

CAS 2022/A/8856 Table Tennis Federation of Russia v. European Table Tennis Union

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr James Drake K.C., Barrister, London, United Kingdom
Arbitrators: Mr Bernhard Welten, Attorney-at-law, Bern, Switzerland
Mr João Nogueira Da Rocha, Attorney-at-law, Lisbon, Portugal

in the arbitration between

Table Tennis Federation of Russia, Moscow, Russian Federation

Represented by Mr Ivan Bykovskiy, Mr Yury Zaytsev, Mr Mikhail Prokopets and Ms Inga Agoshkova, SILA International Lawyers, Valencia, Spain

Appellant

and

European Table Tennis Union, Luxembourg

Represented by Mr Tiago Rodrigues Bastos, Mr Jose Ricardo Goncalves, Mr Sergio Castanheira, and Mr David Valente Bastos, Attorneys-at-law, RBMS - Rodrigues Bastos, Magalhães e Silva & Associados, Porto, Portugal

Respondent

I. THE PARTIES AND OTHERS

1. The Appellant is the Table Tennis Federation of Russia (the “Appellant” or the “TTFR”), the national table tennis association (“NTTA”) for the Russian Federation (the “Russian Federation” or “Russia”) for the sport of table tennis, with its seat in Moscow. It is the national federation (“NF”) for and the governing body of Russian table tennis, which, amongst other things, administers table tennis at all levels in Russia, including the national team.
2. The Respondent is the European Table Tennis Union (the “ETTU” or the “Respondent”). It is the “Continental Table Tennis Federation for Europe” for the sport of table tennis, being recognised as such by the International Table Tennis Federation (the “ITTF”) and has its seat and headquarters in Luxembourg. The ETTU deals with all matters relating to table tennis at a European level, including the development and promotion of the sport in the territories controlled by its member associations, and the organisation of continental table tennis competitions, including the European Championships.
3. The ETTU member associations are the NTTAs from the following countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England, Estonia, Faroe Islands, Finland, France, Georgia, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Jersey, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russia, San Marino, Scotland, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and Wales.
4. The ITTF is the governing body for all national table tennis associations, recognised as such by the International Olympic Committee (the “IOC”). The ITTF is responsible for the organisation of numerous international competitions, including the World Table Tennis Championships. By its constitution, it provides that *“there shall be five Continental Federations, one each from the geographical regions of Africa, America, Asia, Europe, and Oceania. Such Federations shall be supported and encouraged by the ITTF, which shall co-operate with them in all matters, provided that the constitution, general principles, rules and policy of the Continental Federation conform to those of the ITTF”*. The “ITTF Group” comprises the ITTF itself, World Table Tennis (the commercial and event business arm of the ITTF), and the ITTF Foundation (the corporate social responsibility arm of the ITTF).
5. The parties shall be referred herein collectively as the “Parties”.

II. OUTLINE OF THE APPEAL

6. This is an appeal by the TTFR against a decision by the Board of Appeal of the ETTU (the “ETTU BoA”) on 26 April 2022 (the “Appealed Decision”) by which the ETTU BoA upheld, in part, decisions of the Executive Board of the ETTU (the “ETTU EB”),

inter alia, “not to let Belarussian and Russian players and officials be invited or allowed in events hosted by ETTU and no Belarussian or Russian national symbols, flags or anthems will be displayed until further notice” and that “Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season”.

7. The Appealed Decision was made against the backdrop of commencement of the Russia-Ukraine War (defined below) on 24 February 2022 and the febrile atmosphere in February and March of 2022.

III. FACTUAL BACKGROUND

8. Set out below is a summary of the relevant facts based on the Parties’ written submissions, pleadings and evidence in these proceedings and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel’s reasoning and its decision.
9. The Respondent organises events between national teams and individuals in the sport of table tennis. The Respondent’s events include the following: the Men’s Champion’s League, the Women’s Champions League, the European Championships, the Europe Cup (Men), the Europe Cup (Women), and the Europe Trophy. The Men’s Champions League for the 2021-2022 season began in late 2021 and was scheduled to finish in March / April 2022.
10. On 15 February 2022, the Russian State Duma voted to submit a request to the President of Russia to recognise the independence of certain areas of the Donetsk and Luhansk regions of Ukraine.
11. On 16 February 2022, Fakel Gazprom Orenburg of Russia (“Fakel Gazprom”) won the first leg of its semi-final against TTSC UMMC of Russia (“TTSC UMMC”) in the Men’s Champions League 2021-2022.
12. On 20 February 2022, Borussia Dusseldorf (of Germany) won the first leg of its semi-final against FC Saarbrücken TT of Germany in the Men’s Champions League 2021-2022.
13. On 21 February 2022, the Russian Federation issued two decrees by which it recognised the independence the Luhansk People’s Republic and the Donetsk People’s Republic.
14. On 23 February 2022, the European Council adopted a package of sanctions and travel bans against various Russian State Duma officials and certain other Russian individuals.
15. On 24 February 2022, to put it neutrally, the Russia-Ukraine conflict began. This will be described herein as the “Russia-Ukraine War”.
16. Also on 24 February 2022:

- a. The IOC issued a press statement according to which it “*condemn[ed] the breach of the Olympic Truce by the Russian government*”.
 - b. The Ukraine Table Tennis Federation (the IF for table tennis in Ukraine) withdrew one of its athletes, Margaryta Pesotska, from the Europe Top 16 Cup being held in Montreux, Switzerland on 26-27 September 2022.
17. On 25 February 2022, the United Nations Security Council met and voted upon a draft resolution by which, *inter alia*, the Russian Federation was called upon “*immediately [to] cease its use of force against Ukraine and shall refrain from any further unlawful threat or use of force against any UN member state*” and “*shall immediately, completely, and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders*”. The draft was submitted by Albania and the United States, supported by 11 members of the Security Council. The Russian Federation vetoed the draft resolution and China, India and the United Arab Emirates abstained.
18. Also on 25 February 2022, the Executive Board of the IOC (the “IOC EB”) issued the following statement:

“The Executive Board (EB) of the International Olympic Committee (IOC) reiterated today the IOC’s strong condemnation of the breach of the Olympic Truce by the Russian government and the government of Belarus through its support in this. [...] The Olympic Truce began seven days before the start of the Olympic Games, on 4 February 2022, and ends seven days after the closing of the Paralympic Games. 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 Belarussian governments into account and give the safety and security of the athletes absolute priority. [...] The IOC EB expresses its deep concerns about the safety of the members of the Olympic Community in Ukraine and stands in full solidarity. ...”
19. On 26 February 2022, the ITTF Group issued the following statement:

“The ITTF Group is very concerned about the conflict in Ukraine.

We are monitoring the situation and have tasked the ITTF Foundation with reaching the Ukraine Table Tennis Federation to offer support where possible.

The ITTF Group is aligned with the Executive Board of the International Olympic Committee and will follow its recommendations. We ask the Continental Federations and the Member Associations to act accordingly.

Ping Pong Diplomacy has been at the heart of our sport for more than half a century. The ITTF Group strongly believes that constructive dialogue is the solution to any disputes. We hope for a rapid return to peace.”

20. On 27 February 2022, the ETTU EB postponed the second leg of the Men's Champions League semi-final between Fakel Gazprom and TTSC UMMC: *"The ETTU Executive Board has decided to postpone the Champions League Men second semi-final match Fakel-Gazprom Orenburg - TTSC UMMC initially scheduled for Friday 4th March to a date between the 8th and 10th April 2022. ETTU is considering an alternative location for the match."*
21. On 28 February 2022, the IOC EB issued a resolution as follows (the "IOC EB Resolution"):

"The IOC EB has therefore today carefully considered the situation and, with a heavy heart, issued the following 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, including the following:*

- *Mr Vladimir Putin, President of the Russian Federation ...*

- *Mr Dmitry Chernyshenko, Deputy Prime Minister of the Russian Federation*
...
- *Mr Dmitry Kozak, Deputy Chief of Staff of the Presidential Executive Office*
...

5. *The IOC EB welcomes and appreciates the many calls for peace by athletes, sports officials and members of the worldwide Olympic Community. The IOC admires and supports in particular the calls for peace by Russian athletes.*
6. *The IOC EB reaffirms its full solidarity with the Ukrainian Olympic Community. They are in our hearts and thoughts. The IOC EB commits to continue and strengthen its efforts for humanitarian assistance. Therefore, the IOC EB has today established a solidarity fund. In this context, the IOC expresses its gratitude to the National Olympic Committees (NOCs) and International Sports Federations that are already supporting Ukrainian athletes and their families.*

The IOC EB, assisted by the IOC Task Force, continues to closely monitor the situation. It may adapt its recommendations and measures according to future developments.”

22. On 1 March 2022, the ITTF Executive Committee met and decided to follow the IOC EB recommendations directing that *“until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed. Please note no ITTF Group events are currently scheduled in Russia or Belarus”*. The ITTF Group issued the following statement:

“The ITTF Group remains highly concerned by the outbreak of war in Ukraine. It expresses its solidarity with the people of Ukraine and wishes to send a powerful message of peace and unity to the entire world.

The ITTF Executive Committee met on March 1st, 2022, after consulting with the sport community, and took the decision to follow the recommendations made by the IOC Executive Board with immediate effect.

Therefore, until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed. Please note no ITTF Group events are currently scheduled in Russia or Belarus.

The ITTF Athletes’ Commission also expressed their deep concern and sympathy, and fully support these decisions.

The ITTF Group will continue to monitor the situation and will review its decision in light of future developments.”

23. On 2 March 2022, the General Assembly of the United Nations adopted a resolution headed “Aggression against Ukraine” which provided (in relevant part) as follows:

“The General Assembly,

Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligation of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means,

Recalling also the obligation under Article 2 (2) of the Charter, that all Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

Taking note of Security Council resolution 2623 (2022) of 27 February 2022, in which the Council called for an emergency special session of the General Assembly to examine the question contained in document S/Agenda/8979,

...

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,...

Condemning the 24 February 2022 declaration by the Russian Federation of a “special military operation” in Ukraine,

Reaffirming that no territorial acquisition resulting from the threat or use of force shall be recognized as legal,

Expressing grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children,

Recognizing that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war,

Endorsing the Secretary-General’s statement of 24 February 2022 in which he recalled that the use of force by one country against another is the repudiation of the principles

that every country has committed to uphold and that the present military offensive of the Russian Federation is against the Charter,

Condemning the decision of the Russian Federation to increase the readiness of its nuclear forces,

Expressing grave concern at the deteriorating humanitarian situation in and around Ukraine, with an increasing number of internally displaced persons and refugees in need of humanitarian assistance,

Expressing concern also about the potential impact of the conflict on increased food insecurity globally, as Ukraine and the region are one of the world's most important areas for grain and agricultural exports, when millions of people are facing famine or the immediate risk of famine or are experiencing severe food insecurity in several regions of the world, as well as on energy security,

Welcoming the continued efforts by the Secretary-General and the Organization for Security and Cooperation in Europe and other international and regional organizations to support de-escalation of the situation with respect to Ukraine, and encouraging continued dialogue,

- 1. Reaffirms its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters;*
- 2. Deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter;*
- 3. Demands that the Russian Federation immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State;*
- 4. Also demands that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders;*
- 5. Deplores the 21 February 2022 decision by the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter;*
- 6. Demands that the Russian Federation immediately and unconditionally reverse the decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine;*

7. *Calls upon the Russian Federation to abide by the principles set forth in the Charter and the Declaration on Friendly Relations;*

8. *Calls upon the parties to abide by the Minsk agreements and to work constructively in relevant international frameworks, including in the Normandy format and Trilateral Contact Group, towards their full implementation;*

9. *Demands all parties to allow safe and unfettered passage to destinations outside of Ukraine and to facilitate the rapid, safe and unhindered access to humanitarian assistance for those in need in Ukraine, to protect civilians, including humanitarian personnel and persons in vulnerable situations, including women, older persons, persons with disabilities, indigenous peoples, migrants and children, and to respect human rights;*

10. *Deplores the involvement of Belarus in this unlawful use of force against Ukraine, and calls upon it to abide by its international obligations;*

11. *Condemns all violations of international humanitarian law and violations and abuses of human rights, and calls upon all parties to respect strictly the relevant provisions of international humanitarian law, including the Geneva Conventions of 1949² and Additional Protocol I thereto of 1977,³ as applicable, and to respect international human rights law, and in this regard further demands that all parties ensure respect for and the protection of all medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities;*

12. *Demands that all parties fully comply with their obligations under international humanitarian law to spare the civilian population, and civilian objects, refraining from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, and respecting and protecting humanitarian personnel and consignments used for humanitarian relief operations;*

13. *Requests the Emergency Relief Coordinator to provide, 30 days after the adoption of the present resolution, a report on the humanitarian situation in Ukraine and on the humanitarian response;*

14. *Urges the immediate peaceful resolution of the conflict between the Russian Federation and Ukraine through political dialogue, negotiations, mediation and other peaceful means;*

15. *Welcomes and urges the continued efforts by the Secretary-General, Member States, the Organization for Security and Cooperation in Europe and other international and regional organizations to support the de-escalation of the current situation, as well as the efforts of the United Nations, including of the United Nations Crisis Coordinator for Ukraine, and humanitarian organizations to respond to the humanitarian and refugee crisis that the aggression by the Russian Federation has created;*

16. Decides to adjourn the eleventh emergency special session of the General Assembly temporarily and to authorize the President of the General Assembly to resume its meetings upon request from Member States.”

24. On 2 March 2022, the ETTU EB met (remotely), in which meeting it was decided to “follow the ITTF decision” (i.e., the ITTF decision of 1 March 2022 referred to at ¶22 above). This is referred to in this Award as the “ETTU Decision of 2 March 2022”. The minutes of the meeting record in material part as follows:

“ITTF Executive Committee decision 1.3.2022 Russia and Belarus

The Acting President informed the Executive Board members about the ITTF Executive Committee decision during its meeting on March 1st, 2022, to follow the recommendations made by the IOC Executive Board with immediate effect, not to invite or allow Russian nor Belarusian players and officials in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems to be displayed.

The ETTU Executive Board accepted to follow the ITTF decision and decided not to let Belarusian and Russian players and officials be invited or allowed in events hosted by ETTU and no Belarusian or Russian national symbols, flags or anthems will be displayed until further notice. ...”

