

**CAS 2021/A/8888 Noravank Sport Club LLC v. Union des Associations Européennes de Football**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Amsterdam, The Netherlands

*Ad hoc* Clerk: Mr Dennis Koolaard, Attorney-at-Law, Amsterdam, The Netherlands

**in the arbitration between**

**Noravank Sport Club LLC**, Yerevan, Armenia

Represented by Mr Georgi Gradev and Mr Márton Kiss, Counsels, SILA International Lawyers, Sofia, Bulgaria

**as Appellant**

and

**Union des Associations Européennes de Football**, Nyon, Switzerland

Represented by Mr Angelo Rigopoulos, UEFA Managing Director Integrity & Regulatory, and Mr William McAuliffe, UEFA Head of Disciplinary, Nyon, Switzerland

**as Respondent**

\* \* \* \* \*

## **I. PARTIES**

1. Noravank Sport Club LLC (the “Appellant” or the “Club”) is a football club with its registered office in Yerevan, Armenia. The Club is registered with the Football Federation of Armenia (the “FFA”), which in turn is a member of the *Union des Associations Européennes de Football*.
2. The *Union des Associations Européennes de Football* (the “Respondent” or “UEFA”) is an association under Swiss law with its registered offices in Nyon, Switzerland, and is the administrative and governing body of European football.
3. The Club and UEFA are hereinafter jointly referred to as the “Parties”.

## **II. INTRODUCTION**

4. These proceedings revolve around the eligibility of the Club to participate in the 2022/23 UEFA club competitions. The Club, through the FFA, applied for an exemption to the “three-year rule” set forth in Article 12 of the UEFA Club Licensing and Financial Fair Play Regulations (2018 edition) (the “CL&FFP Regulations”).
5. On 17 May 2022, the Chairman of the UEFA Club Financial Control Body First Chamber (the “UEFA CFCB” / the “UEFA CFCB Chair”), rejected the FFA’s application on the ground that it was filed late and that, even if the application had not been filed late, it would have been denied for substantive reasons (the “Appealed Decision”).
6. In these proceedings, the Club is challenging the Appealed Decision, whereas UEFA seeks a confirmation thereof.

## **III. FACTUAL BACKGROUND**

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

### **A. Background Facts**

8. In January 2020, the Club became affiliated to the FFA.
9. On 25 June 2020, the Club was granted a national licence to participate in the Armenian First League for the 2020/21 season.
10. On 9 July 2021, although the Club did not qualify for a national licence to participate in the Armenian Premier League for the 2021/22 season (for not having the appropriate number of youth teams), the FFA Executive Committee nonetheless decided to grant the Club a licence to ensure that the national championship would take place with ten teams.

11. On the same date, 9 July 2021, UEFA sent to all its licensors, including the FFA, an overview of the key deadlines for the 2021/22 season. This correspondence, *inter alia*, indicated that the deadline for submission of an exception request in relation to the three-year rule was set at 1 February 2022.
12. On 16 November 2021, UEFA sent a letter to all of its licensors, including the FFA, under the heading “*UEFA Club Licensing & Financial Fair Play // Three-year rule assessment process*”, which stipulated, *inter alia*, as follows:

*“The entry into force of the UEFA Club Licensing and Financial Fair Play Regulations – Edition 2018 (hereinafter: CL&FFP Regulations) has given the UEFA Club Financial Control Body Investigatory Chamber (hereinafter: CFCB-IC) the responsibility to act as the decision-making body on exception requests (Annex I (B) (1) of the CL&FFP) regarding the “three-year rule” (Art. 12 (2-3) of the CL&FFP).*

*In order for the CFCB-IC to undergo a proper assessment, “exceptions related to the item defined under A(1)(d) [Non-applicability of the three-year rule] must be submitted by the licensor on behalf of the licence applicant by the deadline and in the form communicated by the UEFA administration” (Annex I (B) (4) of the CL&FFP).*

[...]

*The deadline to apply for an exception in respect of the three-year rule for the next licence season is the 31st March 2022.*

[...]

*In accordance with Annex I (B) (4) of the CL&FFP, the exception request must be submitted by the licensor on behalf of its club concerned. Such measure must be taken with the total collaboration of the concerned licence applicant/licensee which must confirm the factual accuracy of any documents sent on its behalf to UEFA administration.*

*We kindly ask you to communicate information on this ‘Three-year rule exception request process’ to your clubs without delay. Should you or your clubs require any additional information or further clarifications in respect of any of the above, please do not hesitate to contact UEFA administration ([...]@uefa.ch).”*

13. On 27 December 2021, the Club sent an email to the FFA, applying for a license to participate in the 2022/23 Armenian Premier League, the 2022/23 UEFA club competitions and the 2022/23 UEFA Women’s Champions League.
14. On 1 April 2022, the FFA informed the Club that it had granted the Club a national licence to participate in the 2022/23 Armenian Premier League. No information was provided with respect to the Club’s licence applications for UEFA club competitions.

15. On 13 April 2022, the FFA Licensing Manager sent an email to UEFA, which stipulates as follows:

*“As previously communicated to you, [the Club] has reached the final of the Armenian Cup and has applied to the FFA for UEFA license three-year rule exception. Although we have described the situation to the club and have provided detailed explanation on the very low chances of the exception granting, but the club showed their willingness to apply for the exception ‘even having 1% of chance’.*

*With this regard I would kindly ask you to accept this as an official notification, as well as to provide us with the guidance of the further steps. Please also note, that the FFA Club licensing FIB meeting is appointed on 2<sup>nd</sup> of May.”*

16. On 8 May 2022, the Club won the domestic cup of Armenia, which, on the basis of sporting merit, in principle qualified it to participate in the second qualifying round of the 2022/23 UEFA Conference League.

