction of member associations, and widespread public reaction against the military conflict.
144. The Appellant submitted that while travel is "*more complicated*" it is "*not impossible*". The Panel acknowledges that since 28 February 2022 travel routes may have been adapted and that travel for Russian players, football administrators and teams, while more complicated may not now be impossible. As noted above, the Panel, however, is not considering events that have occurred since 28 February 2022. Its role is not to assess the ease with which Russian citizens and sports teams may travel abroad now but to consider the proportionality of the Appealed Decision taken on 28 February 2022 under the circumstances as UEFA appreciated them to be or reasonably predicted them to become. On 28 February 2022, travel restrictions were already in place, making travel to and from Russia challenging, and in the majority's view, were a relevant consideration for UEFA to take into account when assessing the participation of the Appellant's teams in its competitions.
145. The Appellant submitted that UEFA could have changed its competition schedules rather than suspending its national team. Regarding this particular suggestion, the Panel defers to UEFA's considerable expertise to manage its competitions' match schedules as it sees fit. The majority observes that making a decision to suspend the Appellant's national teams, rather than delaying and rescheduling matches, in the hope that the situation would improve in time, is not a disproportionate response, given the uncertainty of the scope and duration of the military conflict.

146. The Appellant submitted that UEFA's concerns about safety and security could have been allayed through playing on neutral grounds or behind closed doors. The Panel, however, accepts that the very presence of the Appellant's teams (to be distinguished from the presence of Russian individuals in, for example, non-team sports such as tennis) might generate protests that escalate into violence. It observes that unlike some other sports, football, sadly, has proven over the years particularly prone to extreme crowd reactions that are sourced in racism, nationalism or religious differences. It is not unknown for tensions between different groups to spill over into violence at or around football events, creating security and safety concerns inside and outside a stadium. On this issue, however, it is not for the Panel to decide whether it would have reached the same decision, and it defers to UEFA's expertise when it comes to assessing the security risk and safety concerns of its competitions and deciding in favour of suspension of the Appellant's teams, rather than persisting with the position outlined in the First Decision or playing behind closed doors. The Panel notes also that the latter option would have inconvenienced other teams who could reasonably expect to play their matches in front of a crowd but for being drawn against the Appellant's team.
147. Overall, the majority finds that the Appealed Decision was a proportionate response to the very fluid situation that UEFA found itself to be in on 28 February 2022. The majority finds that UEFA's interest of organizing its competitions prevailed when considering, in particular, the security and logistical concerns for the organisation of a competition in which the Appellant's national team or clubs may participate.

c) *Breached the principle of equal treatment*

148. The Appellant submitted that when making its decision, UEFA was required to react in a similar manner to previous situations of conflict between States. It asserted that UEFA was aware of, and had taken steps to address, the conflict between Russia and Ukraine "*for years*". Since Russia annexed Crimea in 2014, a Russia/Ukraine team match had been prohibited for political reasons in all tournaments except for playoffs at the final stage of tournaments. The escalation of tension between the two countries was not a "*new argument*" on which UEFA could adopt the Appealed Decision. Furthermore, there were other examples of conflict situations which had not resulted in the suspension of a sports federation or representative team e.g. neither the Vietnam War between 1955 – 1975, the Iran/Iraq War in 1980 – 1988, or military operations in Afghanistan in 1979-1989 and 2001-2021. There was also no act of any competent international body obliging UEFA to suspend Russian sports teams from international competitions such as, for example, a United Nations resolution. In 1948, German athletes were not allowed to compete in the Munich Games following the decision of the International Military Tribunal at Nuremberg in 1946; and in 1992, paragraph 8(b) of Resolution 757 of the United Nations Security Council resulted in the expulsion of Yugoslav athletes from international competitions, but these situations were not comparable to the present case. Moreover, UEFA had not suspended the Belarusian teams from its competitions.