25. This ETTU Decision of 2 March 2022 was not disseminated beyond the ETTU.
26. On 3 March 2022, Borussia Dusseldorf won the second leg of the Men’s Champions League semi-final against FC Saarbrücken TT.
27. Also on 3 March 2022, the ETTU EB met (remotely) once again. At the meeting, the ETTU EB decided that “*Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season*”. This decision will be referred to herein as the “ETTU Decision of 3 March 2022”. In relevant part, the minutes of the meeting state as follows:

“... 1. European Club competitions season 2021-2022 Russian clubs.

The ETTU Executive Board decided that Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season. This includes Russian clubs due to compete in the semi-final and the final of the Men’s Championships League. The decision, taken in order to protect the integrity of the competitions and the safety of those involved, is in line with the recommendations of the ITTF Group and follows on from the Executive Board’s decision from March 2nd, 2022 not to invite or allow Belarusian and Russian players and officials to participate in events hosted by ETTU until further notice. ...”

28. On the same day, 3 March 2022, the ETTU EB sent a letter to its member associations in the following terms:

“Luxembourg, 3rd March 2022

To the ETTU Member Associations

Dear friends,

The ETTU Executive Board met today to discuss further action needed to protect the integrity of our competitions and the wellbeing of our athletes.

After careful deliberation, the ETTU Executive Board decided that Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season. This includes Russian clubs due to compete in the semi-final and final of the Men’s Champions League.

This decision is in line with the previous ETTU decision to not invite or allow Belarusian and Russian players and officials to participate in events hosted by ETTU until further notice and follows the recommendations set by the International Olympic Committee (IOC) and ITTF. In addition, no Belarusian or Russian national symbols, flags or anthems will be displayed at ETTU events until further notice.

The ETTU Executive Board also informs that both Vladimir Samsonov and Polina Mikhailova have self-suspended from their positions on the Executive Board, immediately after Igor Levitin’s self-suspension from the Presidency, until further notice.

The ETTU Executive Board accepts their decision and will continue to operate as normal, in full compliance with the ETTU Constitution, in order to best serve European table tennis.

As the ITTF has repeatedly stated, Ping Pong Diplomacy has been at the heart of our sport for more than half a century and we join them in hoping that constructive dialogue can be the solution to any disputes.

As a table tennis family, we are united in our hope that peace will soon return to Europe.

*Yours sincerely,
ETTU Executive Board”*

29. It will be apparent that, as a matter of fact, the ETTU EB made two, separate decisions, one on 2 March 2022 (the ETTU Decision of 2 March 2022) and the other on 3 March 2022 (the ETTU Decision of 3 March 2022) as follows:

- a. The ETTU Decision of 2 March 2022:

- i. Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by ETTU.
- ii. No Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by ETTU until further notice.

b. The ETTU Decision of 3 March 2022:

- i. Russian clubs are not permitted to compete in any European Club competitions for the 2021-2022 season, including in particular the Men's Champions League 2021-2022.

30. These decisions will be referred to collectively as the "ETTU EB Decision".
31. It will also be apparent from a reading of the chronology set forth above that an immediate effect of the ETTU EB Decision was that the two Russian clubs (affiliates of the Appellant), Fakel Gazprom and TTSC UMMC (together, the "Clubs"), who were at that point in time scheduled to compete in the second leg of one of the semi-finals of the Men's Champions League 2021-2022, were precluded from doing so by the ETTU, and thus precluded from advancing to the final.
32. On 21 March 2022, the Respondent announced that Borussia Dusseldorf was the winner of the Men's Champions League 2021-2022. The press release was in the following terms:

"The ETTU Executive Board confirmed at its meeting on 19th March 2022 that German club Borussia Düsseldorf is the winner of the European Champions League men 2021-2022 season following their semi-final victory over 1.FC Saarbrücken TT on 3 March.

Borussia Düsseldorf beat 1.FC Saarbrücken TT having won 3:0 in straight matches in the first leg and 3:1 in the second leg.

The other semi-final was cancelled after the ETTU Executive Board decided on 3 March that Russian clubs would not be permitted to compete in any European Club competitions for the 2021-2022 season.

The trophy will be delivered to Borussia Dusseldorf at the earliest opportunity."

IV. PROCEEDINGS BEFORE THE ETTU BOARD OF APPEAL

33. On 22 March 2022, the TTFR, together with Fazel Gazprom and TTSC UMMC whose match had been cancelled (see above), appealed the ETTU EB Decision to the ETTU BoA seeking the following relief (where the TTFR is described as "Appellant 1", Fazel Gazprom as "Appellant 2", and TTSC UMMC as Appellant 3):

"As an interim measure:

1. Grant the suspensive effect to the present Appeal and/or, if needed, order ETTU to take all necessary measures to reinstate immediately all Russian teams, whether national representative teams or club teams, for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present Appeal.

2. Order ETTU to organize the celebration of all matches initially scheduled to be held initially in Men's Champions League 2021-2022 (semi-final between the Appellant 2 and Appellant 3, and the final) to be celebrated in the available dates.

On the merits:

3. Set aside the decision of the ETTU Executive Board dated March 3rd, 22

4. Set aside the decision of ETTU of proclaiming the winner of Men's Champions League 2021-2022

5. Reinstate all Russian teams, whether national representative teams or club teams, for participating in ETTU competitions

6. Order ETTU to organize all remaining unplayed games in Men's Champions League

7. Order ETTU to bear all costs incurred with the present procedure.

8. Order ETTU to pay Appellants a contribution towards its legal and other costs, in the amount to be determined at the Board of Appeal discretion."

34. On 26 April 2022, the ETTU BoA issued the Appealed Decision by which it upheld the appeal in part and confirmed the ETTU EB Decision in part. In the decision, the ETTU BoA said this in relation to that part of the ETTU EB Decision barring Russian clubs from competing and not inviting Belarusian and Russian players and officials to ETTU events:

"With its decision dated March 3rd 2022 the ETTU Executive Board decided that the "(...) Russian clubs will not to be permitted to compete (...)" and "(...) to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU (...)"

Both sanctions are however not part of the disciplinary sanctions foreseen in the Handbook, 'Catalogue of Disciplinary Sanctions' or any other relevant Regulations and are therefore to be qualified as beyond the competences of the ETTU Executive Board.

As an addition the following.

Clause 1.3.3 Handbook states: "ETTU is committed to providing a sport environment free of harassment on any basis without exception."

Olympic Charter, Fundamental Principles cipher 4: “The practice 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.”

There is no doubt that the Olympic idea includes the peaceful coexistence of people from all over the world. In this context, it can also be seen as an Olympic task to make a contribution to a peaceful coexistence. This should also include that conflicts are not increased on the level of sport, but rather de-escalated. In this sense, possibilities must be sought for Club teams and athletes, even if the political situation in their home countries may be difficult, to live this Olympic idea together peacefully. Apart from these generic Olympic principles, the ETTU commitment is clear and unmistakable: ETTU is committed to providing a sport environment free of harassment on any basis without exception. Therefore, not permitting Appellant 2 and 3 to compete and to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU does not seem to be appropriate from a sporting point of view and discriminator [sic, discriminatory]. ETTU Executive Board has failed to credibly argue that the measures are about more than a political measure/statement.”

35. The “conclusion” and “decision” of the ETTU BoA were as follows:

“Conclusion

The BoA rejects the application of the Appellant 1 to reinstate Russian national team for participation in ETTU competitions. That also applies to Appellant 2 and 3, also because they have no direct interest to it. Concerning the Men's Champions League 2021-2022 the BoA finds the reasoning of the Appellants more convincing than the rather not too reasoned position of the ETTU Executive Board. The BoA will use its Competence (clause 1.1. of Annex Handbook) not only to confirm or reject a juridical decision made by one of the ETTU judicial bodies, but also modify it. In this case by specifying it with regard to the actual competition.

Given the changing and unpredictable circumstances caused by the conflict, parties are referred to clause 13 of the Handbook in case such situation would occur.

A revision of the judgement may be requested if new facts or new circumstances have emerged, which have not been not known at the time of the BoA resolutions. This request, including detailed information, has to be sent via the Secretariat to the BoA Chair, who shall decide upon the appropriateness of a new settlement of the case.

Decision

The ETTU decisions of March 3rd 2022 are modified:

- a) Appellant 2 and Appellant 3 will be permitted to compete in the semi-final and final of the Men's Champions League 2021-2022.*

b) To set aside the proclamation by ETTU of the winner of the Men's Champions League 2021-2022 of March 3rd 2022.

Any other decisions are confirmed, including the decision of March 2nd 2022 that no Belarusian or Russian national symbols, flags or anthems will be displayed at ETTU events until further notice.”

36. On 26 April 2022, upon receipt of the Appealed Decision, the Appellant wrote to the ETTU BoA asking for clarification of the Appealed Decision. The Appellant asked for clarification of the applicability of the decision to future competitions under ETTU jurisdiction – *“would Russian teams be allowed to participate in future competitions, for instance, the next edition of the Champions League? It is not clear from the wording of the decision, however, I can only make my suggestion based on the line from the decision: ‘Therefore, not permitting Appellant 2 and 3 to compete and not to invite or allow Belarusian or Russian players and officials in events hosted by ETTU does not seem to be appropriate form a sporting point of view and discriminator.’.”*
37. On 29 April 2022, the ETTU BoA replied saying: *“The decision of the BoA with regard to players and officials is limited to the semi-final and final. The other measures set by the ETTU remain unchanged.”*
38. The ETTU EB met with the Appellant and the Clubs on 29 April and 6 May 2022 in order *“to discuss the conditions under which the unplayed semi-final and finals of the Men’s Champion’s League 2021-2022 could be staged”* (according to the minutes of the ETTU EB meeting of 12 May 2022).
39. In these meetings, the Appellant and the Clubs put forward a *“Proposition for the conditions of semifinal and final matches of the TTCLM [Table Tennis Champions League Men] season 2021-2022 from Table tennis club ‘Fakel Gazprom’ (Orenburg) and Table tennis sports club UMMC (Verkhanya Pyshma)”*. The proposition was as follows:
 - a. Play the unplayed second leg of the semi-final between the Clubs on 10 June 2022 in Orenburg, Russia.
 - b. Nominate a Russian umpire team for that match.
 - c. Set the dates for the two final matches of the Men’s Champions League after the completion of the semi-final.
 - d. Play the first of the final matches either at Orenburg or Verkhanya Pyshma, depending on who wins the semi-final.
 - e. Reimburse the travel expenses of the Clubs for organising and staging the matches.

40. In a meeting held on 12 May 2022, the ETTU EB considered the said proposition and decided against it. In particular:
- a. The ETTU EB decided against holding the second semi-final match on 10 June 2022 on the basis that such would mean that the final would be played during July at the earliest, at which time Borussia Dusseldorf may not have eligible players under contract.
 - b. The ETTU EB decided against nominating a Russian umpire team on the basis that it had already been decided that *“Russian officials are not allowed to be invited or allowed in events hosted by ETTU”*.
 - c. The ETTU EB decided against hosting one of the finals matches in Russia as proposed. *“From a security perspective, ETTU would not be able to guarantee the safety of the German’s [sic] team athletes in Russia. Nor would ETTU be able to guarantee the safety of Russian’s [sic] team athletes in Germany, to play the second match of the final, or even if they were allowed to enter the country. The safety of the athletes and all participants shall be ETTU’s first priority. In addition the EB’s position, from a competition integrity perspective, it is clear some, if not all, players from Borussia Dusseldorf would be unwilling to travel to Russia or even refuse to play against any of the Russian Teams.”*
41. On 15 May 2022, the ETTU EB submitted a request to the ETTU BoA, pursuant to clause 13 of the ETTU Constitution, to revise the Appealed Decision on the basis that new facts and circumstances had emerged (i.e., those facts and matters set forth above at ¶40.c). The ETTU BoA was asked to set aside the decision that that ETTU was obliged to organise the unplayed semi-final between the Clubs. The ETTU EB submitted that *“there are no conditions to organize the unplayed matches of the Men’s Champions League 2021-2022 without undermine [sic] the integrity of the competitions and assuring the safety of all involved and so wishes to declare the Men’s Champions League 2021-2022 finished with no declared winner”*.
42. There is no response on the file from the ETTU BoA to this request.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

43. By a Statement of Appeal and Urgent Request for Provisional Measures dated 10 May 2022, submitted in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Appellant appealed to CAS against the Appealed Decision. In its Statement of Appeal and Urgent Request for Provisional Measures, the Appellant (a) made an urgent request to stay the Appealed Decision and for provisional measures, (b) requested that a panel of three arbitrators be appointed, and (c) appointed Mr Bernhard Welten as an arbitrator.
44. By letter dated 23 May 2022, the Respondent filed its Answer to the Request for Provisional Measures.

45. By letter dated 11 May 2022, the CAS Court Office granted the Appellant an extension of time of five (5) days in which to file its Appeal Brief, i.e., by 25 May 2022.
46. The Appellant filed its Appeal Brief on 25 May 2022, in accordance with Article R51 of the CAS Code.
47. By letter dated 25 May 2022, the CAS Court Office informed the Parties that the Respondent was granted a deadline of 20 days from 25 May 2022 to file its Answer (i.e., 14 June 2022).
48. On 14 June 2022, the ETTU emailed the CAS Court Office a copy of its Answer (titled “Response to the Appeal Brief”) informing the CAS Court Office that it had been unable to upload the document to the CAS Court Office e-filing platform as a result of technological difficulties with the platform.
49. On 4 July 2022, the Appellant drew “*the attention of CAS that, in principle, the time limit for the provision by the Respondent of its answer has already lapsed. Without any prejudice, I have not been yet notified of the contents of the Respondent’s answer*”. The Appellant also indicated its preference for a hearing.
50. On the same day, in response to the Appellant’s letter, the CAS Court Office noted that the Respondent was granted a deadline of 20 days from receipt of the Appeal Brief on 25 May 2022 to file its Answer and that such deadline expired on 14 June 2022. The office stated: “*To date, the CAS Court Office has not received the Respondent’s Answer or any communication from the Respondent in this regard. In accordance with Article R55 of the [Code] if the Respondent fails to submit its Answer by the stated time limit, the Panel may, nevertheless proceed with the arbitration and deliver an award.*”
51. Also on 4 July 2022:
 - a. The Respondent replied stating that it had “*sent an email containing its Response within the time limit*” (attaching its email of 14 June 2022, see paragraph [ref] above) and stated that “*At the time we tried to upload the file on the e-filing portal but we were not able to recover the password, as explained in the attached email. No new password was sent until now, and for that reason we cannot recover access to the e-filing portal.*”
 - b. The Appellant responded, citing Article R31 of the CAS Code, and noted that the Respondent was obliged to submit its Answer within 20 days of receipt of the Appellant’s Appeal Brief on 24 May 2022, which the Respondent failed to in accordance with the requirements of Article R31 of the CAS Code. It was said that the consequence was that the Respondent’s Answer was “*invalid and inadmissible*”. The Appellant requested “*CAS to declare the Answer of the Respondent as inadmissible and invalid, as filed in violation of CAS Code*”.
52. On 5 July 2022, the CAS Court Office responded to the Parties. The office acknowledged receipt of the Respondent’s Answer, received at the CAS Court Office

on 4 July 2022 by email and uploaded on the CAS E-filing platform on 5 July 2022 at 12:40 (CET) and informed the Parties that *“it will be for the Panel, once appointed, to decide on the admissibility of the Answer”*.