**B. Proceedings before the Chairman of the UEFA Club Financial Control Body First Chamber**

17. On 9 May 2022, the FFA sent an application to UEFA for an exception to the three-year rule on behalf of the Club. While it was sent to UEFA on 9 May 2022, the application was dated 31 March 2022.
18. On 17 May 2022, the UEFA CFCB Chair, by means of a letter, issued the Appealed Decision, determining as follows:

*“We hereby acknowledge receipt of the request for an exception to the three-year rule submitted by the [FFA] on 9 May 2022 on behalf of its affiliated club, [the Club].*

*Article 12 [CL&FFP Regulations] provides that:*

- ‘1 A licence applicant may only be a football club, i.e. a legal entity fully responsible for a football team participating in national and international competitions which either:
  - a. is a registered member of a UEFA member association and/or its affiliated league [...]; or*
  - b. has a contractual relationship with a registered member [...].**
- 2 The membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years.*
- 3 Any change to the legal form, legal group structure (including a merger with another entity or transfer of football activities to another entity) or identity (including headquarters, name or colours) of a licence applicant*

*during this period to the detriment of the integrity of a competition or to facilitate the licence applicant's qualification for a competition on sporting merit or its receipt of a licence is deemed as an interruption of membership or contractual relationship (if any) within the meaning of this provision'.*

*Pursuant to Article 4 of the CL&FFP Regulations, 'UEFA may grant an exception to the provisions set out in part II [Article 12 being included in such part II] within the limits set out in Annex I'.*

*According to Annex I (B)(4) of the CL&FFP Regulations, exceptions related to the non-applicability of the three-year rule must be submitted by the licensor on behalf of the licence applicant by the deadline communicated on 16 November 2021 by the UEFA administration, i.e. 31 March 2022 in the case at hand.*

*We note that the request for an exception to the three-year rule of [the Club] was submitted on 9 May 2022, i.e. more than a month after the regulatory deadline.*

*[The Club's] belated request for an exception to the three-year rule is therefore inadmissible. It is consistent CAS jurisprudence that deadlines are to be strictly observed (CAS 2013/A/3233 and CAS 2008/A/1579). Consequently, we will not open proceedings (in the meaning of Article 12 et seq. of the Procedural rules governing the UEFA Club Financial Control Body – Edition 2021) to decide on [the Club's] request for an exception to the three-year rule.*

*Furthermore, we note, on the merits, that UEFA, acting through its competent body (either its Administration or its Club Financial Control Body), has consistently considered that clubs which have less than three years' membership with their UEFA Member Association, and have not played three complete seasons at the start of the licence season, do not qualify as a licence applicant as defined in Article 12 of the CL&FFP Regulations. This is the case for [the Club] which became affiliated to the [FFA] in January 2020, i.e. less than three years ago. Consequently, even if [the Club] had submitted its exception request by 31 March 2022, such request would have been denied."*

### **C. Correspondence between the Club and the FFA**

19. On 23 May 2022, when the Club had already filed an appeal with the Court of Arbitration for Sport, as set forth below, the Club requested the FFA to be provided with the UEFA letter dated 16 November 2021 referred to in the Appealed Decision, indicating that it had never received such letter.
20. On the same date, 23 May 2022, the FFA informed the Club, *inter alia*, as follows:

*"In response to your letter received on 23.05.2022, please be informed, that the mentioned UEFA correspondence ("16th of November 2022 in regards to a change in the deadline for application of the inapplicability of the 3-year rule") was sent to the attention of General Secretaries and Licensing Managers of the national associations by Ales Zevrl, the UEFA head of Club Licensing on 16.11.2021. Please also be aware, that according to UEFA and FFA procedural*

*rules such communications and correspondences are considered to be internal procedural documents between relevant units of UEFA and FFA. Consequently, they are of confidential nature and cannot be shared with third parties. Moreover, the circular letters, documents and/or other correspondences by UEFA, which might be non-confidential, are published in UEFA official website and available to the public.” (emphasis in original)*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

21. On 20 May 2022, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Club requested that the proceedings be expedited in accordance with Article R52 CAS Code. Furthermore, the Club requested the dispute to be referred to a sole arbitrator.
22. On 23 May 2022, UEFA informed the CAS Court Office that it agreed to have the matter of whether or not the Club’s request for an exception to the three-year rule was belated and inadmissible decided on an expedited basis.
23. On the same date, 23 May 2022, the Parties informed the CAS Court Office that they had agreed to jointly nominate Mr Manfred Nan, Attorney-at-Law in Amsterdam, The Netherlands, as sole arbitrator.
24. On the same date, 23 May 2022, the Club informed the CAS Court Office, *inter alia*, as follows:

*“[...] I note that (i) UEFA implicitly requests to bifurcate the proceedings so that CAS can decide on the issue of the exception request as to the inapplicability of the three-year rule to the Appellant as a preliminary matter and (ii) has agreed to accelerate the proceedings regarding this sole aspect only.*

*In line with UEFA’s reference to “good faith and procedural efficiency”, if I were to agree to bifurcate the proceedings so that the Sole Arbitrator can rule on the admissibility of the exception request and he finds the request admissible, there will be no sufficient time to rule on the substance of the case by May 31.*

*Nevertheless, to not jeopardize the Appellant’s procedural rights and legitimate interests to take its earned place in the UEFA Europa Conference League this season, I hereby accept UEFA’s proposal. However, in the case that the Sole Arbitrator deems the exception request admissible, I would be grateful to receive UEFA’s position on whether they would agree that the three-year rule does not apply to the Appellant or, if they do not, whether they would also agree to accelerate the second part of the proceedings.”*

25. On the same date, 23 May 2022, UEFA informed the CAS Court Office, *inter alia*, as follows:

*“In the unlikely event that the Sole Arbitrator rules in favour of the Appellant on this point, UEFA confirms that it would be prepared to agree on an expedited procedure on the merits of the request. For the avoidance of doubt, UEFA’s position would be that the three-year rule does indeed apply to the Appellant.”*

26. On 24 May 2022, the Club filed its Appeal Brief in accordance with Article R51 CAS Code.
27. On the same date, 24 May 2022, the CAS Court Office, further to the Parties agreement to proceed expeditiously, confirmed the following procedural calendar:
  - *“Appeal Brief by 24 May 2022 at 12.00 noon CET;*
  - *Answer by 30 May 2022;*
  - *Decision (operative part) by 31 May 2022 at 4.00 pm CET.”* (emphasis omitted by Sole Arbitrator)
28. On 27 May 2022, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the arbitral tribunal appointed to decide the case was constituted as follows:

Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Amsterdam, The Netherlands  
Ad hoc Clerk: Mr Dennis Koolaard, Attorney-at-Law, Amsterdam, The Netherlands
29. On 30 May 2022, UEFA filed its Answer in accordance with Article R55 CAS Code and the procedural calendar agreed upon by the Parties.
30. Following the agreement of the Parties, no hearing was held.
31. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence and arguments presented by the Club and UEFA, even if they have not been specifically summarised or referred to in the present Award.
32. On 31 May 2022, the CAS Court Office issued the operative part of the present Award in an expedited manner, as requested by the Parties.

