Arbitration CAS 2022/A/8708 Football Union of Russia (FUR) v. Fédération Internationale de Football Association (FIFA) *et al.*, award of 25 November 2022 (operative part of 15 July 2022)

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

Football
Suspension of a member association's right to participate in competitions
Nature of the decision
Scope of review of the CAS
Force majeure
Denial of the right to participate in a competition
Proportionality of the measure
Personality rights

1. **A decision taken by a sports association can be characterised as either an administrative decision or a disciplinary decision. The decision of the FIFA Bureau to suspend a member association's right of participation in FIFA competitions as a measure to deal with the consequences of a military conflict for football competitions that it organizes may be properly characterised as an administrative decision. It will have economic effects for the member association, and its players, teams and clubs that are all denied the opportunity to participate and the commercial opportunities and prestige that participation in FIFA competitions provides. But whatever its effect, its intention is not penal. It is also not a disguised sanction. A disguised sanction is a measure that is not described as a sanction but is, nonetheless, intended to punish a certain behaviour of the person to whom the measure is addressed.**

2. **The principle of freedom of association requires a certain level of deference to be afforded to a sports association. However, the principle of deference and respect for the autonomy of a sports association is not absolute; these principles may yield when there are exceptional circumstances such as arbitrariness, a misuse of an association's discretionary power, discrimination or breaches of any relevant mandatory legal principle. The threshold for determining those exceptional circumstances is set high, and the arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice. Although made with some deference, the review is *de novo* and anew under Article R57 of the Code, and CAS panels have and will consider evidence of violation of the relevant rules, statutes, and law *de novo* in determining whether a decision should stand.**

3. **As military conflict *per se* is a classic *force majeure* event, the extraordinary and unprecedented consequences that follow military action – namely: the widespread**

condemnation of the military conflict by international organisations and governments, the reaction of the international sports community to the conflict, the imposition of sanctions and travel bans on people and businesses, the uncertainty of the duration and scope of the conflict, and the exceptional and widespread international public reaction against it – can also be considered a *force majeure* event.

4. **Denying a member association the right to participate in FIFA's competition when that member has not violated FIFA rules or regulations and for which its membership has not been suspended, denies that member and its stakeholders the benefits that participation provides, e.g. financial incentives, commercial opportunities and prestige, amongst others, and is a decision that should not be taken lightly, and even then, only in the rarest of circumstances. However, the right of a member association to participate in competitions is not an *absolute* right, since there are likely other circumstances when the right of participation must give way to other rights or interests, such as another member's right to participate or the wider interests of the football community or a *force majeure* event.**

5. **A CAS panel is entitled to assess the proportionality of an administrative measure within the scope of its review of the exercise of the sports association's discretion, and arguments regarding proportionality are relevant.**

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

I. PARTIES

1. The Football Union of Russia (the "Appellant" or the "FUR") is the governing body of football in the Russian Federation. It has its seat in Moscow, Russian Federation and is the member association for Russia of the Union of European Football Associations ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. FIFA (the "First Respondent") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football

and is recognised as such by the International Olympic Committee (the "IOC"). It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

3. UEFA (the "Second Respondent") is an association of European member football associations incorporated under Swiss law with its registered office in Nyon, Switzerland. UEFA is the governing body of European football and is recognised as such by FIFA.

4. The Polish Football Association (the "Polish FA" or the "Third Respondent") is the governing body of football in Poland. It has its seat in Warsaw, Poland, and is a member of UEFA and FIFA.

5. The Swedish Football Association (the "Swedish FA" or the "Fourth Respondent") is the governing body of football in Sweden. It has its seat in Solna, Sweden, and is a member of UEFA and FIFA.

6. The Czech Football Association (the "Czech FA" or the "Fifth Respondent") is the governing body of football in Czech Republic. It has its seat in Prague, Czech Republic, and is a member of UEFA and FIFA.

7. The Football Association of Montenegro (the "Montenegrin FA" or the "Sixth Respondent") is the governing body of football in Montenegro. It has its seat in Podgorica, Montenegro, and is a member of UEFA and FIFA.