53. By undated letter from the Respondent sent on 7 July 2022, the Respondent stated that (a) the email containing the Respondent’s Answer was successfully sent at 21.58.40 UCT to the CAS Court Office, thereby in time and (b) the Respondent was agreeable to a hearing in this matter.
54. On 11 July 2022, the CAS Court Office replied to the Respondent’s letter. The office referred the Respondent to Article R31(3) of the CAS Code *“pursuant to which the Answer is to be filed by courier, in at least six (6) copies or uploaded on the CAS e-Filing platform”*.
55. On 5 August 2022, the Deputy President of the CAS Appeals Arbitration Division issued an order in respect of the Appellant’s application for provisional measures, deciding as follows: (1) The application for provisional measures filed by the Table Tennis Federation of Russia on 10 May 2022 in the matter CAS 2022/A/8856 Table Tennis Federation of Russia v. European Table Tennis Federation is dismissed. (2) The costs of the present Order shall be determined in the final award or any other final disposition of this arbitration.
56. On 24 October 2022, the CAS Court Office confirmed receipt of the Parties’ payments of the advance of costs for this procedure and informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the panel appointed to decide this reference was constituted as follows: Mr Bernhard Welten, Attorney-at-law, Bern, Switzerland; Mr João Nogueira Da Rocha, Attorney-at-law, Lisbon, Portugal; and Mr James Drake K.C., Barrister, London, United Kingdom (as President).
57. On 6 December 2022, the Parties signed and returned the Order of Procedure, which stated (inter alia) as follows:

“1 Jurisdiction

The Appellant relies on Article 8.4.1 of the ETTU Constitution as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order.

...

8.3 In accordance with Article R55 of the Code, the Respondent filed its Answer on 14 June 2022 (according to the Respondent) or 4 July 2022 (according to the Appellant).”

58. A hearing took place on Friday, 3 February 2023, in which the following people participated:
 - a. The Panel:

- i. Mr James Drake K.C., President
 - ii. Mr Bernhard Welten, Arbitrator
 - iii. Mr João Nogueira Da Rocha, Arbitrator
 - b. The Appellant:
 - i. Mr Ivan Bykovskiy, Counsel
 - ii. Ms Inga Agoshkova, Counsel
 - c. The Respondent:
 - i. Mr Jose Ricardo Gonçalves, Counsel
 - ii. Mr Sergio Castanheira, Counsel
 - iii. Mr David Valente Bastos, Counsel
 - iv. Mr Pedro, Acting President of the Respondent
 - v. Mr Pierre Kass, General Secretary of the Respondent
 - vi. Ms Galia Dvorak, Deputy General Secretary of the Respondent
 - d. CAS Court Office:
 - i. Mr Fabien Cagneux, Managing Counsel
59. Prior to the commencement of the hearing, the Panel enquired of the Parties whether they wished to take advantage of the fact that the Parties and their representatives were gathered in the one place in order to meet and discuss a possible resolution. The Parties did so wish and met in the absence of the Panel. In the event, the Parties informed the Panel that discussions had been worthwhile but no resolution was reached. The hearing thus proceeded in the ordinary way. At the close of the hearing, the Panel indicated to the Panel that, in order to allow the Parties further time to discuss the matter inter partes, the Panel would allow a period of 30 days from the date of the hearing (i.e., until 4 March 2023) before the Panel deliberated and began drafting the Award.
60. At the commencement of the hearing, the Parties confirmed that they had no objection to the jurisdiction of CAS or to the constitution of the Panel. At the conclusion of the hearing, the Parties expressly confirmed that their right to be heard had been fully respected.
61. Subsequent to the hearing:

- a. On 2 March 2023, the Parties requested that the proceedings be suspended until 31 March 2023 in order to allow the Parties a further opportunity to resolve the dispute.
- b. On 5 April 2023, the Appellant informed the CAS Court Office that the matter had not been resolved but that the Parties had established a “*working group*” and asked that the “*CAS proceeds in due course*”. The Respondent replied on the same date providing an agreed-upon schedule for the “*working group*”.
- c. On 31 May 2023, the Respondent informed the CAS Court Office that the Parties had met on 12 May 2023 and were drafting “*a document in order to achieve a final solution*” and that the Respondent would keep the CAS Court Office informed.
- d. On 19 June 2023, the Appellant informed the CAS Court Office that “*the Parties have not reached a Settlement Agreement until today*” and suggested that the Panel should proceed with the drafting of the Award, pending any further notification from the Parties.
- e. On 22 June 2023, the Respondent informed the CAS Court Office that the Parties had not yet reached a settlement of the dispute and requested a further period of suspension of 30 days.
- f. On 27 June 2023, the Respondent informed the CAS Panel that no settlement had been reached and the Appellant suggested that the Panel “*proceeds in due course with drafting the award*”.
- g. On 28 June 2023, the CAS Court Office informed the Parties that the Panel “*will proceed with the drafting of the Award*”.

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant’s Submissions

The Admissibility of the Answer

62. As a preliminary matter, the Appellant submitted that the Respondent’s Answer was out of time and therefore inadmissible. In this respect it was said that, by Article R31 of the CAS Code, the Respondent was required to submit its Answer via the E-filing platform or by courier mail and that it did neither but submitted its Answer by email. The Appellant repeated what it had said in correspondence (see ¶49 above) and that the Answer was therefore “*inadmissible and invalid*”.
63. As to the merits of the matter, and its challenge to the Appealed Decision, the Appellant’s submissions are summarised below in three parts: (a) the nature of the Appealed Decision; (b) the procedural flaws in the Appealed Decision; and (c) the “*material flaws*” in the Appealed Decision. As to the last-mentioned, the Appellant

submits that the Appealed Decision: (i) lacks a legal basis; (ii) violates the ETTU Constitution; (iii) “*violates the duty of political neutrality*”; (iv) is discriminatory; (v) “*violated the personality rights of the Appellant, its teams, and athletes*”; (vi) is disproportionate; (vii) “*violates the fundamental principle of equal treatment*”; and (viii) violates the principle of *venire contra factum proprium*.

The Nature the Appealed Decision

64. As to the nature of the Appealed Decision, the submissions on the part of the Appellant may be summarised as follows:

- a. In suspending the Appellant’s right to delegate its national teams, clubs and athletes to ETTU competitions “*is nothing else than a purely disciplinary decision*”.
- b. CAS 2008/A/1583 and CAS 2008/A/1584 provide that, usually, measures taken by an association are divided into (a) acts of administration and (b) disciplinary measures, albeit that all disciplinary measures are also acts of administration. Where, as is typical, a disciplinary measure imposes a sanction, it is “*subject to a stricter test*” and “*certain protective standards must apply*”. Whether something has a disciplinary character one must consider the effects on the addressee.
- c. The suspension of the Appellant’s representative teams, clubs, and athletes from participation in ETTU competitions “*obviously imposes negative consequences on the Appellant*”.
- d. It should therefore be characterised as a decision of a disciplinary nature.

The Procedural Flaws in the Appealed Decision

65. The Appellant submitted that there were a number of what it called “*procedural flaws*” in the Appealed Decision which rendered the Appealed Decision “*null and void*”. Its submissions in this regard were in summary as follows:

- a. The right to be served process in a fair and timely manner is a fundamental procedural right, part of the right to be heard. This is a fundamental and general principle which derives from the elementary rules of natural justice: see CAS 2021/A/7220. The ETTU did not respect this right. Before publishing the ETTU Decision of 3 March 2022, “*ETTU did not even consult the Appellant*”. The Appellant was not invited to provide its position and had no opportunity to “*pronounce*” until after the decision was taken.
- b. The decision “*to not invite Russian teams and athletes to participate*” in ETTU competitions and the ETTU BoA’s decision “*to sustain this prohibition*” does not contain any reference to any regulations or rules of law that would justify the decision.

- c. The ETTU EB lacked the authority to make such a decision. By Article 5 of the ETTU Constitution, the ETTU EB can only “*impose disciplinary sanctions for inappropriate conduct and violations of the Constitution and Regulations which are not expressly attributed to another body within ETTU*”. That is not the case here. Neither the Appellant, its teams, nor its athletes has violated any provision of the ETTU Regulations that warrants a sanction “*with such a severe measure*”. This means that the decision “*was adopted beyond the scope of the jurisdiction of the Respondent, having no authority nor competence to do so*”.

The Material Flaws in the Appealed Decision

- 66. The Appellant also contended that the Appealed Decision suffered from a number of “*material flaws*”, i.e. substantive errors. These were said to be: (a) the Appealed Decision lacked a legal basis; (b) the Appealed Decision violates the ETTU Constitution and the ETTU Regulations; (c) the Appellant has a statutory right to take part in all ETTU competitions; (d) the Appealed Decision violates the duty of political neutrality; (e) the Appealed Decision is discriminatory; (f) the Appealed Decision violates the personality rights of the Appellant, its teams, and athletes; (g) the Appealed Decision is disproportionate; (h) the Appealed Decision violates the fundamental principle of equal treatment; and (i) the Appealed decision offends the principle of *venire contra factum proprium*.

The Appealed Decision lacks a legal basis

- 67. It was first said that the Appealed Decision lacks a legal basis. In this respect, the Appellant’s submissions may be summarised as follows:
 - a. No superior decision or order justifies the Appealed Decision. The IOC EB Resolution “*refers to no legal provision, being pure of generic in nature*”. It was merely a recommendation with no binding effect on the ETTU and nothing in the Olympic Charter, the ITTF Constitution, the ETTU Constitution or the ETTU regulations imposes “*a binding effect of such a recommendation*”.
 - b. The Respondent is not “*released*” from its obligations under various international conventions, namely: Article 14 of the European Convention on Human Rights (the prohibition of discrimination); Article 1 of Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (prohibition on discrimination); Articles 2, 7, 12, 29 and 30 of the Universal Declaration of Human Rights. The Appealed Decision does not comply with these obligations.
 - c. The ETTU should have assessed whether or not the IOC EB Resolution complied with the principle of “*political neutrality*” and the obligation not to discriminate.

The Appealed Decision violates the ETTU Constitution and the ETTU Regulations

68. It was next submitted by the Appellant that the Appealed Decision violates both the ETTU Constitution and the ETTU Regulations.
69. The Appellant's submissions in this respect may be summarised in the following way:
- a. Article 2.3.6 of the ETTU Constitution provides that: "*The Executive Board may act to suspend an Association pending the Congress provided the Association is afforded an opportunity to present its case and all Associations having been informed of the suspension and provided with reasons.*"
 - b. A member association "*can only be suspended immediately (as is the case here) if it has seriously violated its obligations*" and yet the Appealed Decision "*does not refer to or even mention any such breach by the Appellant*". This was "*for a good reason: the Appellant did not violate the slightest of its obligations!*"
 - c. There is nothing in the ETTU Regulations that provides the basis for a sanction "*not to permit to compete*" or "*not to invite*". All of the permissible sanctions are set forth in Article 3.2 of Annex B Catalogue of Disciplinary Sanctions of the ETTU Regulations and there is no mention of these sanctions. The legal principle *nulla poena sine lege* (one cannot be punished for doing something that is not prohibited by law) applies. "*Even if the Respondent is a governing body in European table tennis, it is not empowered to 'invent' measures for the specific situation, which are not embodied in any legal rule.*"
 - d. As was recognised by the ETTU BoA, the ETTU is under an obligation to justify its decision, and it has failed to do so here. The ETTU "*decided to hide behind general excuses of 'safety of the athletes' and 'integrity of competitions' without providing any proof whatsoever*".
 - e. Any sanction must be "*predictable*" and "*proportionate*". CAS 2017/A/5031 provides that "*the principle of proportionality requires an assessment of whether a sanction is appropriate to the violation committed in the case at stake*". In this case, the Respondent "*overreacted*" and should have "*considered milder consequences for the Appellant (if any sanction at all)*". The Respondent "*had ample opportunity to consider and apply the measures less strict than the total suspension of the Appellant's athletes and teams*".

The Appellant has a statutory right to take part in all ETTU competitions

70. In this respect, it was submitted by the Appellant that:
- a. Articles 1-3 of the ETTU Regulations list the eligibility requirements for players and Articles 2.4 and 2.5 of the ETTU Constitution set forth the rights and obligations of member associations. The Appellant therefore has a right to participate in ETTU competitions.

- b. The ETTU EB Decision “*frontally violated this right*” which the ETTU BoA sought to mitigate by declaring the decision discriminatory and reinstating the two Russian clubs for the 2021-2022 season. Nevertheless, the Appealed Decision “*lacks any ruling regarding the following seasons*”.

The Appealed Decision violates the duty of political neutrality

- 71. The Appellant next submitted that the Appealed Decision violated the ETTU’s duty to remain politically neutral.
 - a. Article 1.3 of the ETTU Constitution provides for political neutrality, independence and good governance.
 - b. Article 1.3.1 provides that “*The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds.*”
 - c. According to the Appellant, the “*general principle of political neutrality in sport is of the essence because any decision taken based on political circumstances in the sport directly affects the individuals who participate in the championship, the athletes, depriving them of fundamental rights they were given*”.
 - d. The decision to ban athletes leaves them and their families “*without means of subsistence*”.