## **V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

### **A. The Appellant**

33. The Club’s submissions, in essence, may be summarised as follows:

#### **Timeliness of the exception request**

- It is held in the Appealed Decision that the exception request filed by the FFA Licensing Manager on behalf of the Club is inadmissible. However, through its procedural conduct, UEFA is precluded from objecting to the timeliness of the appeal, based on the principle of good faith stipulated in Article 2 of the Swiss Civil Code (the “SCC”).

- Reference is made to CAS 2013/A/3155, where it was determined that a FIFA decision had to be revoked because FIFA had not informed the club concerned directly about the opening of proceedings, but only its national association with the request to notify the club, which the national association did not do.
- Reference is also made to CAS 2004/A/659, where it is determined that the principle of good faith precludes an objection against an appeal that is filed late if the decision is informal, in particular if it fails to mention the legal way in which it can be contested before an appeal authority.
- An exception request on the inapplicability of the three-year rule must be submitted “*by the licensor on behalf of the licensee*”, whilst UEFA had to subsequently communicate the relevant deadline. Accordingly, UEFA puts clubs on the side line regarding the application procedure. The Club was left at the mercy of UEFA and the FFA. The FFA did not act with the required procedural fairness and good faith.
- As early as December 2021, the Club urged the FFA to review the license package documents, including the potential need for clearance from the three-year rule. Only in April 2022, the FFA Licensing Manager suggested submitting a formal exception request to UEFA, assuring the Club that this was only a formality.
- The fact that the FFA Licensing Manager backdated the exception request to 31 March 2022 shows that he was aware of the deadline but missed it due to a possible oversight or negligence. However, this cannot be held to the detriment of the Club as it was unaware of the deadline of 31 March 2022. The Club is not responsible for the acts or omissions of third parties. The Club never explicitly authorised or provided a mandate to the FFA to file an exception request with UEFA. It was the idea of the FFA Licensing Manager to file an exception request in the first place. The FFA assumed its responsibility directly based on Article B.4 Annex I CL&FFP Regulations. Therefore, UEFA should bear the adverse consequences of the FFA’s Licensing Manager’s acts or omissions, not the Club. The rules of procedural fairness and good faith so dictate.
- UEFA did not notify its 16 November 2021 letter directly to the Club and did not publish it on the UEFA website. If UEFA and the FFA had acted with the required diligence, the Club would not have been in this situation. It is incomprehensible why UEFA did not communicate such important deadline directly to the Club. Under such circumstances, it was impossible for the Club to meet the alleged deadline unknown to it and which could not have been discovered otherwise, even exercising the utmost diligence and care.
- In CAS jurisprudence, an exception request dated 2 May 2017 was considered admissible. Therefore, the Club could not anticipate that UEFA would set an earlier date to lodge an exception request.
- Based on the foregoing and in accordance with CAS jurisprudence, through its procedural conduct, UEFA is precluded from objecting to the timeliness of the appeal. The exception request to the three-year rule filed by the FFA on behalf of the Club was admissible.

### **Mootness of the exception request**

- Again, it was the FFA Licensing Manager’s suggestion to submit a formal exception request. However, such a request was moot because of the inapplicability of the three-year rule to the Club.
- Article 12 CL&FFP Regulations is clear in that it does not apply if the “*membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years*”. It is silent about requirements, such as “*three entire years*” or “*three complete seasons*” or “*three years membership*”. The UEFA CFCB Chair should have adhered to what is in the text of the three-year rule and should not have drawn material consequences from the rule’s silence. He wrongly relied on “*three complete seasons*” and “*three years’ membership*”, impermissibly stretching the regulations to mean what he wanted them to mean by skipping the literal interpretation and moving directly to the purposive interpretation in violation of Swiss law. The language of the three-year rule cannot be stretched to the point encompassing “*entire*” years, let alone “*seasons*”. The bottom line is that the three-year rule clearly does not apply if a club has participated in the domestic championships for at least three consecutive years, not necessarily “*entire*” years.
- The three-year rule should be interpreted in accordance with the principle of *contra proferentem*, i.e. against the author of the wording. Accordingly, any unclarity should be interpreted against UEFA. If UEFA wanted the rule to apply for “*three entire seasons*” or “*three complete seasons*”, it should have drafted Article 12 CL&FFP Regulations that way.
- In other CAS proceedings, PFC CSKA Sofia was a newly established club in June 2016 that had participated in the Bulgarian championship for two consecutive seasons (2016/17 and 2017/18) and in three years (2016, 2017 and 2018). In that case, UEFA decided that the end of application of the three-year rule was the season 2017/18.
- Also FC Ararat-Armenia was provided by the FFA with an UEFA license after participating in two complete seasons (2017/18 and 2018/19) and three consecutive, but not entire years (2017, 2018 and 2019) and participated in the 2019/20 UEFA club competitions.
- As this practice has existed at least since 2018, and given the ambiguity of the applicable rules, the UEFA decisions on PFC CSKA Sofia and FC Ararat-Armenia represent customary law. This concept is accepted under Swiss law and CAS jurisprudence and overrides express statutes of the association. The two applicable conditions in this respect, i.e. a longstanding practice and a belief that this practice is legally binding, are satisfied.
- Since the situation of the Club is identical to that of PFC CSKA Sofia and FC Ararat-Armenia, the three-year rule, which ended in the season 2021/22, is satisfied, as the Club irrefutably participated in the FFA championship for three consecutive years (2020, 2021 and 2022). The Club is therefore entitled to receive an UEFA license

from the FFA. As a result, the exception request submitted by the FFA to UEFA was moot. Hence, the issue of the timeliness of the exception request is also moot.