8. The Malta Football Association (the "Maltese FA" or the "Seventh Respondent") is the governing body of football in Malta. It has its seat in Ta' Qali, Malta, and is a member of UEFA and FIFA.

9. The Appellant and the Respondents are collectively referred to as the "Parties.

II. INTRODUCTION

10. This is an appeal against a decision taken by the Bureau of the FIFA Council (the "FIFA Bureau") dated 28 February 2022 (the "Appealed Decision") which suspended the Appellant's national teams from participation in FIFA competitions. The Appealed Decision states as follows:

"All teams of the FUR or otherwise affiliated to the FUR are suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted".

11. These proceedings primarily concern the exercise of FIFA's discretion to remove the Appellant's right, provided in the FIFA Statutes, to participate in FIFA-organized competitions, in circumstances which the Panel considers to be extraordinary and unforeseen. The catalyst for these circumstances was the commencement of a military conflict between

Ukraine and Russia on 24 February 2022, which is still ongoing at the time of the Panel's decision. When reaching its decision, the Panel has not taken a position on the conflict or how it is characterised or otherwise referred to. In its capacity as a Panel, it does not need to do so. The Panel needs to do no more than acknowledge that there are different views as to the nature of the conflict in Ukraine, as illustrated by the different terms in which the Parties themselves have referred to the conflict. The Appellant describes it as *"military operations"*. FIFA and UEFA refer instead to an *"act of war"*, or a *"Russian military invasion"*. Be that as it may, the Panel repeats that it considers it unnecessary in the exercise of its adjudicative role to enter the debate or to offer a view on the nature of the conflict. It is concerned only with the correctness or otherwise of the exercise of a sports association's discretion in the circumstances arising from the conflict by examining those circumstances at the time the decision was taken.

12. In the Panel's view, those circumstances merit the descriptive adjectives "extraordinary" and "unforeseen". The Panel in so describing them has in mind the rapidly evolving series of events that occurred during the period after 24 February 2022 and as existed at the time when the Appealed Decision was taken on 28 February 2022, namely: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community, including the IOC, to the conflict; the imposition of sanctions and travel bans on Russian people and businesses; the uncertainty of the duration and scope of the conflict; and, the exceptional and widespread international public reaction against it. In addition, the Panel has been asked to consider, from a football perspective: the refusal of the Third, Fourth and Fifth Respondents to play against Russia in the impending Playoffs for the FIFA World Cup Qatar 2022™ (the "World Cup 2022"); the prospect of other FIFA members adopting a similar stance; the effect these refusals might have for the organization of the World Cup 2022; and security concerns for FIFA-organized competitions and the players, teams and sports administrators involved. All these circumstances provided the context in which the Appealed Decision was taken and are relevant to the Panel's analysis.

13. The Panel also emphasises that it has not taken into consideration any events occurring since 28 February 2022 which, retrospectively and with the benefit of hindsight, may, arguably, have led to a different decision being taken had they been known at the time of the Appealed Decision itself. The Panel has focused on the Parties' evidence and legal submissions as to the circumstances known or foreseeable on 28 February 2022, which underlay the Appealed Decision.

III. FACTUAL BACKGROUND

14. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the remote hearing on 5 July 2022. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties

in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

15. The First Respondent organises competitions between national representative teams. The following competitions are relevant to these proceedings:

    a. The World Cup 2022 which will take place from 21 November 2022 to 18 December 2022;

    b. The World Cup 2022 Qualification Competition which commenced in June 2019 and ended in June 2022. The First Respondent assigned the organisation of the European Qualification Competition to the Second Respondent. The Appellant, the Third, Fourth and Fifth Respondents were participants in the Qualification Competition;

    c. The FIFA Women's World Cup 2023, which will be jointly hosted by Australia and New Zealand from 19 July 2023 to 20 August 2023; and

    d. The FIFA Women's World Cup 2023 Qualification Competition that commenced in September 2021 and will end in February 2023. The First Respondent assigned the organisation of the European Women's World Cup 2023 Qualification Competition to the Second Respondent. The Appellant was a participant in the competition together with the Sixth and Seventh Respondents.