The Appealed Decision is discriminatory

- 72. The Appellant submitted that the Appealed Decision discriminated against the Appellant. Its submissions in this respect may be summarised as follows:
 - a. Article 1.3.1 (see above) of the ETTU Constitution prohibits discrimination.
 - b. Article 1.3.2 and Article 1.3.3 of the ETTU Constitution go on to provide as follows:

“1.3.2 ETTU is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices.

1.3.3. ETTU is committed to providing a sport environment free of harassment on any basis without exception.”
 - c. Not inviting or allowing Belarusian and Russian players and officials in events hosted by the ETTU is discriminatory.

The Appealed Decision violates the Appellant’s personality rights

73. It was submitted by the Appellant that the Appealed Decision violates the personality rights of the Appellant, its teams, and its athletes.
74. The submissions in this respect may be summarised as follows:
- a. Sanctions and measures imposed by a federation that do not merely ensure the smooth running of the game but also impinge on the legal interests of the persons concerned are subject to judicial review.
 - b. This applies in particular where the sanction imposed seriously violates “*the personal right to economic freedom*”. According to Swiss law, measures taken by sports federations which may seriously impair the personality rights of their members are only permissible if justified by the interests of the federation.
 - c. The Respondent’s suspension of the Appellant’s teams for future seasons “*clearly violates their personality rights. They should find themselves de facto excluded from championships The Appellant will be prohibited from sending any athlete or team affiliated with it to future competitions. Hence this decision infringes the Appellant’s and the Appellant’s teams’ rights to [their] own economic development*”.
 - d. Further, there is no time limit on the prohibition, “*making such sanctions indefinite*”. There is “*no overriding ETTU interest to justify this severe violation*” of personality rights.

The Appealed Decision is disproportionate

75. It was submitted by the Appellant that the Appealed Decision was disproportionate. The submissions in this respect may be summarised as follows:
- a. In sporting matters, there is a doctrine that requires sporting bodies to weigh the individual interest of the member against the general interest of the association or federation. The athlete “*is thus entitled to the mildest possible measure that is still likely to achieve the intended goal (Hans Bodmer, Vereinsstrafe und Verbandsgerichtsbarkeit – Dargestellt am Beispiel des SFV, St. Gallen/Berne/Stuttgart, 1989, p.100)*”.
 - b. It is obvious that, even if the Appellant had infringed the ITTF, ETTU or IOC Constitutions, “*many less incisive measures could be taken*”.
 - c. The “*prohibition to participate in the following competitions derived from personal assessment of ETTU of the fault in actions of the government of the Russian Federation is an extreme and misconceived measure towards the Appellant and its teams which is not justified*”.
 - d. The Appellant’s athletes and teams “*suffer an actual boycott*”. “*They are made to bear the responsibility for an unfortunate situation provoked by government of the Russian Federation in which the Appellant, its affiliated athletes, and*

clubs had nothing to do nor ever participated or supported hostile actions nor violated founding documents of ETTU, ITTF, or IOC.”

- e. The sanction also violates the presumption of innocence, with the Respondent applying the presumption of guilt on the Appellant and its affiliates.

The Appealed Decision violates the fundamental principle of equal treatment

76. It was submitted by the Appellant that the Appealed Decision violates fundamental principle of equal treatment. The submissions in this respect may be summarised as follows:
- a. *“The principle of equal treatment is mandatory under Swiss association law. It is however only violated when two similar situations are treated differently. Any party alleging the discriminatory nature of a sanction bears the burden of proof for this allegation.” CAS/2013/A/3297.*
 - b. In application of this principle, the Appellant notes that the ETTU did not react in the same way with respect to various other recent conflicts from the war in Afghanistan through to the conflict in Yemen.
 - c. Even if the decision had been to provide peace in the championship, then both Russian and Ukraine teams should have been excluded *“as no organisation nor association can arbitrarily decide which fault was it and whom to blame”*.

The Appealed Decision violates the principle of *venire contra factum proprium*

77. It was submitted by the Appellant that, in the Appealed Decision, the ETTU BoA made a number of statements from which the Appellant cannot now resile in violation of the principle of *venire contra factum proprium*.
78. These include statements to the effect that: (a) the sanctions imposed are not part of the disciplinary sanctions in the ETTU Handbook or Regulations and are therefore beyond the competence of the ETTU EB; (b) the ETTU Decision was discriminatory; no punishment should be applied to athletes for the decisions of their governments if the athletes are not involved in them; (d) the measures adopted by the ETTU *“were merely political”*.

Relief

79. The Appellant seeks the following relief on this appeal:

“The Appellant respectfully requests that the CAS:

1. *Sets aside the decision of the ETTU Board of Appeal in part that it did not uphold the previous appeal, i.e., the non-inviting of Russian athletes and teams (including the National team) to the competitions organized by the ETTU and the prohibition of the Russian anthem, symbols, and flag.*

2. *Reinstates all Russian teams, whether national representative teams or club teams, and athletes for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present appeal and any other future competitions.*

3. *Reinstates the Appellant in its right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation.*

4. *Orders ETTU to bear all costs incurred with the present procedure.*

5. *Orders ETTU to pay the Appellant a contribution towards its legal and other costs in the amount to be determined at CAS discretion.*

The Appellant reserves the right to amend its requests for relief considering, but without limitation, further possible ETTU decisions in the matter of admission of Russian teams and athletes for participation in ETTU competitions and/or membership of the Table Tennis Federation of Russia.”

B. The Respondent’s Submissions

80. By its Answer, the ETTU seeks to maintain the Appealed Decision and argued as follows.

The Admissibility of the Answer

81. In relation to the Appellant’s contention that the Answer was inadmissible because it had been filed out of time, the Respondent submitted that, as had been explained in correspondence at the time, as a result of technological difficulties with the CAS E-filing platform, the Respondent was unable to lodge the Answer electronically and, instead, emailed a copy of the Answer to the CAS Court Office on the due date, namely 14 June 2022.

82. It was submitted that, accordingly, the Answer was filed on time and was admissible.

83. However, for the reasons that will be explained below at paragraphs 92 to 96, the Respondent’s Answer is inadmissible and, accordingly, its content is to be disregarded. As noted below, however, the Respondent was permitted to present its case orally at the hearing of the appeal.

VII. JURISDICTION

84. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted

the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”

85. The Appellant referred to Article 8.4 of the ETTU Constitution, Article 1.4 of Annexe A to the ETTU Constitution and Article J.5.8 of the ETTU Club Competitions Men. The Respondent made no submissions as to the jurisdiction of CAS.

Article 8.4 of the ETTU Constitution provides as follows:

“8.4.1 ETTU recognises the Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes arising from this Constitution or other ETTU rules and regulations, or decisions of ETTU which cannot be settled by the ETTU appeals process. The parties concerned shall undertake to comply with the Statutes and procedural rules of this Court of Arbitration for Sport and to accept and enforce its decisions, which are final.”

Article 1.4 of Annexe A to the ETTU Constitution states:

“The decisions of the BoA [Board of Appeal] shall be final and binding to all parties concerned.”

Article J.5.8. of the ETTU Club Competitions Men states:

“In case of any appeal against the decision of the ETTU Board of Appeal at the Court of Arbitration for Sports shall be made within 14 days of the notification of the decision of the ETTU Board of Appeal, which should be communicated to the ETTU Secretariat.”

86. The Panel notes that the Respondent did not contest the CAS jurisdiction and that the Parties agreed to the jurisdiction of the CAS to decide this appeal by signing the Order of Procedure.
87. The Panel, therefore, confirms that based on Article 8.4 of the ETTU Constitution and Article 1.4 of Annexe A of the ETTU Constitution CAS has jurisdiction to decide this appeal.

VIII. ADMISSIBILITY

88. Article R47 of the CAS Code provides as follows:

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

89. Article R49 of the CAS 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”

90. As to time limit, there is none set forth in Article 8.4.1 (as just cited) of the ETTU Constitution. However, Article J.5.8. of the ETTU Club Competitions Men does provide for a period of 14 days to appeal to the CAS.
91. The Appealed Decision, dated 26 April 2022, was communicated to the Appellant on 26 April 2022. The Appellant submitted its appeal on 10 May 2022, within the 14-day period.
92. The Panel, therefore, confirms that the Appellant’s appeal is admissible.
93. A question arises, however, as to the admissibility of the Answer. In this respect, as noted above, the Appellant contends that the Respondent’s Answer was out of time and therefore inadmissible. The Appellant contends that the Respondent filed its Answer late, beyond the deadline of 20 days provided by Article R55 of the Code and ordered in the letter of the CAS Court Office of 25 May 2023. According to the Respondent, its Answer was filed on 14 June 2022; according to the Appellant, the Respondent’s Answer was filed on 4 July 2022. The difference in this regard was recorded in the Order of Procedure signed by the Parties and, on 5 July 2022, the Parties were informed that the issue would be for the Panel, once appointed, to decide on the admissibility of the Respondent’s Answer.
94. Article R31 of the CAS Code provides (in relevant part) that a party’s submissions *“must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic email by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit”*.
95. It is apparent from the chronology of events set out above that the Respondent did not comply with the requirements of Article R31 of the CAS Code in that, whilst it emailed its Answer to the CAS Court Office on the due date, 14 June 2022, it did not also provide the required number of copies by courier or by upload onto the CAS e-filing platform within the time stipulated. Strictly speaking, therefore, the proviso set forth in Article R31 of the CAS Code was not met; the Answer is late and formally inadmissible.

96. The Respondent says, however, that its inability to do so was the result of technical failure with the CAS E-filing platform in that, despite attempts to do so, the Respondent was unable to recover its password. This may well be so but, as soon as it became apparent that it would not be able to upload the Answer (and copies) onto the CAS e-platform, the Respondent, acting conservatively, should have arranged for the documents to be sent to the CAS by courier within time.
97. Nevertheless, there is no rule in the CAS Code that a respondent loses the right to be a party to the proceedings and/or to defend itself in the subsequent stages of the arbitration proceeding if it files a late Answer: see, e.g., CAS 2019/A/6463 at ¶104ff. Indeed, it is well understood that “*Article R56 of the CAS Code does not preclude the Respondent from pleading at the hearing within the scope of the submissions it made in the first instance proceedings*”. Bearing that in mind, the Panel took the view that, in the particular circumstances of this case, it was in the interests of justice and fairness that the Respondent be permitted to make the same points in oral submissions at the hearing and this is how the hearing proceeded.

IX. APPLICABLE LAW

98. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

99. In this appeal:
- a. The applicable regulations are the relevant provisions of the ETTU Constitution and the ETTU regulations.
 - b. There is no express choice of law by the Parties.
 - c. The Respondent is domiciled in Luxembourg.
100. It follows that the Panel shall decide this appeal according to the provisions of the ETTU Constitution and the ETTU regulations and, subsidiarily, the laws of Luxembourg.
101. The ETTU Constitution provides in relevant part as follows:

“PRINCIPLES

1.3.1 The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination

against Associations or individuals on racial, political, religious, gender or other grounds.

1.3.2 ETTU is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices.

1.3.3 ETTU is committed to providing a sport environment free of harassment on any basis without exception.

1.3.3.1 The Executive Board of ETTU shall impose appropriate disciplinary sanctions from warnings to exclusions from all kind of activity in ETTU, when a complaint of harassment has been substantiated. The same range of disciplinary sanctions can be imposed if a false accusation has been substantiated.

1.3.3.2 The Executive Board has the power to delegate any of its duties or obligations to a competent body such as a disciplinary or ethics committee.

1.3.4 ETTU is committed to take a responsible approach to safeguarding the environment and managing resources through its practices in hosting events and in managing its operations.

1.3.5 ETTU shall observe the general and fundamental principles of Good Governance, the ITTF Code of Ethics; the Olympic Movement Code on the Prevention of the Manipulation of Competitions, the Olympic Movement Medical Code, the ITTF Anti-Doping Rules, the International Paralympic Committee (IPC) Handbook; and no provision of this Constitution shall be deemed to conflict with or derogate from those principles.

1.3.6 ETTU shall co-operate with ITTF, the European Olympic Committees (EOC), the European Paralympic Committee (EPC), and other organisations that recognise it as the controlling and governing authority for table tennis throughout Europe.

1.4 OBJECTIVES

1.4.1 The objectives of ETTU shall be:

1.4.1.1 to uphold the principles of ETTU and to develop the spirit of friendship and mutual assistance among Associations, officials, coaches and players;

1.4.1.2 to seek continual improvement in the technical standard of table tennis and to promote participation of table tennis throughout Europe;

1.4.1.3 to foster friendly sporting competition and to eliminate unfair and unsporting practices such as match fixing, match corruption, irregular and illegal betting, doping or illegal equipment;

1.4.1.4 to apply and enforce the Constitution, the Regulations for ETTU title competitions and events, the ITTF Regulations for International Competitions, the ITTF Anti-Doping Rules, the ITTF Code of Ethics, the ITTF Anti-Harassment Policy and Procedures and other ETTU regulations;

1.4.1.5 to promote and to supervise ETTU title competitions and events;

1.4.1.6 to employ the funds of ETTU as may be expedient in the interests of European table tennis;

1.4.1.7 to endeavour to increase participation at all levels, to enhance the popularity of the sport, to develop new sources of revenue, and to manage the sport through a systematic planning process;

1.4.1.8 to encourage players, coaches and officials to present the sport positively in the best ways to enhance its image.

...

RIGHTS OF THE ASSOCIATIONS

2.4.1 The Associations have the following rights:

2.4.1.1 to appoint up to two (2) representatives (referred to as delegates) to take part in the Congress;

2.4.1.2 to submit proposals or resolutions for inclusion in the agenda of the Congress;

2.4.1.3 to nominate candidates for election or appointment according to the specific rules;

2.4.1.4 to enter players for participation in competitions organised under the authority of ETTU according to the specific qualification rules of each competition;

2.4.1.5 to take part in and benefit from ETTU's assistance, development and educational programmes;

2.4.1.6 to exercise all other rights arising from the Constitution or other ETTU regulations.

...