34. On this basis, the Club submits the following prayers for relief in its Appeal Brief:

*“On these grounds, the Appellant respectfully asks that CAS:*

1. *Annul the appealed decision of the chair of the UEFA Club Financial Control Body First Chamber dated May 17, 2022.*
2. *Determine that the issue of the admissibility of the exception request to the three-year rule filed by the FFA on behalf of the Appellant with UEFA on May 9, 2022, is moot.*
3. *Alternatively, only if the above in item no. 2 is rejected, determine that the exception request to the three-year rule filed by the FFA on behalf of the Appellant with UEFA on May 9, 2022, was admissible.*
4. *Determine that the end of the three-year rule in Article 12 of the 2018 UEFA Club Licensing and Financial Fair Play Regulations regarding the Appellant is the season 2021/2022.*
5. *Order UEFA to bear all costs incurred with the present procedure.*
6. *Order UEFA to pay the Appellant EUR 25,000 to contribute towards its legal and other costs.”*

## **B. The Respondent**

35. UEFA’s submissions, in essence, may be summarised as follows:

- Despite the procedural direction that the Appeal Brief be limited to the preliminary issue of admissibility of the Club’s request for an exception to the three-year rule, the Club has set out its position on the merits of the Club’s exception request. In the unlikely event that the Sole Arbitrator decides that the Club’s request for an exception was admissible, and given that the legal issues arising on the merits in the proceedings are quite straightforward, UEFA has, in a good faith manner, set out in a summary manner its position on the merits of the Club’s request to enable the Sole Arbitrator to decide on that aspect also.
- The Club put forward a number of allegations and criticisms pertaining to a party that it chose not to bring into the proceedings, namely its licensor, the FFA. To UEFA’s knowledge, the Club has not initiated proceedings against the FFA. Many of the Club’s allegations are not supported by any evidence. Consequently, UEFA respectfully requests that the Sole Arbitrator considers these allegations with caution in reaching his decision on the present matter.

**A request for an exception to the three-year rule must be submitted before the regulatory deadline**

- The Club does not dispute that it was bound by the CL&FFP Regulations and the provisions contained therein, nor does it claim that it was unaware of the contents of the CL&FFP Regulations including the provisions pertaining to the three-year rule.
- Pursuant to Annex I(B)(4) CL&FFP Regulations, “*exceptions related to [the non-applicability of the three-year rule] must be submitted by the licensor on behalf of the licence applicant by the deadline and in the form communicated by the UEFA administration*”. It is clear from this provision that (i) the licensor is responsible for submitting a request for an exception to the three-year rule on behalf of a licence applicant (club); (ii) such request must be submitted by a specific deadline; and (iii) this deadline is set and communicated by the UEFA administration to the licensor. Accordingly, on 16 November 2021, the UEFA administration communicated the deadline of 31 March 2022 for the purposes of submitting exception requests to the three-year rule to the licence managers of all the licensors for the 2022/23 licence season.
- The Club alleges that it was unaware of this date to argue that the 31 March 2022 deadline does not apply to its request for an exception to the three-year rule.
- First, the fact that the CL&FFP Regulations provide that exception requests “*must be submitted*” by a specific deadline is not trivial. The UEFA club licensing process is a sophisticated system and must be completed in advance of the start of the season to ensure smooth and good organisation of the UEFA club competitions. The 31 March 2022 deadline leaves a two-month margin before the final submission of the list of licensing decisions. It is chosen to ensure the smoothness of the club licensing process by providing sufficient time for the UEFA administration and the CFCB First Chamber to review the information submitted by the clubs, to obtain additional information from the clubs if necessary, to assess any additional information, and to allow the clubs to submit their observations prior to any decision.
- The situation caused by the Club’s belated request for an exception to the three-year rule is indicative of the importance of complying with the deadline set by the UEFA administration. Indeed, the Club’s request for an exception to the three-year rule was only submitted to the UEFA administration on 9 May 2022, i.e. only three weeks before the 31 May 2022 deadline for the submission by the FFA of the licensing decisions for the upcoming season. The Club’s own submissions evidence the complications caused by the submission of a request for an exception to the three-year rule at the eleventh hour.
- Second, CAS panels have consistently confirmed the importance of complying with regulatory deadlines for the purposes of preserving certainty in the UEFA club licensing system and ensuring equal treatment amongst clubs. Consequently, had the UEFA CFCB Chair decided to open proceedings to decide on the Club’s request for an exception to the three-year rule despite the deadline of 31 March 2022 having elapsed, such decision would have (i) caused the CFCB First Chamber to treat the Club differently to other clubs which did their utmost to comply with the regulatory deadline; (ii) significantly undermined the necessity to strictly comply with any deadlines set by the UEFA administration for the purposes of club licensing; thereby

(iii) raising uncertainty and unpredictability in the licensing process; and (iv) causing significant unrest and practical complications regarding the organisation of the upcoming season for the UEFA club competitions.

- For these reasons, the Club's request for an exception to the three-year rule was submitted after the 31 March 2022 deadline and was therefore clearly inadmissible.

**The Club's contention that UEFA failed to notify the 31 March 2022 deadline is misplaced**

- The Club claims that it was left in the dark regarding the applicable deadline to file an exception request, as such information was only communicated by UEFA to the FFA. The Club therefore claims that "*UEFA is precluded from objecting to the timelessness of the [exception request]*" which is therefore inadmissible.
- First, as confirmed by the Club, the licensor is responsible for operating the club licensing process and determining whether licence applicants fulfil the criteria to be granted a licence to enter the UEFA club competitions. Accordingly, on 16 November 2021, the UEFA administration communicated the 31 March 2022 deadline for the purposes of submitting a request for an exception to the three-year rule to the licensors. As indicated in the communication of 16 November 2021, the information (including the deadline) pertaining to the three-year rule exception request process, was to be communicated by the licensors to their clubs. The clubs were, on their part, to collaborate with the licensors to ensure the accuracy of the documentation submitted by the licensor with the exception request.
- As evidenced in the Appeal Brief, the Club was well aware that it was obliged to communicate and cooperate with the FFA for the purposes of obtaining a licence for the upcoming season. Indeed, as set out above, on 27 December 2021, the Club applied for a 2022/23 licence to participate in UEFA club competitions. Moreover, the Club did not ignore that it was subject to the three-year rule as it repeatedly states that "*as early as December 2021*", it raised the three-year rule issue with the FFA. This confirms that the Club was perfectly aware of the club licensing process provided for by the CL&FFP Regulations, and of the three-year rule contained therein. The Club can therefore not ignore that requests for an exception to the three-year rule were to be submitted by a certain deadline.
- Importantly, the Club did not deem necessary to check with the FFA why the licence for participating in UEFA club competitions had not been granted along with that for the 2022/23 Armenian Premier League on 1 April 2021.
- Had the Club considered, at the time, that it was missing information regarding the deadline for the submission of a request for an exception to the three-year rule, it could and should have asked this information from its licensor. Such information is not confidential. The present proceedings cannot serve to remedy the Club's own shortcomings during the licensing process.
- Second, the Club's reliance on two CAS decisions to support its argument that its exception request is admissible, is of no avail. CAS 2013/A/3155 concerned a situation

where a “claim” was brought against a party, and where the party was not timely informed of such claim. This is not the situation in the case at hand: no claim is brought against the club, rather the issue concerns an exception request pertaining to the Club’s fulfilment of the licensing conditions to be granted a licence to participate in UEFA club competitions. Also, the Club was timely notified of the Appealed Decision: it received the decision on the date it was rendered. Finally, unlike the situation in CAS 2004/A/659, the Club was not precluded from appealing the Appealed Decision to CAS. In fact, in the Statement of Appeal, the Club indicated that “*this appeal is lodged with CAS on time and in due form. It is, therefore, admissible*”. The admissibility of the Club’s appeal to CAS is not disputed.