16. The Appellant's men's national team finished second in Group H in round one of the World Cup 2022 Qualification Competition, and advanced to the second-round playoffs (the "Playoffs").

17. On 26 November 2021, the Playoffs' draw was held, and the Appellant's team was drawn to play against the Polish FA's team on 24 March 2022. The winner of that match was scheduled to play the Playoffs' final on 29 March 2022 against the winner of the match between the Swedish FA's team and the Czech FA's team.

18. On 23 February 2022, the European Council adopted a package of sanctions and travel bans against Russian State officials and certain high-profile individuals.

19. On 24 February 2022, the military conflict in Ukraine started to unfold.

20. On 24 February 2022, the European Council and Council of Europe condemned the military action. The Chair of the African Union urged the parties to establish an immediate ceasefire. The Association of Southeast Asian Nations (ASEAN) also expressed concern and appealed for restraint and dialogue.

21. On 25 February 2022, the United Nations Security Council attempted to adopt a Resolution on Ending Ukraine Crisis, which was vetoed by the Russian Federation.

22. On 25 February 2022, the Executive Board of the IOC issued a statement, which included the following recommendations:

"The IOC EB today urges all International Sports Federations to relocate or cancel their sports events currently planned in Russia or Belarus. They should take the breach of the Olympic Truce by the Russian and Belarusian governments into account and give the safety and security of the athletes absolute priority. The IOC itself has no events planned in Russia or Belarus.

In addition, the IOC EB urges that no Russian or Belarusian national flag be displayed and no Russian or Belarusian anthem be played in international sports events which are not already part of the respective World Anti-Doping Agency (WADA) sanctions for Russia.[…]".

23. On 26 February 2022, the Swedish FA issued the following statement on its Twitter account:

"SvFF's message: The men's national team will not play against Russia - regardless of where the match is played.

The Federal Board also urges FIFA to cancel the play-off matches in March in which Russia participates" (free translation).

24. On 27 February 2022, the Polish FA issued the following statement:

"The Polish Football Association declares that, as a result of the brutal aggression of the Russian Federation on Ukraine and the ongoing war there, it does not see the possibility of competing with the Russian representation in the play-offs for promotion to the World Cup in Qatar in 2022, regardless of the name of the team consisting of Russian footballers and the place where the match will be played.

In the face of the Russian invasion of Ukraine, condemned almost everywhere in the world, this is the only decision we can make. The performance in the match against the Russian team would be shameful not only for our representatives, but also for the entire football community, it would be a denial of solidarity with the Ukrainian people. As a football association, we refuse to take part in the barrage matches in which the team from Russia plays.

At the same time, we call on the FIFA authorities to react immediately to the brutal violence we see every day on the territory of independent Ukraine. If the document "FIFA's Human Rights Policy" is more than just words on paper, now is the time to put it into effect by excluding the Russian Football Association from qualifying for the 2022 World Cup in Qatar".

25. On the same day, the Czech FA issued the following statement:

"The FAČR Executive Committee unanimously approved the decision that the Czech national team will not play in any way in the 2022 World Cup qualification barrage against the Russian selection. […]".

26. On 27 February 2022, the European Union closed its airspace to Russian aircraft. The Swiss Federal Council also adopted a package of sanctions.

27. Also on 27 February 2022, the FIFA Bureau, endorsing the IOC recommendations of 25 February 2022, issued the following decision (the "First Decision"):

> *"1. No FIFA competition shall be played on the territory of Russia, until further notice and that matches instead be played on neutral territory.*
>
> *2. The Member Association of Russia shall participate in any FIFA competition under the name: Football Union of Russia (RFU). The National Team of the Football Union of Russia shall participate without a flag and anthem until further notice.*
>
> *3. No spectators shall attend matches in which the National Team of the Football Union of Russia features as host".*

28. A media release that accompanied the First Decision, included the following paragraph:

> *"FIFA will continue its ongoing dialogue with the IOC, UEFA and other sport organisations to determine any additional measures or sanctions, including a potential exclusion from competitions, that shall be applied in the near future should the situation not be improving rapidly. The Bureau of the FIFA Council remains on standby to take any of these decisions".*