EXECUTIVE BOARD

5.2.1. The Executive Board has the following duties and responsibilities:

5.2.1.1 to determine the internal operations and procedures;

5.2.1.2 to appoint the Secretary General of ETTU;

5.2.1.3 to appoint the chair of the Board of Appeal among the members elected by the Congress;

5.2.1.3 to appoint the Committee chairs and members, Officials and working groups, except the chair and members of the Athletes Commission;

5.2.1.4 to impose disciplinary sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within ETTU;

5.2.1.5 to determine the terms of reference for all Committees, Commissions, working groups or panels that the Executive Board may establish from time to time;

5.2.1.6 to establish an ETTU strategic plan to be submitted to the Congress;

5.2.1.7 to appoint the bank accounts of ETTU and the persons with signature on them;

5.2.1.8 to decide a remuneration of the President or any elected Executive Board member, if applicable. Such decisions shall be minuted with specific mention of the names and amounts and shall be reflected in the annual budget and the annual statement of accounts;

5.2.1.9 to review all applications for new membership and make recommendations on acceptance to the Congress;

5.2.1.10 to submit propositions and resolutions to the Congress;

5.2.1.11 to define the use of the ETTU name and logo;

5.2.1.12 to represent ETTU in all juridical matters;

5.2.1.13 to deal with all other current or urgent business and to assume all responsibilities which are not expressly attributed to another body within ETTU.

5.2.2 The Executive Board shall consist of the President, the Deputy President, the Vice President for Finance and five (5) Vice Presidents, all from different Associations, and the chair of the Athletes Commission.

5.2.3 The Executive Board shall meet at least four (4) times a year and otherwise when convened by the President or at the request of three (3) Executive Board members shall be convened within thirty (30) days. ...”

102. The ETTU Regulations provide, in relevant part, as follows:

“Annex B

Catalogue of Disciplinary Sanctions

1. General provisions

1.1 Member Associations, clubs, club teams, players and coaches, as well as umpires and other persons fulfilling an official task at a Competition (= officials) shall all behave in accordance with the principles of loyalty, integrity and sporting spirit.

1.2 Any Member Association, club, club team, player, coach or official may be sanctioned in the case of a violation of the Constitution, the Regulations or the official decisions of relevant Authorities.

1.3 In any case, any Member Association is fully responsible for the clubs, club teams, players, coaches, officials and other persons representing it, affiliated to it or otherwise under its authority.

1.4 The judicial bodies may impose disciplinary measures and sanctions according to their jurisdiction after the Constitution and regulations either to the present 'Catalogue of Disciplinary Sanctions' or to other relevant Regulations.

2. Disciplinary sanctions in direct connection with Competitions

2.1 There are two types of competitions to be distinguished:

a) 'short-term' competitions, as e.g. tournaments, staged at one venue and played continuously,

b) 'long-term' competitions, as e.g. leagues, played at different venues and at different times,

throughout a major part of one or more playing seasons.

Protests and appeals shall be made as follows:

- at 'short-term' Competitions: according to the relevant ITTF rules or regulations;

- at 'long-term' Competitions: according to the respectively relevant Regulations.

2.2 Any serious infringement upon ITTF or ETTU Regulations or rules, committed by a team, a player, a coach or an official, and which in the opinion of the referee, the organiser or the Jury of a Competition is of such a gravity to require a disciplinary sanction or another follow-up action, shall be brought to the knowledge of the Executive Board.

2.3 In disciplinary matters, ETTU shall generally follow the ITTF policy, i.e. to disqualify the trespasser (team, player, coach, official) from the running Competition concerned and to report the case to its/his nominating Association, which shall take an appropriate action and/or impose an appropriate sanction.

3. Disciplinary sanctions by the Executive Board

3.1 In addition to the cases mentioned in 2 of this Catalogue, the following offences shall as well be subject to disciplinary action by the Executive Board:

i) according to Constitution 1.3.3.1: appropriate disciplinary, when a complaint of harassment has been substantiated;

ii) according to Constitution 5.2.1: sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within the ETTU

and

a) a non-compliance with or a violation of official decisions, taken by relevant Authorities according to the Constitution and Regulations;

b) the supply on purpose of false or incomplete information to the Executive Board or to a Juridical Board in a case or an appeal brought forward;

c) any other unreasonable conduct which may bring the table tennis sport, ETTU, a Member Association or a club affiliated to a Member Association into disrepute;

d) any other non-conformity with or violation of ITTF and/or ETTU Regulations. In the case of, a full report of the facts, including the names and addresses of all persons concerned by the case as well as of any witnesses, shall be sent to the Secretariat.

3.2 The disciplinary sanctions which may be imposed by either the Executive Board or the judicial bodies to Member Associations, clubs, club teams, players, coaches or officials are:

a) a warning;

b) a financial fine;

c) a disqualification;

d) a suspension ().*

() according to the relating provisions of the Constitution, an eventual suspension of a Member Association by the Executive Board shall be confirmed and endorsed by a relating decision to be taken by the Congress at its next following Meeting.*

Doping cases are regulated separately.”

103. The Parties also relied upon the IOC Charter, and the “*Fundamental Principles of Olympism*” stated therein, in particular principles 4, 5 and 6:

“4. The practice 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, sports organisations within the Olympic Movement shall apply political neutrality. They have the rights and obligations of autonomy, which includes freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”

104. As to Luxembourg law, which applies subsidiarily pursuant to Article R58 of the CAS Code, the Parties proceeded on the basis of the applicability of Swiss law and made no submissions and put no material before the Panel, in relation to Luxembourg law. In those circumstances, the Panel is prepared to proceed on the basis that Swiss law and Luxembourg law are substantively the same in respect of the matters in this dispute.

X. THE MERITS OF THE APPEAL

105. The appeal is against the Appealed Decision which, as has been noted, upheld in part the ETTU EB Decision on the basis that the ETTU EB was acting lawfully within its constitutional powers. The principal relief sought by the Appellant is the setting aside of that part of the Appealed Decision that confirmed the ETTU EB Decision.
106. The Panel makes the following general observations as to its approach in respect of this challenge to the Appealed Decision.
107. First, the Panel gratefully adopts, with two important qualifications, the overarching approach outlined in CAS 2020/A/7090 (and adopted in CAS 2022/A/8708 at ¶110) as follows:

“148. In this sense, the many CAS precedents mentioned by the First Respondent – e.g., CAS 2017/O/5264 & 5265 & 5266, TAS 2007/A/1424, CAS 2018/A/5888, CAS 2016/A/4722 and CAS 2014/A/3523 – do in fact confirm the soundness of the idea expressed above; that is, that the power of a Panel such as this one does not extend to an evaluation of the merits or the substantive value of a decision, and that deference and respect to the autonomy of sporting federations ... is of paramount importance in sports law.

149. Deference to the autonomy and freedom of the association and the decisions its main bodies freely adopt should thus be considered a basic principle of sports law.

150. However, it is also true that this principle of deference and respect to the autonomy of the associations is not absolute – as no legal principle in fact is – and has indeed been qualified by the CAS panels in the cases cited above. As the Panel in CAS 2018/A/5888, to mention one example, held, this principle may yield when there are “exceptional circumstances”, such as “arbitrariness”, a “misuse of its discretionary power”, or “discrimination” or “breaches any relevant mandatory legal principle”.

151. There is no doubt in the opinion of this Panel that the bar for determining these “exceptional circumstances” must be set very high, lest it converts itself into a Trojan horse that subverts the principle itself. The arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice.”

108. The first qualification is this. The phrase “exceptional circumstances” as used by the panel in that case is drawn from CAS 2018/A/5888 and was the statutory basis on which FIFA in that case was empowered to remove the executive body of a member association, which was at the heart of that appeal; i.e., “exceptional circumstances” were a prerequisite for any intervention on the part of FIFA. In that case, the panel put its task in this way:

“198. In order to determine whether the Appealed Decision was lawful or not, the Panel must establish under what circumstances FIFA is entitled to remove from office the Executive Committee of an affiliated member association. In this regard, the Panel shall bear in mind that FIFA is an association incorporated and governed under Swiss law, which holds a wide degree of independence and self-governance. In particular, in accordance with the fundamental Swiss legal principle of freedom of association (Vereinsautonomie), as an association it has the right to freely organise itself and establish its own regulatory system, being thus free to establish the provisions that it deems convenient regarding its organisation and membership. Furthermore, the Panel notes that under Swiss law this freedom of association involves not only the right to create its own rules, but also the right to apply and enforce these associative rules, being only these rights limited by the due respect to Swiss law and, in particular, to personality rights.

199. In the present case, the Panel observes that Art. 8 para 2 of the FIFA Statutes grants FIFA the power and authority to intervene in the management of a member

association, removing Executive Bodies and replacing them by a Normalisation Committee for a specific period of time, provided that “exceptional circumstances” so justify. In particular, in light of the literality of this statutory provision, if these exceptional circumstances occur, FIFA has discretion (i.e. it may do it or not) to take such decision. The Panel notes that the FIFA Statutes neither clarify the meaning of this concept (i.e. exceptional circumstances), nor define which conditions should be met to consider that “exceptional circumstances” indeed occurs. Therefore, this is an undetermined legal concept that shall be concretized in each specific case, in which such concept would acquire the relevant meaning. FIFA shall thus proceed accordingly in each particular case, assessing the circumstances at stake to infer whether the prerequisite of exceptional circumstances exists or not (tertium non datur).

200. In addition, considering the freedom of association that governs Swiss associations and hence the wide margin of autonomy, organization and self-government of FIFA, when reviewing FIFA’s ascertainment of the concurrence in a particular case of these exceptional circumstances, CAS must act in a moderate manner, with certain respect towards FIFA’s discretion and margin of assessment to the extent possible, that is to say intervening and annulling FIFA’s decision if it is clearly incorrect or inappropriate in light of the circumstances that FIFA finds as “exceptional circumstances” justifying its intervention. Furthermore, in accordance with this statutory provision, once established by FIFA that these exceptional circumstances are met in the case at stake, FIFA will have discretion to decide whether to enforce its power of intervention (hence removing the member association’s Executive Bodies and replacing it by a Normalisation Committee) or not (“Executive bodies of member associations may under exceptional circumstances be removed [...]”). In this regard, once these exceptional circumstances are met, the opportunity and convenience of enforcing this statutory provision will exclusively belong to FIFA, being only possible for the CAS to review FIFA’s decision in case it is unlawful because, for example, it entails arbitrariness, a misuse of its discretionary power, leads to discrimination or breaches any relevant mandatory legal principle or if the decision entails a violation of FIFA’s own Statutes and Rules.

201. When assessing the validity of such decision of FIFA, the Panel must balance between the very wide discretionary power of FIFA under Art. 8 of its Statutes and the clear will of the association, accepted by its members, to leave it to FIFA to decide if indeed the circumstances at stake meet the undefined requirements of the term “exceptional circumstances”, while at the other hand, taking into account the fact that the appointment of a normalisation committee to replace the executive bodies of a FIFA member and deprive them from their powers and authorities is a very severe – for sure one of the most severe – means that FIFA can take. In such assessment the Panel should also consider the specific effect of the decision of FIFA and if the Normalization Committee took over the responsibility of managing the member association without limitations in respect of scope and time or if the powers of the Normalisation Committee were limited in a reasonable way by FIFA in establishing, within the decision, the scope and time frame of the appointment of the normalization committee. In the framework of such an assessment the Panel will always consider and check whether the decision taken

by FIFA was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention.”

109. In CAS 2018/A/5888, the panel was concerned to establish whether the FIFA decision in that case was lawful in the sense that (a) it complied with Swiss law (and in particular personality rights thereunder) and with the FIFA Statutes and (b) it was proportionate in that it did not go beyond what was necessary to achieve the legitimate goal of the intervention. In this context, the panel did not describe the circumstances in which it is right for a CAS panel to intervene in the decision of a sports governing body as “*exceptional*”; rather it was concerned with whether or not there were “*exceptional circumstances*” so as to warrant (as a prerequisite) FIFA’s decision to intervene in the affairs of the member association. In the Panel’s view, to describe the circumstances in which it is right for a CAS panel to review a decision on the part of a sports governing body as “*exceptional*” is to add an unnecessary gloss.
110. The second qualification is of the same ilk. The Panel does not agree that circumstances in which a CAS panel may review a decision of a sports governing body should be “*blatant or manifest and offend a basic sense of justice*”. In the Panel’s view that is to overstate the deference to be shown to sports governing bodies in their decision-making and to understate the importance of sports governing bodies being held to account for their decisions. As has been said elsewhere, it is right that tribunals should show deference to sports governing bodies, but this does not mean that a tribunal should show “*unthinking servile obeisance*”.
111. Second, as was explained in CAS 2022/A/8708, this deference for the decisions of sports governing bodies is not in conflict with the role of a CAS appellate panel in conducting a *de novo* review (pursuant with Article R57 of the CAS Code), “*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*”.
112. Third, in the Panel’s view therefore a decision of a sports governing body, such as the Respondent here, will be afforded deference and respect, and a very wide margin of appreciation, subject however to obligations on the part of the body to behave in the following way:
 - a. to act fairly (in a procedural sense);
 - b. to act in accordance with any applicable mandatory law(s) and with its own rules and regulations; and
 - c. to act in a way that is not irrational, capricious, or arbitrary.
113. Fourth, as applied to this appeal, the overarching task for the Panel is therefore to decide whether the Appealed Decision violated the ETTU Constitution and Regulations or any mandatory rules of Luxembourg (for which in this case read Swiss) law, or otherwise

amounted to an improper use of power, all the while bearing in mind the ETTU's principles and objectives and the margin of autonomy it enjoys with respect to its decision-making in relation to its affairs: see CAS 2022/A/8708 at ¶129.

114. Fifth, it is important to understand that, in addressing these questions, the Panel will not take into account any events that have taken place after the date of the ETTU EB Decision, namely 2-3 March 2022. Instead, the Panel has focussed its attention on the facts, matters and circumstances at the time that the underlying ETTU EB Decision was rendered, having regard only to those matters that were either known or foreseeable to the ETTU at that time: see CAS 2022/A/8708 at ¶13. As was said in CAS 2012/A/2831 at ¶11: *“it is necessary to identify the basis on which the decision was taken; and for that purpose to focus on the most contemporary documentation rather than accept any ex post facto rationalisation.”*
115. Finally, during the hearing, the Respondent referred to the fact that a number of other IFs have taken measures within their respective sports in response to the Russia-Ukraine War. That is no doubt the case, but it is important to note each instance should and will be determined on its own merits, according to the particular rules and regulations, the specific measures involved, and the manner in which those measures were decided and imposed; and this Panel must decide this appeal according to its own particular facts, matters and circumstances. This is all the more important with respect to the Respondent's reliance on CAS 2022/A/8708 in relation to FIFA's response to the circumstances surrounding the Russia-Ukraine War and the FIFA World Cup. This was expressly recognised by the panel in that case in this way (at ¶162):

“The Panel again 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 FIFA'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.”