- In light of the above, the Club’s argument that its request for an exception to the three-year rule should be deemed admissible because the Club was not notified of the 31 March 2022 deadline does not withstand scrutiny.

### **The applicability of the three-year rule on the Club**

- First, in support of its position that it did not need to request an exception to the three-year rule, the Club relies on two UEFA decisions, and wanders into interpreting the three-year rule provided at Article 12(2) CL&FFP Regulations. Specifically, the Club considers that it satisfies the three-year rule requirements because it participated in the FFA championship for three consecutive years (2020, 2021 and 2022). The Club’s approach is wrong.
- The wording of Article 12(2) CL&FFP Regulations is clear: “*the membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years*”. It is not disputed that the Club became affiliated to the FFA in January 2020. Therefore, its membership will have lasted three consecutive years in January 2023. Consequently, the Club does not satisfy the three-year rule.
- Regarding the Club’s reliance on the UEFA decisions pertaining to PFC CSKA Sofia and FC Ararat-Armenia, it is sufficient to note that the situation in these two cases was different to that in the case at hand. Indeed, these two cases do not concern entirely newly founded clubs, as is the case with the Club which was created in January 2020. Rather, in the case of FC Ararat- Armenia, and as evidenced in the Club’s own exhibit, FC Ararat-Armenia was found to be the successor of two former clubs. In the case of PFC CSKA-Sofia, contrary to what the Club suggests, the club was not established in June 2016. Rather, the pre-existing club Litex Lovech changed its name to PFC CSKA-Sofia following a complex restructuring process.
- Second, and in any event, the Club’s claim that it did not require an exception to the three-year rule is self-serving: it is an allegation that has been put forward for the first time in these proceedings and is contradicted by the Club’s own admissions.
- The Club repeatedly claims that “*as early as December 2021, [it] urged the FFA to review our license package documents, including the potential need for clearance from the three-year rule*”. This shows that the Club had concerns pertaining to the application of the three-year rule. Moreover, and although the Club suggests that it

*“never explicitly authorised the FFA Licensing Manager to file an exception request with UEFA. It was his idea in the first place”, an email dated 13 April 2022 evidences that the Club was determined to “apply for an exception ‘even having 1% of chance’”. The Club fails to explain why it now considers that it did not require an exception to the three-year rule when it was determined to apply for it prior to these proceedings.*

- In light of the foregoing, the Club’s allegations pertaining to the “mootness” of the request for an exception to the three-year rule are without merit. There is no doubt that the Club is subject to Article 12 CL&FFP Regulations, and that the Club does not satisfy the conditions to be granted an exception to the three-year rule.

36. On this basis, UEFA submits the following prayers for relief in its Answer:

*“On these grounds, the Respondent respectfully requests that the Sole Arbitrator:*

- a) Reject the reliefs sought by the Appellant;*
- b) Confirm the decision rendered by the Chairman of the First Chamber of the UEFA Club Financial Control Body on 17 May 2022, i.e. that the Appellant’s exception request was belated and inadmissible;*

*Alternatively, in the unlikely event that the Sole Arbitrator considers that the request was not belated,*

- c) Confirm that the three-year rule in Article 12 of the UEFA Club Licencing and Financial Fair Play Regulations applies to the Appellant and no exception was merited.*

*In any event,*

- d) Order the Appellant to pay the arbitration costs in this matter;*
- e) Order the Appellant to bear the costs of its own legal fees and other costs.”*

## **VI. JURISDICTION**

37. Article R47 CAS Code (2021 edition) 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.”*

38. Article 17(d) of the UEFA Procedural rules governing the UEFA Club Financial Control Body (2021 edition) (the “CFCB Procedural Rules”) provides as follows:

*“Appeals against decisions of the First Chamber may be made to the Appeals Chamber, with the exception of the following decisions, which are final: [...] decisions on exceptions to the three-year rule.”*

39. Article 34.1 CFCB Procedural Rules provides as follows:

*“Appeals against final decisions by the First Chamber or Appeals Chamber may be made only to the Court of Arbitration for Sport (CAS), in accordance with Articles 62 and 63 of the UEFA Statutes.”*

40. Article 62.1 UEFA Statutes (2021 edition) provides as follows:

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

41. The jurisdiction of CAS is not contested by UEFA.

42. It follows that CAS has jurisdiction to adjudicate and decide on the present appeals arbitration proceedings.

## **VII. ADMISSIBILITY**

43. Article R49 CAS Code, *inter alia*, 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.”*

44. Article 62.3 UEFA Statutes provides as follows:

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

45. The appeal was filed within the deadline of 10 days set by Article 62.3 UEFA Statutes. Furthermore, the appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

46. It follows that the appeal is admissible.

## **VIII. APPLICABLE LAW**

47. Article R58 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.”*

48. Article 25 CFCB Procedural Rules provides as follows:

*“In rendering its decisions, the CFCB applies the UEFA Statutes, UEFA’s rules and regulations and, subsidiarily, Swiss law.”*

49. It is not in dispute between the Parties that, according to Article R58 CAS Code and Article 25 CFCB Procedural Rules, the dispute shall be decided primarily according to the various regulations of UEFA, in particular the CL&FFP Regulations and the CFCB Procedural Rules and, subsidiarily, Swiss law.