149. The First Respondent denied a breach of the principle of equal treatment, submitting in particular, that the examples of previous conflicts provided by the Appellant did not involve Europe, with the exception of the suspension of people representing the Federal Republic of Yugoslavia (Serbia and Montenegro) which was subject to a UN Security Council resolution that expressly requested that States took necessary measures to prevent the participation of people representing the Federal Republic of Yugoslavia (Serbia and Montenegro). It contended that such situation could be distinguished because in the present conflict, i) Russia had a veto right on the UN Security Council which Yugoslavia did not; ii) the Appellant had not shown that the UEFA Executive Committee can suspend a right of participation only if the UN Security Council adopts a resolution to that effect; and iii) the very fact that many other international sports federations have taken measures to address the consequences of Russian athletes competing in their competitions means that such a resolution is not required.
150. As to the situation involving the Belarusian FA, the First Respondent submitted that on 3 March 2022, the UEFA Executive Committee decided that all Belarusian clubs and national teams competing in UEFA competitions would be required to play their home matches at neutral venues and that no spectators would attend matches that feature teams from Belarus as host. The First Respondent submitted that the different treatment of the Appellant and the Belarusian FA arose because Belarus' involvement in the military conflict was different to that of Russia, Belarus "*had not faced the same degree of backlash as Russia as it was not responsible for the invasion itself*", and also because the UEFA Executive Committee considered that implementing such measures were possible for Belarusian teams and clubs.
151. The majority does not consider it helpful to compare previous global conflicts and the responses of other international sports federations in relation to a particular country's involvement in those conflicts. The Russian State's annexation of Crimea or the activities of the Assad regime in Syria, both recent examples of military conflict, have not, for better or for worse, elicited the same global reaction from governments, non-governmental organisations, international bodies or the wider public (whether or not in the view of some people or entities, it should have). The reality is that this military conflict has elicited an unprecedented global reaction, including amongst the general public, and it was the consequences of that reaction to which UEFA considered it was required to act in order to fulfil its statutory objectives.
152. The Panel was referred to the decisions of the European Table Tennis Union Board of Appeal dated 26 April 2022 and the Fédération Internationale de Luge de Course Court of Arbitration decision dated 7 April 2022, both of which dealt with the issue of involvement of Russian teams or athletes in their respective sports, and concluded to varying degrees that they should not be so excluded. The Panel was also referred to the Lawn Tennis Association's decision not to permit Russian tennis players to participate in Wimbledon in 2022, and the Women's Tennis Association (WTA), ATP and ITF decisions in response, to remove ranking points for the Wimbledon tournament, and it is a matter of public record that World Athletics have suspended Russian teams and athletes (other than so termed neutral athletes) on the basis that according to its President, such sanctions "*appear to be the only way to disrupt and disable Russia's current intentions and restore peace*".

153. The Panel does not find it helpful in the present case to compare the approaches of other sports federations, whether more or less stringent, to the participation of Russian teams or athletes in their respective competitions. With all respect to the sports involved, they are not of the same global scale as football and their statutes, regulations, and decision-making processes will differ to UEFA's. There will also be different factors or different weightings applied to certain factors that were considered when each sport responded in the manner in which it did. The Panel finds accordingly that comparisons to the decisions of other sports federations taken in materially different circumstances and for different reasons, which the Panel cannot and does not pronounce, do not assist in the present case.
154. For the above reasons, the majority finds that the Appeal Decision did not breach the principle of equal treatment.

d) *Violated the Appellant's personality rights recognised in Article 28 of the SCC*

155. The Appellant alleged that the Appealed Decision violated its personality rights under Article 28 SCC, in particular its rights to economic development and fulfilment, and to honour (ATF 134 III 193, 4.3 to 4.6) because it deprived the Appellant of important bonuses and implied that the Appellant's qualification would bring the world of football into disrepute. It submitted that there was no overriding UEFA interest to justify the serious violation of the Appellant's personality rights.
156. The First Respondent did not challenge the Appellant's contention that the Appealed Decision infringed the Appellant's personality rights. It submitted, however, that such an infringement is unlawful under Swiss law only if it is not justified by an overriding public or private interest. It submitted that UEFA's legitimate interest of protecting the integrity and safety of its competitions justified the infringement and that the Appealed Decision did not unlawfully infringe the Appellant's personality rights. It further submitted that the travel and security situation was "*volatile*" and "*inherently unpredictable*" and that this could jeopardise both the integrity of the competitions (for instance if the Russian team was not in a position to play or travel) and the safety of the participants (for instance if the Russian team's participation inflamed or created trouble in connection with UEFA's competitions). Furthermore, the possibility to play behind closed doors did not rule out security concerns, and it was "*the other team's prerogative to play in front of an audience*" and "*the organiser's legitimate right to have fans at their events*".
157. Article 28(2) of the SCC provides that:
- "1. Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.*
- 2. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law".*

158. The Panel recalls previous CAS jurisprudence which defines personality rights under Swiss law as follows:

“The notion of «personality» (or of «personhood») is to be characterized by reference to the fundamental attributes which every person, and in some measure every legal entity such as an association or a corporation, has a right to see protected against external intrusion and interference. It is difficult to find definitions in the abstract as there is an indefinite number of liberties, varying from time to time and from country to country, which can be encompassed within the concept of personality rights. Examples are core rights related to privacy, name and personal identity, physical integrity, image, reputation, marriage, family life, sexual life and the like” (CAS 98/200, para 68).