116. Turning to this appeal in particular, by way of summary, by the Appealed Decision the BoA decided (in relevant part) that:
- a. The ETTU EB had jurisdiction pursuant to Articles 5.2.1.4 and/or 5.2.1.13 of the ETTU Constitution to make the ETTU EB Decision.
 - b. The Clubs were to be permitted to complete the second leg of their semi-final in the Men's Champions League 2021-2022. (There is, of course, no appeal against this and it can be put to one side.)

- c. The announcement by the Respondent that Borussia Dusseldorf was the winner of the Men's Champions League 2021-2022 (see paragraph [32] above) was set aside.
 - d. The other decisions of the ETTU EB were confirmed.
117. There is, however, some uncertainty as to what precisely was so confirmed.
118. When one reads the body of the BoA Decision, it appears that the ETTU BoA took the view that the decision on the part of the ETTU EB *“to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU”* was not part of the disciplinary sanctions provided for in the ETTU Regulations and, additionally, offended both Article 1.3.3 of the ETTU Constitution (*“ETTU is committed to providing a sport environment free of harassment on any basis without exception.”*) and the Olympic Charter (*“The practice 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.”*).
119. The ETTU BoA went on to say this:
- “There is no doubt that the Olympic idea includes the peaceful coexistence of people from all over the world. In this context, it can also be seen as an Olympic task to make a contribution to a peaceful coexistence. This should also include that conflicts are not increased on the level of sport, but rather de-escalated. In this sense, possibilities must be sought for Club teams and athletes, even if the political situation in their home countries may be difficult, to live this Olympic idea together peacefully. Apart from these generic Olympic principles, the ETTU commitment is clear and unmistakable: ETTU is committed to providing a sport environment free of harassment on any basis without exception. Therefore, not permitting Appellant 2 and 3 to compete and to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU does not seem to be appropriate from a sporting point of view and discriminator [sic, discriminatory]. ETTU Executive Board has failed to credibly argue that the measures are about more than a political measure/statement.”*
120. The Panel reads this passage as a clear determination on the part of the ETTU BoA that the decision by the ETTU EB *“to not invite or allow Belarusian and Russian players and officials in events hosted by ETTU”* was inappropriate and discriminatory and that the ETTU BoA was *not* persuaded by the ETTU EB that the decision in this respect was something other than a political measure or statement.
121. However, when asked to clarify its decision in this respect the ETTU BoA stated that *“The decision of the BoA with regard to players and officials is limited to the semi-final and final. The other measures set by the ETTU remain unchanged.”* This plainly contradicts the passage just cited and would appear to suggest that the ETTU BoA did not intend to set aside that part of the ETTU EB Decision *“to not invite or allow*

Belarusian and Russian players and officials in events hosted by ETTU". This is the basis on which the Appellant proceeded, and the Panel shall do likewise.

122. By its appeal, the Appellant seeks, primarily, to set aside these decisions of the ETTU EB as confirmed by the ETTU BoA (save for that at ¶¶129(b) and (c) above). The Appellant also seeks more wide-ranging relief as follows:
 - a. The reinstatement of all Russian teams (whether national or club teams) and athletes for participation in ETTU competitions *"including, without limitation, the competitions mentioned in the present appeal and any other future competitions"*.
 - b. The reinstatement of the Appellant's *"right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation"*.
123. The Appellant contends that the Appealed Decision is flawed both procedurally and substantively.
 - a. As to the former, the Appellant submitted that its procedural rights were violated by the ETTU EB during the course of its decision making.
 - b. As to the latter, the Appellant submitted that, contrary to the ETTU BoA's determination, the ETTU EB did not have the jurisdiction to make the ETTU EB Decision; and that, even if it had the jurisdiction to do so, its decision was unlawful and the ETTU BoA should have set it aside.
124. It follows that, in light of the matters outlined above as to the Panel's general approach, the questions for the determination by the Panel are as follows:
 - a. Did the ETTU EB breach the Appellant's procedural rights?
 - b. Did the ETTU EB have the power to make the ETTU EB Decision?
 - c. Was the ETTU EB Decision an improper use of that power?

A. Question 1: Have the Appellant's Procedural Rights been Breached?

125. As summarised above, the Appellant contends that the ETTU EB violated various of the Appellant's procedural rights in coming to its decision(s), including, in particular, a breach of its right to be heard.
126. In the event, this can be dealt with quite shortly. The Appellant's procedural complaint is that it was denied its right to be heard before the ETTU EB at the time that it was taking the ETTU EB Decision. Even if the Appellant's complaint in this respect was valid, as to which the Panel expresses no view, any procedural irregularity has been cured not once but twice. In the first place, the Appellant enjoyed a hearing before the ETTU BoA and was heard and represented by counsel. And second, pursuant to Article

R57 of the CAS Code, the Panel “*has full power to review the facts and the law*” and it “*may issue a new decision which replaces the challenged decision or annul the decision and refer back to the previous instance*”. This is well settled: see e.g., CAS 2016/A/4648; and Mavromati & Reeb, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, p506ff. The hearing of this appeal is thus a hearing *de novo*, so that any procedural irregularity that may have taken place earlier is cured on appeal. There is no complaint on the part of the Appellant that there was any violation of its procedural rights before the BoA or the Panel; indeed, to the contrary, the Appellant has confirmed that it enjoyed a full and fair opportunity to put its case on this appeal.

B. Question 2: Did the ETTU EB have the power to make the ETTU EB Decision?

127. The next issue concerns whether or not the ETTU EB had the power to make the ETTU EB Decision.
128. Article 5 of the ETTU Constitution deals with “governance”. It parcels out the separate areas of duties and responsibilities of the various ETTU organs, namely: the ETTU Congress, the ETTU EB; the ETTU Board of Directors; and the ETTU commissions, committees and officials. In this appeal, the underlying decision was taken by the ETTU EB. Its duties and responsibilities are set forth in Article 5.2 of the ETTU Constitution. It provides in the relevant provisions as follows (with emphasis added):

“EXECUTIVE BOARD

5.2.1. The Executive Board has the following duties and responsibilities:

[...]

5.2.1.4 to impose disciplinary sanctions for inappropriate conducts and violation of the Constitution and Regulations which are not expressly attributed to another body within ETTU;

[...]

5.2.1.13 to deal with all other current or urgent business and to assume all responsibilities which are not expressly attributed to another body within ETTU.

5.2.2 The Executive Board shall consist of the President, the Deputy President, the Vice President for Finance and five (5) Vice Presidents, all from different Associations, and the chair of the Athletes Commission.

5.2.3 The Executive Board shall meet at least four (4) times a year and otherwise when convened by the President or at the request of three (3) Executive Board members shall be convened within thirty (30) days.”

129. In the Appealed Decision, the ETTU BoA decided, as has been noted, that the ETTU EB acted within its competence pursuant to Article 5.2.1.4 and/or Article 5.2.1.13 of the ETTU Constitution. The oddity, however, is that the Respondent, during the hearing, did not contend that the ETTU EB was acting pursuant to Article 5.2.1.4. To the contrary, it took the position that the ETTU EB was not exercising a disciplinary function when it took the ETTU EB Decision and relied on what it described as the discretionary powers set forth in Article 5.2.1.13 of the ETTU Constitution, to be exercised in order to achieve the principles and objectives set forth in the ETTU Constitution, in Article 1.3 and Article 1.4, respectively.
130. In any event, there is a disagreement between the Parties as to the essential character of the ETTU EB Decision. The Appellant contends that the decision was “*a purely disciplinary decision*”; the Respondent replied that it is not a sanction but that it was of “*an administrative nature*” and not taken to suspend or otherwise punish the Appellant and its teams and athletes for the violation of any obligation pursuant to the ETTU Constitution or the ETTU Regulations.
131. For its part, the Appellant relied on CAS 2008/A/1583 and CAS 2008/A/1584. In those appeals, the panel was concerned with a decision taken by UEFA to exclude FC Porto from the upcoming season of the Champions League on the basis that it had been guilty of match fixing in the 2003/4 season. If the decision was disciplinary then the “principle of non-retroactivity” applied, but, if administrative, it would not. This was said in relation to the divide between administrative and disciplinary measures taken by sports associations (where “CL” refers to the UEFA Champions League):

“35. Usually, measures taken by an association are divided into acts of administration and disciplinary measures (cf. also CAS 2007/A/1381, no. 55 et seq.) However, it must thereby not be overlooked that all disciplinary measures are also acts of administration. The latter is therefore the generic term. Now, it is typical for a disciplinary measure that it imposes a “sanction” on the person affected and is therefore – in order to protect this person – basically subject to a stricter test. In the decision CAS 2007/A/1381, no. 92 et seq. the sole arbitrator at the time rightly justified this with the argument that there is an imbalance between the association and the person affected. This is expressed by the fact that the person affected only has the choice of whether to accept performing the sport under the conditions dictated by the association or to give up performing the sport altogether. Since this imbalance carries the risk that the association abuses its position of power, certain protective standards must apply ... in the interests of the person affected. ...

37. For the question of whether the provision in Art. 1.04 of the UCL-Regulations has a disciplinary character, one must consider, inter alia, the effects, which the application of the rule has on the addressee (CAS 2007/A/1381, nos. 109 et seq.). From the addressee’s point of view it undeniably has a penal character for the person affected must feel that the exclusion from the CL because of particular past conduct is a penalty for said conduct. But also from UEFA’s point of view, the provision in Art. 1.04 of the UCL-Regulations does not only have the purpose of ensuring the smooth running of the competition; for admission to the CL is excluded in Art. 1.04 of the UCL-Regulations if

– to use the words of the disciplinary inspector – the candidate has seriously violated the values and objectives of UEFA. The intent and purpose of non-admission to the CL is – according to the disciplinary inspector – that a club, whose violation of UEFA’s values and objectives has been established, may not take part in the most prestigious competition unpunished. The text of the “réquisitions adressées à L’Instance de Contrôle et de Discipline de l’UEFA” of 29 May 2008 reads verbatim :

“Un club dont il vient d’être établi qu’il a contravenu de manière grave aux valeurs et objectifs de l’UEFA ne saurait participer impunément, dans les mois qui suivent la condamnation, à la compétition la plus prestigieuse pour le club”. [(“A club which has just been found to have seriously breached the values and objectives of UEFA cannot participate with impunity, in the months following the conviction, in the most prestigious competition for the club.”)]

38. In the light of this analysis of the interests one can take no other view than that the (possible) non-admission of the Second Respondent to the CL also has at least an inherent disciplinary aspect.”

132. The Appellant relies on the language just cited and argues that, by precluding the Appellant from participating in the Respondent’s events, the Appealed Decision has “*at least an inherently disciplinary aspect*” and is therefore to be characterised as a sanction.
133. As the Panel reads CAS 2008/A/1583 and CAS 2008/A/1584, the panel in those references took the view that the decision taken by UEFA to exclude the club from the Champions League was of a penal character because it was based on the club’s past misconduct. That is an important point of difference. In this case, there is no suggestion – by either Party – that the Appealed Decision was made on the basis of any act or omission on the part of the Appellant. There is no past conduct of the Appellant that brought about the decision by the Respondent to suspend the Appellant from participation in the Respondent’s events. It is, of course, right to say that suspending the Appellant’s right of participation will have economic and other effects on the Appellant (and its athletes) in circumstances where the Appellant had no role in and no responsibility for the situation that has led to the suspension; this is the inherent disciplinary effect of the decision taken by the ETTU EB. But, as was the case in CAS 2022/A/8708, whatever the effects of the Appealed Decision, its intention was not penal.
134. All that being so, it is the Panel’s view that the ETTU EB Decision is to be characterised as a decision of an administrative nature, taken by the Respondent in an attempt to deal with the consequences of an unforeseen military conflict in Ukraine and is unrelated to “*inappropriate conducts and violation of the Constitution and Regulations*”. That being so, Article 5.2.1.4 of the ETTU Constitution does not provide the necessary constitutional power.
135. Does Article 5.2.1.13 provide the necessary constitutional power to do so?

136. As is obvious from the language used, Articles 5.2.1 through 5.2.1.12 deal with specific (or relatively so) duties and responsibilities of the ETTU EB whilst Article 5.2.1.13 is what might be described as a general or residual duty and responsibility. The question therefore is, on the proper construction of Article 5.2.1.13, did the ETTU EB have the constitutional power to take the ETTU EB Decision?
137. Article 5.2.1.13 of the ETTU Constitution is in two limbs. The first is that the ETTU EB is allocated constitutional power to act in respect of “*current*” or “*urgent*” business that arises from time to time; and the second is that it is allocated constitutional responsibility for all matters that are not otherwise allocated to another ETTU organ. It is perfectly understandable that a board of a sports association should be allocated residual powers in this way. A number of matters will arise throughout the year that cannot wait for consideration by the association in congress so that it falls to the board to attend to such matters in the best interests of the association. Likewise, it makes perfect sense that it is the board who should act in circumstances where there has been no specific allocation of responsibility to another organ or office.
138. In this case, it is clear that the Russia-Ukraine War gave rise, in sport as elsewhere, to a range of difficult considerations that had to be grappled with on an urgent basis; and it most certainly was a current item of business to be addressed: what the Respondent should do in response to the military conflict and, for that matter, in response to the IOC Resolution, were plainly both “*current*” and “*urgent*” questions. Moreover, the constitutional responsibility to act in respect of the Russia-Ukraine War in particular or even military conflict in general had not been allocated to any other ETTU organ or office. It is clear therefore that the organ with the duty and responsibility to act in response to these difficult matters was the ETTU EB.
139. On balance, the Panel takes the view that the ETTU EB enjoyed constitutional authority to act in respect of the urgent circumstances thrown up by the Russia-Ukraine War based on Article 5.2.1.13 of the ETTU Constitution and that it took the decision by reference to its principles and objective as adumbrated in the ETTU Constitution. Therefore, the Panel takes the view that the ETTU EB took the ETTU EB Decision in accordance with its authority under the ETTU Constitution.