## **IX. MERITS**

### **A. The Main Issues**

50. The main issues to be resolved by the Sole Arbitrator are the following:

- i. Was the application of the FFA on behalf of the Club for an exception to the three-year rule admissible?
- ii. Was the application of the FFA on behalf of the Club for an exception to the three-year rule moot?
- i. Was the application of the FFA on behalf of the Club for an exception to the three-year rule admissible?***

51. Article 12 CL&FFP Regulations provides as follows:

- “1. A licence applicant may only be a football club, i.e. a legal entity fully responsible for a football team participating in national and international competitions which either:*
- a) is a registered member of a UEFA member association and/or its affiliated league (hereinafter: registered member); or*
  - b) has a contractual relationship with a registered member (hereinafter: football company).*
- 2. The membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years.*
- 3. Any change to the legal form, legal group structure (including a merger with another entity or transfer of football activities to another entity) or identity (including headquarters, name or colours) of a licence applicant during this period to the detriment of the integrity of a competition or to facilitate the licence applicant’s qualification for a competition on sporting merit or its receipt of a*

*licence is deemed as an interruption of membership or contractual relationship (if any) within the meaning of this provision.”*

52. Article 4 CL&FFP Regulations provides the following:

*“UEFA may grant an exception to the provisions set out in part II within the limits set out in Annex I.”*

53. The three-year rule set forth in Article 12 CL&FFP Regulations is incorporated in Chapter 2 CL&FFP Regulations.

54. Article A.1(d) Annex 1 CL&FFP Regulations provides as follows:

*“The UEFA administration or the UEFA Club Financial Control Body investigatory chamber may, in accordance with Article 4, grant exceptions on the following matters:*

*[...]*

*d) Non-applicability of the three-year rule defined in Article 12;”*

55. Article B.4 Annex 1 CL&FFP Regulations provides the following:

*“Exceptions related to the item defined under A(1)(d) must be submitted by the licensor on behalf of the licence applicant by the deadline and in the form communicated by the UEFA administration.”*

56. The first issue to be determined in these proceedings concerns the admissibility of the application for an exception to the three-year rule of the FFA on behalf of the Club.

57. As indicated above, but repeated here for ease of reference, on 16 November 2021, UEFA sent a letter to all of its licensors, including the FFA, under the heading “*UEFA Club Licensing & Financial Fair Play // Three-year rule assessment process*”, which stipulated, *inter alia*, as follows:

*“The entry into force of the UEFA Club Licensing and Financial Fair Play Regulations – Edition 2018 (hereinafter: CL&FFP Regulations) has given the UEFA Club Financial Control Body Investigatory Chamber (hereinafter: CFCB-IC) the responsibility to act as the decision-making body on exception requests (Annex I (B) (1) of the CL&FFP) regarding the “three-year rule” (Art. 12 (2-3) of the CL&FFP).*

*In order for the CFCB-IC to undergo a proper assessment, “exceptions related to the item defined under A(1)(d) [Non-applicability of the three-year rule] must be submitted by the licensor on behalf of the licence applicant by the deadline and in the form communicated by the UEFA administration” (Annex I (B) (4) of the CL&FFP).*

*[...]*

*The deadline to apply for an exception in respect of the three-year rule for the next licence season is the 31st March 2022.*

[...]

*In accordance with Annex I (B) (4) of the CL&FFP, the exception request must be submitted by the licensor on behalf of its club concerned. Such measure must be taken with the total collaboration of the concerned licence applicant/licensee which must confirm the factual accuracy of any documents sent on its behalf to UEFA administration.*

*We kindly ask you to communicate information on this ‘Three-year rule exception request process’ to your clubs without delay. Should you or your clubs require any additional information or further clarifications in respect of any of the above, please do not hesitate to contact UEFA administration ([...]@uefa.ch).”*

58. The Sole Arbitrator finds that, on this basis, UEFA duly informed the FFA of the relevant deadline of 31 March 2022 for filing any potential applications for an exception to the three-year rule on behalf of its member clubs.
59. Since the FFA filed the relevant application on behalf of the Club on 9 May 2022, such application was clearly filed late and therefore, in principle, inadmissible. Also the FFA letter dated 13 April 2022, which it requested to be regarded as an “*official notification*”, was filed past the relevant deadline. The question is whether there are reasons to nonetheless consider the application admissible.
60. The Club’s contention that the FFA never informed it of the relevant deadline is corroborated by the FFA’s letter dated 23 May 2022, whereby the FFA informed the Club that it considered such information to be of confidential nature.
61. It is to be noted that the Club did not rely on any witness evidence of representatives of the FFA or call the FFA as a respondent in the present proceedings. The Sole Arbitrator is therefore somewhat reluctant in condemning the FFA or its representatives, as they are not in a position to defend themselves against the allegations made. However, for the purposes of the present arbitration and in the legal relationship between the Club and UEFA, the Sole Arbitrator accepts the presumption that the FFA never informed the Club of the relevant deadline.
62. The Sole Arbitrator finds that such presumed failure of the FFA to communicate the relevant deadline to the Club is a matter between the Club and the FFA that does not directly concern UEFA, as UEFA duly complied with its responsibility to inform the FFA of the relevant deadline and requested it to forward such information to its member clubs without delay. The Sole Arbitrator considers this means of communication to be compatible with the requirement set forth in Article B.4 Annex I CL&FFP Regulations:

*“Exceptions related to the item defined under A(1)(d) must be submitted by the licensor on behalf of the licence applicant by the deadline and in the form communicated by the UEFA administration.”*

63. This provision does not suggest that UEFA must inform all clubs potentially interested in applying for an exception to the three-year rule about the relevant deadline directly or that such deadline is to be announced publicly.
64. The Club and the FFA were or ought to have been aware of the three-year rule in the CL&FFP Regulations and that an application for an exception to this rule could only be filed by the FFA. The Sole Arbitrator finds that the Club and the FFA should therefore have been in close contact with UEFA about the necessity of filing an application and the timing thereof. Particularly the Club, being aware that it was dependent on the FFA in filing an application for an exception, should have inquired with the FFA and/or with UEFA directly about the relevant deadline for filing such application.
65. The only evidence of such enquiries being made by the Club derive from a letter dated 13 April 2022 from the FFA Licensing Manager to UEFA stipulating as follows:

*“As previously communicated to you, [the Club] has reached the final of the Armenian Cup and has applied to the FFA for UEFA license three-year rule exception. Although we have described the situation to the club and have provided detailed explanation on the very low chances of the exception granting, but the club showed their willingness to apply for the exception ‘even having 1% of chance’.*

*With this regard I would kindly ask you to accept this as an official notification, as well as to provide us with the guidance of the further steps. Please also note, that the FFA Club licensing FIB meeting is appointed on 2<sup>nd</sup> of May.”*

66. The Sole Arbitrator finds that this letter suggests that the Club wanted to file an application for an exception to the three-year rule, but that the FFA was reluctant to do so.
67. However, this letter was sent when the deadline to file an application for an exception had already lapsed and is therefore of little relevance. Whether applying for an exception to the three-year rule was necessary is examined in more detail below, but it is clear that if it was necessary to file an application for an exception to the three-year rule, it had to be filed by 31 March 2022, which did not happen.
68. In any event, filing an application for an exception presupposes that without such application the three-year rule applied and the Club was barred from receiving a licence to participate in UEFA’s club competitions. It was therefore not for UEFA to commence proceedings against the Club and/or the FFA or to inform them of the applicability of the three-year rule, but it was for the Club and the FFA to commence “proceedings” (i.e. to lodge an application for an exception to the three-year rule) with UEFA. The Sole Arbitrator finds that any potential negligence on the side of the FFA in doing so does not change the fact that no application for an exception was filed in a timely manner and that UEFA is not to be blamed for this.
69. The situation in the matter at hand is different from the situations in the CAS jurisprudence invoked by the Club.