159. In the case of elite sport, the Swiss Federal Tribunal has stated that personality rights encompass:

“En matière de sport de haut niveau, elle englobe plus particulièrement le droit à la santé, à l'intégrité corporelle, à l'honneur, à la considération professionnelle, à l'activité sportive et, s'agissant de sport professionnel, le droit au développement et à l'épanouissement économique”.

Freely translated into English this means:

“In terms of high-level sport, it encompasses more particularly the right to health, bodily integrity, honour, professional consideration, sporting activity and, in the case of professional sport, the right development and economic growth” (BGE 134 III 193, para 4.5).

160. Although the Panel has accepted elsewhere in this decision that it is likely that the Appealed Decision has had an adverse impact on Russian football, the majority finds that the extent of that impact has not been proven. The majority was not presented with any evidence that would satisfy it to the level of comfortable satisfaction that an infringement of the Appellant's rights to economic development and fulfilment, and to honour had occurred. The majority, therefore, finds that on the basis of the evidence available to it, no infringement of Article 28 of the SCC has occurred.
161. In any event, assuming (*quod non*) that an infringement even arises, the majority agrees with the First Respondent that an incursion on the Appellant's personality rights in the circumstances of the present case are likely justified by UEFA's overriding interest of protecting the integrity of its competitions and its legitimate security concerns, both of which would amount to an overriding private interest that may justify the infringement if one were found to have occurred, under Article 28(2) of the SCC.

e) *Violated Swiss competition law*

162. The Appellant, with reference to a judgment issued by the High Court of Canton Vaud (TC VD, CM11.033798), alleges that the Appealed Decision violates Swiss competition law because UEFA is an enterprise within the meaning of the Swiss Cartel Act which occupies a dominant position on the market for professional football activities throughout Europe. It

further alleges that the Appealed Decision is an act of obstruction within the meaning of Article 7 of the Swiss Cartel Act, which is not justified, as well as alleging several other competition law infringements.

163. The Panel notes that the onus is on the Appellant to establish the breach of Swiss competition law and that it did not submit any economic or expert evidence to support the existence of a market, UEFA's dominant position on that market or any of the alleged breaches of Article 7 of the Swiss Cartel Act. The Panel finds that the Appellant did not make a case in relation to the competition law breaches and dismisses the claim. The Panel notes simply that had the Appellant crossed the threshold of establishing the engagement of Swiss competition law, the same issues of justification as arose under the complaints (a) – (d) above would apply.

D. Conclusion

164. For the reasons set out above, the majority finds that in the extraordinary and unprecedented circumstances with which UEFA was faced and to achieve its statutory objectives, the Appealed Decision was a reasonable, proportionate and, arguably, necessary, decision to take in order to provide safe, secure and orderly international football events for European football's stakeholders. The majority finds that the decision did not breach the UEFA Statutes, nor mandatory provisions of Swiss law, and was not an improper use of UEFA's discretionary power, and falls within the margin of discretion that UEFA has when making decisions that further its statutory objectives.
165. The Panel notes that it was unfortunate that UEFA was required to take the Appealed Decision, for which the FUR, Russian football teams, clubs, and players have themselves no responsibility, but which has had, and will likely have, an adverse effect on them and on Russian football generally, including at the grassroots level. The Panel is cognisant that the majority view is based on extraordinary and unforeseen circumstances arising during a particular four-day period, and that over time the circumstances that persuaded the majority will change. The Panel recalls UEFA's position outlined in the grounds for the Appealed Decision that the decision is a temporary one, and that "*Russian representative teams and clubs are suspended from taking part in UEFA competitions until further notice*" and very much hopes, for the benefit of the entire European football community, that circumstances develop in a way that the suspension can properly be lifted.
166. For the reasons set out above, the Panel dismisses the appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 March 2022 by the Football Union of Russia in the arbitration *CAS 2022/A/8709 Football Union of Russia v. Union of European Football Associations et al.*, is dismissed.
2. The decision rendered by the Executive Committee of the *Union of European Football Associations* on 28 February 2022 is confirmed.
3. (...).
4. (...).

All other motions or prayers for relief are dismissed.