C. Question 3: Was the ETTU EB Decision an improper use of power?

140. In light of the Panel’s determination that the ETTU EB Decision was within the constitutional power of the ETTU EB to take, the question remains as to whether, nevertheless, the ETTU EB exercised its constitutional power lawfully. In this respect, the question is whether it violated the ETTU Constitution or any applicable mandatory law(s) or otherwise exercised its power improperly.
141. The Appellant attacked the Appealed Decision on the following grounds:
 - a. The Appealed Decision lacked a legal basis.

- b. In the Appealed Decision, the ETTU BoA made a number of statements from which the Appellant cannot now resile in violation of the principle of *venire contra factum proprium*.
- c. The Appealed Decision violated the Appellant's statutory right to take part in all ETTU competitions.
- d. The Appealed Decision violated the ETTU Constitution and the ETTU Regulations.
- e. The Appealed Decision violated the personality rights of the Appellant.
- f. The Appealed Decision violated the principle of equal treatment.
- g. The Appealed Decision discriminated against the Appellant.
- h. The Appealed Decision violated the ETTU's duty to remain politically neutral.
- i. The Appealed Decision was disproportionate.

142. These will be considered below, albeit out of order.

Discrimination / Political Neutrality / Proportionality

143. The principal complaint on the part of the Appellant was that the ETTU EB Decision violated the ETTU's obligations (a) to maintain political neutrality and (b) not to discriminate against the Appellant on racial or political grounds. In this respect the Appellant relied on three sources of law as imposing obligations on the Respondent not to discriminate and to remain politically neutral.
- a. The first source was the ETTU Constitution itself, which, so submitted the Appellant, imposed an obligation on the ETTU to comply with the principle of "*political neutrality*" and the obligation not to discriminate.
 - b. The second source was the IOC Charter, and its Fundamentals of Olympism, principles 3 through 6.
 - c. The third source was the international conventions: Article 14 of the European Convention on Human Rights (the prohibition of discrimination); Article 1 of Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (prohibition on discrimination); Articles 2, 7, 12, 29 and 30 of the Universal Declaration of Human Rights. It was said that the ETTU was bound by and did not comply with these obligations.
144. As to the international conventions, it is not at all clear to the Panel how these apply to the Respondent, at least directly, in circumstances where they apply to state actors and public authorities exercising state powers but not to private bodies not exercising state powers but quasi state powers being a monopoly organisation in a specific sport – such

as the ITTU respectively the Respondent for the European Continent. Moreover, there was nothing before the Panel to show that the Respondent owed, as a matter of Luxembourg respectively Swiss law, any obligation under these international conventions. In this regard, the Panel notes what was said in this respect in CAS 2011/A/2426 that, *“international treaties on human rights are meant to protect the individuals’ fundamental rights vis-à-vis governmental authorities and, in principle, they are inapplicable per se in disciplinary matters carried out by sports governing bodies, which are legally characterized as purely private entities”*. Whilst the Panel has decided that the present appeal does not concern a disciplinary matter, the Panel nevertheless considers that those observations are equally applicable to the Appellant’s reliance on the international conventions in this case.

145. Having said that, it is plain that the Respondent does have the same or similar obligations expressly by dint of the IOC Charter, and the *“Fundamental Principles of Olympism”* stated therein, and the ETTU Constitution. These are set forth above but for ease of reference provide in relevant part as follows:

Principles 4, 5 and 6 of the IOC Charter:

“4. The practice 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, sports organisations within the Olympic Movement shall apply political neutrality. They have the rights and obligations of autonomy, which includes freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 1.3.1 of the ETTU Constitution:

“1.3.1 The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds.”

146. It is therefore “inadmissible” (which the Panel reads as “impermissible”) for the ETTU to discriminate against a member association on the bases of race, politics, or national origin. In this respect, it is generally accepted that, as a protected characteristic, “race” includes colour, ethnic or national origin, and nationality: see, for example, Article 3 of

the United Nations Declaration on Race and Racial Prejudice. It therefore follows that, in confirmation of the tenets set forth in the IOC Charter to this effect, the Respondent has undertaken an express constitutional obligation not to discriminate on racial (including colour, ethnic or national origin, and nationality) or political grounds.

147. The Panel notes further that the warrant against discrimination is also an essential part of the right to equal treatment, considered to be a fundamental right in the law of sport. As observed by Lewis, A and Taylor, J., 2022, *Sport: Law and Practice*, 4th ed. London Bloomsbury, at B1.27, p. 329: *“But in sport the paramount importance of ensuring a level playing-field wherever the sport is played means that all of a [sport governing body’s] regulations should apply equally to all participants in the sport, absent a good objective reason for different treatment. On this basis, any unequal treatment of participants is prima facie impermissible and requires justification in order to be enforceable, whether the unequal treatment is based on a characteristic protected by mandatory law or on some other ground.”*
148. Two questions arise:
 - a. Was the ETTU EB Decision discriminatory in this respect?
 - b. If so, was the ETTU EB Decision a necessary and proportionate means of attaining a legitimate objective (as per CAS 2014/A/3759; CAS 2018/O/5794 & CAS 2018/A/5798; and CAS 2020/A/6807 at ¶¶315, 321)?
149. The Panel notes that it was common ground in CAS 2014/A/3759 and CAS 2018/O/5794 & CAS 2018/A/5798 that the party seeking to challenge an allegedly discriminatory regulation bears the burden of establishing that the rule discriminates on the basis of a protected ground. It was also common ground in those cases that, if the regulation did so discriminate, the burden of proof shifted to the other party (the IAAF in those cases) to establish that the regulation was necessary, reasonable and proportionate. The Panel is of the view that the same approach should logically apply here.
150. In the Panel’s view, the answer to the first question is plainly yes. The ETTU EB Decision was directed at the Appellant because it is Russian. There is no evidence that the Appellant (or its members) expressed any political opinion in relation to the Russia-Ukraine War (or anything else for that matter) or that the Respondent reacted according to any such expression of opinion. It is however clear enough to the Panel that the singular reason for the measures taken by the Respondent against the Appellant was due to the race, national origin, and nationality of the Appellant.
151. In this regard, the situation here is akin to the eligibility rules that were the subject of the challenge in CAS 2014/A/3759 (which expressly applied only to female athletes) and in CAS 2018/O/5794 & CAS 2018/A/5798 (which expressly applied only to athletes who were recognised at law as female or intersex) and which in both cases expressly imposed eligibility restrictions on a subset of those female/intersex individuals on the basis of certain biological characteristics possessed by those

individuals. In light of the fact that the regulations only applied to certain female or intersex athletes and imposed restrictions on those individuals which were not imposed on either male athletes or female/intersex athletes who lacked the specified biological characteristics, the CAS panels in those cases held that the regulations were *prima facie* discriminatory and, therefore, the onus was on the IAAF to establish their validity. It is apparent that this conclusion was reached by reference to the anti-discrimination provisions in the IAAF's Constitution and the Olympic Charter, and did not turn on the application of any international human rights instrument or any provision of Monegasque law.

152. That is of a piece with the position here. The ETTU EB Decision offended the anti-discrimination provisions set forth in the ETTU Constitution and the IOC Charter and did not, directly, turn on the application of any of the international conventions.
153. It appears to the Panel that this was certainly the view of the ETTU BoA itself. As described above, the ETTU BoA was of the view that the decision not to invite or allow Belarusian and Russian players and officials in events hosted by ETTU was not one of the sanctions provided for in the ETTU Regulations and that, moreover, the decision was contrary to the anti-discrimination provisions set forth in terms Article 1.3.3 of the ETTU Constitution and the Olympic Charter – and was discriminatory. The Panel agrees.
154. The Panel therefore concludes that the ETTU Decision is discriminatory.
155. Applying a similar approach to that applied in CAS 2014/A/3759 and CAS 2018/O/5794 & CAS 2018/A/5798, it follows that the ETTU therefore bears the burden of establishing that the ETTU EB Decision is a necessary, reasonable and proportionate means of attaining a legitimate objective. If the ETTU is unable to discharge that burden, then the Panel must declare this element of the ETTU EB Decision to be invalid.
156. Dealing first with the legitimate objective, it was submitted by the ETTU that the objective of the ETTU Decision was “*to protect the principles enshrined in article 1.3. and 1.4. of the ETTU Constitution*”. As noted above, Article 1.3 of the ETTU Constitution is headed “PRINCIPLES” and Article 1.4 is headed “OBJECTIVES”.
157. As to the Principles, the particular principles relied upon by the Respondent during the hearing were Articles 1.3.1, 1.3.2, 1.3.3, 1.3.4 and 1.3.6. of the ETTU Constitution. As to these:
 - a. Principle 1.3.1 provides that “*The principles of ETTU shall be general unity of action, mutual respect of Associations in their dealings with one another and the inadmissibility of discrimination against Associations or individuals on racial, political, religious, gender or other grounds.*” The Respondent provided no elucidation of how the ETTU EB Decision was made in furtherance of this principle. By contrast, the same principle was relied upon by the Appellant in support of its argument that the Respondent was bound by a constitutional principle not to discriminate.

- b. Principle 1.3.2 provides that the ETTU “*is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices*”. Once again, there was no explanation by the Respondent as to how it was that the ETTU EB Decision was made in furtherance of this principle; and, once again, the same principle was relied upon by the Appellant in support of its argument that the Respondent was bound by a constitutional principle not to discriminate.
 - c. Principle 1.3.3 provides that the ETTU “*is committed to providing a sport environment free of harassment on any basis without exception*”. The same comments apply.
 - d. Principle 1.3.4 provides that the ETTU “*is committed to take a responsible approach to safeguarding the environment and managing resources through its practices in hosting events and in managing its operations*”. The Respondent did not explain why this principle is relevant or how it was furthered by the ETTU EB Decision. It appears to the Panel to be plainly irrelevant here, relating as it does to the preservation of the environment.
 - e. Principle 1.3.6 provides that the ETTU “*shall co-operate with ITTF, the European Olympic Committees (EOC), the European Paralympic Committee (EPC), and other organisations that recognise it as the controlling and governing authority for table tennis throughout Europe*”. Once again, there was no attempt by the Respondent to explain the application or furtherance of this principle. It does appear however that the ETTU EB Decision was taken in a manner of co-operation with the ITTF inasmuch as the minutes of the relevant ETTU EB meetings show that the ETTU EB “*accepted to follow the ITTF decision*”.
158. As to the Objectives, despite submitting that the ETTU EB Decision was made in furtherance of the ETTU objectives as set forth in the ETTU Constitution, the Respondent relied on no particular objective set forth in Article 1.4 of the ETTU Constitution. It suffices to say that, having read Article 1.4 of the ETTU Constitution, none appears to be engaged in this appeal save for that objective which provides that the ETTU shall advance the constitutional principles in Article 1.3.
159. Instead, the gist of the Respondent’s position was that the ETTU Decision was taken in order protect the safety and integrity of the ETTU’s competition.
160. This is reflected in the contemporaneous evidence:
- a. On 28 February 2022, the IOC EB Resolution was issued. It recommended that IFs “*not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions*” on the basis that it was necessary to do so “*in order to protect the integrity of global sports competitions and for the safety of all the participants*”.

- b. On 1 March 2022, the ITTF Executive Committee met and decided to follow the IOC EB recommendations directing that *“until further notice, no Russian or Belarusian players and officials will be invited or allowed in events hosted by the ITTF Group, and no Russian or Belarusian national symbols, colours, flags, or anthems will be displayed.* There was no stated basis for the decision.
 - c. On 2 March 2022, the ETTU EB met and decided to *“follow the ITTF decision”* (i.e., the ITTF decision of 1 March 2022). (This is the ETTU Decision of 2 March 2022.) The minutes are silent as to the objective of or the basis for the decision.
 - d. On 3 March 2022, the ETTU EB met again. At the meeting, the ETTU EB decided that *“Russian clubs will not be permitted to compete in any European Club competitions for the 2021-2022 season”* (This is the ETTU Decision of 3 March 2022.) The minutes of the meeting state that the decision was *“taken in order to protect the integrity of the competitions and the safety of those involved”*.
 - e. On the same day, 3 March 2022, the ETTU EB sent a letter to its member associations informing them of the decision taken that day. It made no mention of the objective of the decision.
161. Accordingly, as is borne out by the contemporaneous record, the ETTU EB Decision was taken in order to protect the integrity of the competitions and the safety of those involved.
162. Neither of these concerns was developed by the Respondent at the time in the course of making the ETTU EB Decision. In its submissions, the issue of integrity was put on the basis that there was potential for its events to be disrupted by reason of travel bans to and from Russia and/or by the refusal on the part of organisers to host events. Whilst there was no evidence of any such disruption, potential or real, for any of the Respondent’s events, the Panel is in no position to gainsay that there was not, at the time the ETTU EB Decision was made, the risk of such disruption.
163. It is, in any event, apparent that the safety of the athletes (and all others involved) was an issue at the time the ETTU EB Decision was taken. The Panel has said above that the ETTU EB Decision was made against the backdrop of commencement of the Russia-Ukraine war on 24 February 2022 and the febrile atmosphere in February and March of 2022, and febrile it was.
164. The Panel therefore accepts that the preservation of the safety and integrity of the Respondent’s events was a legitimate objective for the Respondent to pursue.
165. The question thus arises as to whether the ETTU EB Decision was a necessary, reasonable and proportionate means of attaining that legitimate objective, the onus of so showing being on the Respondent. This question must, of course, be asked and answered according to the specific context of the sport of table tennis as it is organised

and played in Europe at the time in question. It is of no assistance to consider what has happened or what might happen in any other sport in any other circumstances. It is necessary instead to have regard to this particular sport in this particular context.

166. The elements of the ETTU EB Decision that were confirmed by the ETTU BoA are (seemingly) as follows:

- a. Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by ETTU until further notice.
- b. No Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by ETTU until further notice.

167. As to each, was it necessary, reasonable and proportionate?

168. It is necessary to deal with each of these elements on its own because they are substantively different decisions with manifestly different consequences. Dealing with the latter first, the Panel takes the view that the Respondent's ban on national symbols is a moderate and modest means of diffusing the potential for conflict in an around an ETTU event. This measure imposes little difficulty on the athlete or club and, importantly, imposes no restriction on the ability to participate in the sport. The Panel readily accepts that this measure was a necessary, reasonable and proportionate means of achieving the legitimate objectives of safety and integrity.