70. In CAS 2013/A/3155, FIFA, as the decision-making body in charge, did not directly inform the relevant club that a claim was filed against it, but it only notified the national federation concerned with the request to forward it to its affiliated club, which the national federation failed to do. In such case, the club concerned was held to have been deprived of its right to be heard and more generally of due process. This is, however, not the case in the present proceedings since the only entity entitled to file a potential application for an exception on behalf of the Club, i.e. the FFA, was duly informed of the relevant deadline by UEFA. The Sole Arbitrator therefore finds that no violation of the Club's procedural rights took place.
71. In CAS 2004/A/659, a CAS panel held that if a decision is notified by means of an informal letter, without an indication of the legal way in which such decision can be contested before the appeal authority, the principle of good faith may preclude the entity issuing the decision from objecting against the timeliness of the appeal. While being somewhat puzzled by the exact analogy the Club aims to draw as the timeliness of the Club's appeal is not in dispute in the present proceedings, the Sole Arbitrator – again – considers it decisive that the only entity entitled to file a potential application for an exception on behalf of the Club, i.e. the FFA, was duly informed of the relevant deadline by UEFA. Accordingly, the Sole Arbitrator finds that there is also no scope for the application of the concepts of *venire contra factum proprium* or estoppel, because no conduct of UEFA resulted in legitimate expectations on the side of the Club and/or the FFA.
72. As to the Club's references to the proceedings in CAS 2017/A/5177 and CAS 2017/A/5201 concerning the Bulgarian side PFC CSKA-Sofia, the Sole Arbitrator finds that UEFA did not create any legitimate expectations on the Club and/or the FFA that an application for an exception to the three-year rule could be filed on 7 May 2022 on the ground that UEFA had declared the application of the Bulgarian Football Union (the "BFU") for an exception to the three-year rule on behalf of PFC CSKA-Sofia admissible while it was filed on 2 May 2017. Deadlines may differ from season to season, and if the Club was not certain about the applicable deadline, as indicated above, it should have made inquiries with the FFA and/or UEFA, but there is no evidence that it did. Based on the evidence on record, there is no reason to assume that, in the case of PFC CSKA-Sofia, a belated application was considered admissible by UEFA.
73. Finally, the following is determined in CAS jurisprudence:
- "[...] [C]lubs must not only fulfil the material requirements set in the regulations, but they also need to meet these conditions on a certain date. In this regard the Panel stresses that for the good organisation of any competition, strict deadlines are inevitable. As stated by another CAS Panel (CAS 2008/A/1579, '[t]he matter of the deadlines has to be considered under the principle of equal treatment; it is a must to treat all the clubs and national football associations the same way'. In addition, the purpose of the deadline set forth in Article 50 of the CL&FFP Regulations is also to serve the interests of legal certainty and security, taking into consideration that UEFA Europa League first qualifying round usually takes place in early July."* (CAS 2013/A/3233, para. 80)
74. The Sole Arbitrator agrees with this jurisprudence and finds that he should be reluctant in allowing exceptions to regulatory deadlines in case no violation of the applicable regulations

or fundamental rights can be established. In the present case, the Sole Arbitrator finds that the arguments invoked by the Club do not warrant such exception.

75. Consequently, the Sole Arbitrator finds that the application of the FFA on behalf of the Club for an exception to the three-year rule was inadmissible.

*ii. Was the application of the FFA on behalf of the Club for an exception to the three-year rule moot?*

76. The second issue to be decided by the Sole Arbitrator is whether the application for an exception filed by the FFA on behalf of the Club is moot. The rationale behind this argument of the Club is that, since the three-year rule allegedly does not apply to the Club, no application for an exception was necessary, as a consequence of which the inadmissibility of such application should remain without consequences for the Club.

77. Article 12(2) CL&FFP Regulations provides as follows:

*“The membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years.”*

78. It is not in dispute that the Club became affiliated with the FFA in January 2020.

79. The Club applied for a licence to participate in the 2022/23 UEFA club competitions, which commence in July 2022. Accordingly, at that point in time, the Club is affiliated with the FFA for about two and a half years.

80. The pertinent question is whether the Club complied with the three-year rule, as a consequence of which no application for an exception to the three-year rule was warranted.

81. Engaging into such interpretation of Article 12(2) CL&FFP Regulations, the Sole Arbitrator agrees with the methodology set forth in CAS jurisprudence about the interpretation of association regulations based on an interpretation of statutes as opposed to contractual interpretation. The Club also relies on such interpretation in its submissions:

*“According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various*

*means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5)."* (CAS 2013/A/3365 & 3366, para. 139 of the abstract published on the CAS website)

82. Insofar as the Club argues that interpreting the wording "*three consecutive years*" as meaning "three full consecutive years" would be adding wording that is not there, the Sole Arbitrator finds that the same can be said about the Club's interpretation that it should be interpreted as "any part of three consecutive years". The Sole Arbitrator finds that the natural meaning of the wording "*three consecutive years*" is three full years in a row and that there is no objective reason (deriving either from a systematic, teleological or historical interpretation) to think that the plain text does not reflect the core meaning of Article 12 CL&FFP Regulations. Accordingly, there is also no scope for the application of the doctrine of *contra proferentem*, if such doctrine is applicable at all, considering that it are the regulations of an association that are being interpreted and not a contract.
83. The Sole Arbitrator notes that the Club relies on a letter dated 28 February 2018 addressed to the BFU concerning PFC CSKA-Sofia, indicating that the "*UEFA Administration has reached the conclusion that the end of the three-year rule that applies to the club, is the season 2017/2018*". The Club maintains that PFC CSKA-Sofia was newly established in June 2016 and argues that, on the basis of UEFA's decision in the letter dated 28 February 2018, the three-year rule also no longer applied to the Club at the end of the 2021/22 season.
84. The Sole Arbitrator finds that the case of PFC CSKA-Sofia is to be distinguished from the matter at hand on at least one important element. While the BFU filed an application for an exception to the three-year rule on behalf of PFC CSKA-Sofia, no admissible application was filed in the matter at hand.
85. Pursuant to Article B.5 Annex I CL&FFP Regulations, the UEFA administration or the UEFA CFCB are afforded discretion in potentially granting exceptions:
- "The UEFA administration or the UEFA Club Financial Control Body investigatory chamber uses the necessary discretion to grant any exception within the limits of these regulations."*
86. Considering this discretion, the Sole Arbitrator finds that it cannot be said that, for the mere fact that an exception was granted to PFC CSKA-Sofia, the Club is not required to apply for an exception and can take it for granted that the three-year rule does not apply to it.
87. The Sole Arbitrator finds that the three-year rule is in principle applicable to the Club and if the Club deemed that it should be entitled to an exception, it should have filed an application to such effect through the FFA.
88. The Club's reliance on the case of FC Ararat-Armenia is not considered relevant by the Sole Arbitrator because it was the FFA that issued a licence to such club, not UEFA. In fact, based on the submissions of the Club itself, it appears that UEFA fined the FFA because it had "*granted an UEFA licence to FC Ararat-Armenia in identical circumstances without previously filing an "exception request" with UEFA*". Under such circumstances, the Sole Arbitrator finds that UEFA cannot be bound by a precedent set by a licensor.

89. In any event, the Sole Arbitrator finds that it cannot be said that two decisions issued by different bodies establish a “long-standing practice”, let alone customary law that overrides express statutes of the association, as argued by the Club.
90. The Sole Arbitrator finds that a further reason why the Club could not take for granted that the three-year rule did not apply to it can be found in the Appealed Decision, as it contains the following subsidiary argument (after it is determined that the FFA’s application was inadmissible for being filed late):

*“Furthermore, we note, on the merits, that UEFA, acting through its competent body (either its Administration or its Club Financial Control Body), has consistently considered that clubs which have less than three years’ membership with their UEFA Member Association, and have not played three complete seasons at the start of the licence season, do not qualify as a licence applicant as defined in Article 12 of the CL&FFP Regulations. This is the case for [the Club] which became affiliated to the [FFA] in January 2020, i.e. less than three years ago. Consequently, even if [the Club] had submitted its exception request by 31 March 2022, such request would have been denied.”*

91. While one may question whether participating in three complete seasons is the right yardstick, the Sole Arbitrator agrees with this interpretation of Article 12 CL&FFPR in the sense that the three-year rule applies to clubs “*which have less than three years’ membership*” and finds that this suggests all the more that the Club was required to file an application for an exception through the FFA.
92. Finally, the Club on the one hand maintains in its Appeal Brief that it “*urged the FFA to review our licence package documents, including the potential need for clearance from the three-year rule*”, on the other hand it argues that it “*never explicitly authorised the FFA Licensing Manger to file an exception request with UEFA. It was his idea in the first place*”. The Club also argues that the FFA “*assured the Appellant that this [i.e. filing an application for an exception to the three-year rule] was just a formality*”. The Sole Arbitrator finds it difficult to reconcile these statements and notes that the Club has not corroborated any such statement with evidence.
93. The only potentially relevant evidence in this respect is the letter dated 13 April 2022 from the FFA Licensing Manager to UEFA, that was submitted into evidence by UEFA, stipulating as follows:

*“As previously communicated to you, [the Club] has reached the final of the Armenian Cup and has applied to the FFA for UEFA license three-year rule exception. Although we have described the situation to the club and have provided detailed explanation on the very low chances of the exception granting, but the club showed their willingness to apply for the exception ‘even having 1% of chance’.*

*With this regard I would kindly ask you to accept this as an official notification, as well as to provide us with the guidance of the further steps. Please also note, that the FFA Club licensing FIB meeting is appointed on 2<sup>nd</sup> of May.”*

94. The Sole Arbitrator notes that this letter suggests that the Club may have been willing to send an application for an exception to the three-year rule through the FFA, but that the FFA was reluctant to do so. Again, the Sole Arbitrator is reluctant to draw negative inferences with respect to the FFA because it cannot defend itself in the present proceedings, but, if anything, this letter suggests that the Club wanted the FFA to file an application for an exception, demonstrating that the Club at the relevant point in time apparently considered that the three-year rule could pose a problem and that an exception thereto was necessary.
95. For all the above reasons, the Sole Arbitrator finds that, since the Club had not been affiliated with the FFA for “*three consecutive years*” at the start of the 2022/23 licence season, the Club was subject to the three-year rule, and was required to file an application for an exception in case it wishes to participate in the 2022/23 UEFA club competitions.
96. Consequently, the Sole Arbitrator finds that the application of the FFA on behalf of the Club for an exception to the three-year rule was not moot.

## **B. Conclusion**

97. Based on all the above, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- The application of the FFA on behalf of the Club for an exception to the three-year rule was inadmissible.
  - The application of the FFA on behalf of the Club for an exception to the three-year rule was not moot.
  - The Club’s appeal is dismissed and the Appealed Decision is confirmed.
98. For the avoidance of doubt, whether UEFA should have granted an exception to the three-year rule if the FFA had timely filed an application on behalf of the Club does not have to be addressed and is intentionally left open by the Sole Arbitrator. What matters is that an application had to be filed ultimately on 31 March 2022, that such application was filed late and that it is therefore inadmissible. Accordingly, this is not a partial but a final Award.
99. All other and further motions or prayers for relief are dismissed.

## **X. COSTS**

(...).

\*\*\*\*\*

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 20 May 2022 by Noravank Sport Club LLC against the decision issued on 17 May 2022 by the Chairman of the Club Financial Control Body First Chamber of the *Union des Associations Européennes de Football* is dismissed.
2. The decision issued on 17 May 2022 by the Chairman of the Club Financial Control Body First Chamber of the *Union des Associations Européennes de Football* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative part of the Award issued: 31 May 2022

Reasoned Award issued: 7 March 2023

## **THE COURT OF ARBITRATION FOR SPORT**

Manfred Nan  
Sole Arbitrator

Dennis Koolaard  
*Ad hoc* Clerk