169. The former, however, is of a different ilk. The ban on participation by athletes in their chosen sport is not only severe but likely the most severe means available to a sports governing body. In CAS 2018/A/5888, in the context of Uruguayan football, the panel was concerned with a decision taken by FIFA pursuant to an express provision in the FIFA Statutes to intervene, in "*exceptional circumstances*" in the affairs of a member association by the appointment of a "*normalisation committee*". The panel framed the issue in this way:

"201. When assessing the validity of such decision of FIFA, the Panel must balance between the very wide discretionary power of FIFA under Art. 8 of its Statutes and the clear will of the association, accepted by its members, to leave it to FIFA to decide if indeed the circumstances at stake meet the undefined requirements of the term "exceptional circumstances", while at the other hand, taking into account the fact that the appointment of a normalisation committee to replace the executive bodies of a FIFA member and deprive them from their powers and authorities is a very severe – for sure one of the most severe – means that FIFA can take. In such assessment the Panel should also consider the specific effect of the decision of FIFA and if the Normalization Committee took over the responsibility of managing the member association without limitations in respect of scope and time or if the powers of the Normalisation Committee were limited in a reasonable way by FIFA in establishing, within the decision, the scope and time frame of the appointment of the normalization committee. In the framework of such an assessment the Panel will always consider and check whether the decision taken

by FIFA was necessary as a matter of last resort and if the limits of the decision does not go beyond the necessary in order to achieve the legitimate goal of the intervention.”

170. A similar approach is apt here in analogous circumstances. When assessing the validity of the ETTU EB Decision the Panel must balance, on the one hand, the very wide decision-making power of the Respondent, and the clear will of the association to allow the ETTU EB to act in the best interests of the association while, on the other hand, taking into account the fact that the ban on Russian (and Belarusian) participation in ETTU events is a most severe measure and having the effects of a disciplinary decision. The Panel must also ensure that the decision taken by the Respondent was necessary as a matter of last resort and that the limits of the decision do not go beyond what is necessary in order to achieve the legitimate goal of the intervention as an administrative act.
171. Reading the contemporaneous record, the materials that the Respondent appears to have relied upon, directly or indirectly, at the time the ETTU EB Decision was taken were as follows:
 - a. the IOC EB’s statement of 25 February 2022 condemning the Russian government’s breach of the Olympic Truce;
 - b. the ITTF Group’s statement of 26 February 2022 in support of Ukraine and in alignment with the IOC EB by which it called upon the Continental Federations (i.e., including the Respondent) to follow its and the IOC EB’s recommendations;
 - c. the IOC EB Resolution by which it recommended that, “[i]n 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.”; and
 - d. the decision of the ITTF Executive Committee on 1 March 2022, by which it adopted the IOC EB recommendations.
172. As has been noted above, the ETTU EB met (on 2 and 3 March 2022) and decided to “follow the ITTF decision” (i.e., the ITTF decision of 1 March 2022) by which the ITTF agreed to follow the recommendations set forth in the IOC EB Resolution. There is no reference in the minutes or in any other material put before the Panel of any other basis for the decision or any other consideration brought to account in the making of that decision. It was said by the Respondent that the decision was taken for reasons of safety and integrity but there is nothing from the Respondent as to why and how the continued participation of the Appellant and its members and athletes would have – in the context of European table tennis – disrupted any particular event or rendered it unsafe, and if so how, and to what extent. What in particular were the safety concerns? Had there been any statement by any stakeholder (host countries and cities included) in the sport of European table tennis that brought about a reasonable concern for the conduct of any

particular event? Was there any statement or act on the part of any party that suggested that the holding of any event with Russian athletes participating would disrupt the event or render it unsafe? There is nothing in the materials before the Panel that provides an answer to these questions. The Panel notes in this context that the Respondent relied on what it said was the refusal by a German (Ukrainian born) table tennis player to compete against the Russians. Having read the press clipping relied upon by the Respondent, it is clear to the Panel that the athlete did not go so far as to refuse to play; he was critical of playing against Russian teams, to be sure, but he did not state that he would not play against them. In any event, the athlete's comments appear to post-date the ETTU EB Decision.

173. Further, when the issue of proportionality is considered, there is no evidence of any discussion or consideration by the Respondent of steps that might have been taken that were short of a complete ban on Russian participation in ETTU events. Was it feasible to hold 'closed door' events, without any public participation? Was it feasible to play matches on neutral grounds / in neutral territories? Would either of those things have alleviated the risk to safety?
174. In the absence of anything from the Respondent in this respect, the Panel is unable to conclude that the Respondent has discharged its burden of showing that its decision to ban Russian (and Belarusian) athletes from participation in all ETTU events until further notice was a measure of last resort, and was a necessary, reasonable and proportionate means of achieving a legitimate objective.
175. In the circumstances, the Panel takes the view that the ETTU EB Decision banning the participation of Russian (and Belarusian) clubs and athletes was unlawful and should be set aside.
176. Having decided that the Appellant's appeal is partially allowed in the manner described above, it is not strictly necessary for the Panel to assess the further submissions advanced by the Appellant. Nevertheless, having heard argument on them, the Panel sets out its views below.

No Legal Basis

177. It was said that the Appealed Decision lacked a legal basis. The Appellant submitted that there was no superior decision or order to justify the ETTB EB Decision. It was argued that the IOC EB Resolution was merely a recommendation with no binding effect on the ETTU and nothing in the Olympic Charter, the ITTF Constitution or the ETTU Constitution or the ETTU regulations imposes a binding effect of such a recommendation.
178. In light, however, of the Panel's determination as to the constitutional competence of the ETTU EB, the Respondent did not need an order from the IOC (or the like) in order to provide it with the competence to act – it enjoyed such competence according to its own Constitution.

Breach of Statutory Right to Compete/ Personality Rights

179. The Appellant argued that it enjoyed a statutory right to compete in the ETTU competitions and its personality rights had been infringed.

180. In this respect, the Appellant relied on Articles 1-3 of the ETTU Regulations (Regulation B) and Articles 2.4 and 2.5 of the ETTU Constitution. Articles 1-3 of the ETTU Regulations provide for ‘International Eligibility’, and lists the eligibility requirements for players for certain events and competitions. Articles 2.4 and 2.5 of the ETTU Constitution provide for, respectively, ‘Rights of Associations’ and ‘Obligations of the Associations’. It is the former that is relevant here. It provides as follows (recalling that the Appellant is an association):

“2.4.1 The Associations have the following rights:

2.4.1.1 to appoint up to two (2) representatives (referred to as delegates) to take part in the Congress;

2.4.1.2 to submit proposals or resolutions for inclusion in the agenda of the Congress;

2.4.1.3 to nominate candidates for election or appointment according to the specific rules;

2.4.1.4 to enter players for participation in competitions organised under the authority of ETTU according to the specific qualification rules of each competition;

2.4.1.5 to take part in and benefit from ETTU's assistance, development and educational programmes;

2.4.1.6 to exercise all other rights arising from the Constitution or other ETTU regulations.”

181. In this context, the following matters appear to be common ground:

- a. The Appellant (and/or its athletes) meets the applicable eligibility requirements pursuant to the ETTU Regulations.
- b. The Appellant enjoys the rights as an association as set forth in Article 2.4 of the ETTU Constitution.
- c. There has been no conduct on the part of the Appellant that would enable the Respondent to suspend those rights.
- d. The Appealed Decision has, at least on a temporary basis, denied the Appellant the ability to enjoy those rights.

182. The question for the Panel is whether that denial is lawful.

183. The difficulty with this submission on the part of the Appellant is that it is clear that there are competing rights in tension here: the Appellant's rights as an association and its personality rights on the one hand and the Respondent's right to take steps in furtherance of a legitimate objective on the other. It is plain that none is an absolute right, to be enjoyed absolutely and without infringement or curtailment in any circumstances, with the result that it is a matter of balancing the respective rights.
184. In the abstract, therefore, it was open to the Respondent to curtail the Appellant's rights qua association provided that it did so lawfully. The decision to curtail the Appellant's rights of participation is not, of itself, an actionable breach of the ETTU Constitution by the Respondent.

Breach of the ETTU Constitution and the ETTU Regulations

185. It was next submitted by the Appellant that the Appealed Decision violated both the ETTU Constitution and the ETTU Regulations.
186. The Appellant's submissions in this respect are set forth above but, for present purposes, may be summarised in the following way:
- a. Article 2.3.6 of the ETTU Constitution provides the ETTU EB with the power to suspend an association member, provided that the member is afforded an opportunity to be heard and all other associations have been informed and provided with reasons. The Appellant was suspended but was not offered the opportunity to be heard.
 - b. It is only open to suspend an association if it has committed a serious violation of its obligations. The Appellant has violated no obligation, and none is alleged.
 - c. There is no power in the ETTU Regulations that provides the basis for a sanction "*not to permit to compete*" or "*not to invite*". All of the permissible sanctions are set forth in Article 3.2 of Annex B Catalogue of Disciplinary Sanctions of the ETTU Regulations and there is no mention of these sanctions.
 - d. Any sanction must be "*predictable*" and "*proportionate*". The sanction here is neither.
187. In light of the Panel's determination that the ETTU EB Decision is properly characterised as a decision of an administrative nature and not disciplinary, these submissions by the Appellant miss the mark. The ETTU EB Decision was not a sanction such that the constitutional safeguards with respect to sanctions are inapplicable. And whilst it is correct to say that the ETTU Regulations make no express provision to "*not to invite*" an association member, that is neither here nor there given that, as the Panel has held, Article 5.2.1.13 of the ETTU Constitution does provide the ETTU EB with the constitutional power to make such a decision.

Equal Treatment

188. It was submitted by the Appellant that the Appealed Decision violates what was said to be the fundamental principle of equal treatment. The gist of the submission in this respect was that the Respondent did not react in the same way when faced with various other recent conflicts, from the war in Afghanistan through to the conflict in Yemen.
189. It is enough to say that the Panel is unpersuaded by this submission. No two conflicts are the same (or even similar) and no two conflicts require the same response from an IF. In this respect, the Panel agrees with what was said at ¶160 of CAS 2022/A/8708 to the effect that it does not assist the Panel to compare and contrast other conflicts and the responses thereto by the international community and international sports governing bodies. Each conflict stands alone and the responses to each conflict are to be assessed independently.
190. In the result, the Panel does not consider that there has been any violation by the Respondent of the principle of equal treatment.

Venire Contra Factum Proprium

191. It was submitted by the Appellant that, in the Appealed Decision, the ETTU BoA made a number of statements from which the Appellant cannot now resile in violation of the principle of *venire contra factum proprium*.
192. The Panel takes the view that the invocation of the principle here is misconceived. The essence of the principle, whether described as *venire contra factum proprium* or estoppel, is that one party represents certain matters, or acts in a certain way, on which representations or conduct the other party relies to its detriment. See CAS OG 02/006 and CAS 2000/A/274 at ¶37:

“The prohibition against venire contra factum proprium, often compared to the common law principle of estoppel, is widely recognised under Swiss law. This prohibition is based upon the concept of abuse of right under Article 2 of the Swiss Civil Code. Where a party adopts a position contrary to one it has previously taken, its conduct may constitute an abuse of right when the other party has relied on the initial position to its detriment: TUOR/SCHNYDER/SCHMID, Das schweizerische Zivilgesetzbuch, 11th ed., Zurich 1995, p. 57; H. CAS 2000/A/274 S. / FINA, award of 19 October 2000 12 MERZ, Berner Kommentar, Kommentar zum schweizerischen Zivilrecht, Band I, Bern 1962, re: Art. 2 Swiss Civil Code, notes 402-403.”

193. It is true that the ETTU BoA made a number of statements in the Appealed Decision, but these were made in the context of an appellate review and there is no suggestion, let-alone evidence, that the Appellant relied on these statements in any way to their detriment.

D. Conclusion

194. In view of all the above considerations, the Panel holds and determines that the Appellant's appeal succeeds in part in that Appealed Decision is set aside in part and upheld in part as follows:
- a. The decision that the ETTU EB had jurisdiction to make the ETTU EB Decision is upheld.
 - b. The decision that Russian teams, athletes and officials will not be invited or allowed to participate in events hosted by ETTU until further notice is set aside as unlawful.
 - c. The decision that Russian national symbols, flags or anthems are not to be displayed during events hosted by ETTU until further notice is upheld.
195. The other substantive relief sought by the Appellant is dismissed. There is no basis on which the Panel is able to make broad rulings reinstating all Russian teams for participation in ETTU competitions and/or reinstating the Appellant's so-called right to register its national teams, clubs and athletes in future ETTU competitions. Such relief is beyond the ambit of the Appealed Decision and therefore beyond the ambit of the Panel's jurisdiction on this appeal from the Appealed Decision.

XI. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Table Tennis Federation of Russia on 10 May 2022 against the European Table Tennis Union in relation to the decision of its Board of Appeal of 26 April 2022 is partially upheld.
2. The decision of the Board of Appeal of the European Table Tennis Union of 26 April 2022 is upheld in part and set aside in part as follows:
 - 2.1. The decision of the European Table Tennis Union of 2 March 2022 that no Belarusian or Russian national symbols, flags or anthems are to be displayed during events hosted by the European Table Tennis Union until further notice is upheld.
 - 2.2. The decision of the European Table Tennis Union of 2 March 2022 that Belarusian and Russian players and officials will not be invited or allowed to participate in events hosted by the European Table Tennis Union is set aside.
 - 2.3. The decision of the European Table Tennis Union of 3 March 2022 that Russian clubs are not permitted to compete in any European Club competitions for the 2021-2022 season, including in particular the Men's Champions League 2021-2022 is set aside.
 - 2.4. The requests of the Table Tennis Federation of Russia (i) to reinstate "*all Russian teams, whether national representative teams or club teams, and athletes for participation in ETTU competitions, including, but without limitation, in the competitions mentioned in the present appeal and any other future competitions*"; and (ii) to reinstate "*its right to register its national representative teams, clubs, and athletes, in the future competitions organised by ETTU without any limitation*" are dismissed.
3. (...).
4. (...).
5. All other and further claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Dated: 26 September 2025

(operative part notified to the Parties on 4 June 2024)

THE COURT OF ARBITRATION FOR SPORT

James Drake KC
President of the Panel

Bernhard Welten
Arbitrator

João Nogueira Da Rocha
Arbitrator