29. On 28 February 2022, the Executive Board of the IOC issued the following resolution (the "IOC Resolution"):

> *"1. In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*
>
> *2. Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.*
>
> *Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.*
>
> *In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.*
>
> *3. The IOC EB maintains its urgent recommendation not to organise any sports event in Russia or Belarus, issued on 25 February 2022.*

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

30. On 28 February 2022, the FIFA Bureau issued the Appealed Decision.

31. Also on 28 February 2022, the European Parliament approved a resolution on the Russian aggression against Ukraine with 637 votes to 13 against and 26 abstentions, which expressly, *"[welcomed] FIFA's decision to suspend Russia's participation in the World Cup".*

32. On 2 March 2022, the United Nations General Assembly adopted Resolution ES-11/1 which condemned Russia's actions and demanded an immediate withdrawal of Russians troops from Ukraine. The Resolution was adopted, with 141 nations in favour, 5 against (Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation and Syria) and 35 abstentions.

33. On 3 March 2022, FIFA outlined the grounds of the Appealed Decision:

"Following the escalation of the conflict in Ukraine, the Bureau of the FIFA Council (hereinafter: the Bureau) adopted yesterday, 27 February 2022, a decision containing a number of measures to be taken with immediate effect, to urgently address this crisis and to deal with the emergency now faced.

In that decision, the Bureau also highlighted the fact that FIFA would continue to monitor and assess the developments of the conflict and also consider additional emergency measures if appropriate. Given the clear decisions by several FIFA member associations not to compete with the Russian national team in ongoing football competitions, FIFA, as the event organizer of the FIFA World Cup Qatar 2022™, needs to guarantee the smooth running of its flagship competition.

FIFA has a reasonable margin of discretion in decisions concerning the operation of its competitions and the participation of its member associations. This also allows FIFA to take into account cases of force majeure, such as acts of war.

First, it is an objective necessity that FIFA, as the organiser of the FIFA World Cup Qatar 2022™, ensures that the calendar of the ongoing preliminary competition is fully respected. Given that the FIFA World Cup Qatar 2022™ is only a few months away it is imperative that this calendar is not disrupted, thus jeopardising the efficient organization and smooth running of the matches due to take place over the next months.

Second, the decisions by several FIFA member associations and, most particularly, the Polish Football Association, the Swedish Football Association, and the Czech Football Association, not to compete against the Football Union of Russia team (in whatever form) (hereinafter: RUF*) must be respected by FIFA. Those decisions are both fully understandable and cannot be criticized from either a legal or moral point of view.*

It also is foreseeable that other member associations would take the same position as Poland, Sweden and Czech Republic, the consequences of which for FIFA World Cup Qatar 2022™ would be irreparable and chaotic.

Having considered all these factors, FIFA must act to guarantee the efficient organization and smooth running of its competitions, and particularly the FIFA World Cup Qatar 2022™.

Given these circumstances and based on article 2.b and 34.12 of the FIFA Statutes, and article 31 of the Regulations of the FIFA World Cup Qatar 2022™, Preliminary Competition, today, 28 February 2022, the Bureau decided to approve the following measure:

All teams of the FUR or otherwise affiliated to the FUR are suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted.

In accordance with article 38 paragraph 3 of the FIFA Statutes, the above decision of the Bureau shall be ratified by the Council at its next meeting".

34. On 3 March 2022, the Appellant invited FIFA to agree to an expedited procedure before CAS and reserved its right to *"request reimbursement of losses incurred by the [Appealed] Decision".*

35. On 8 March 2022, the Bureau of the Organising Committee for FIFA Competitions issued another decision related to the organisation of the FIFA World Cup qualifying matches ("World Cup Qualifying Matches Decision"):

"i. With respect to Path A of the European qualifiers for the FIFA World Cup 2022™, the match between Scotland and Ukraine, currently scheduled for 24 March 2022, be postponed to the existing May/June window, and by virtue, the match between the winners of Scotland/Ukraine and Wales/Austria also be postponed to the same window.

…

iii. With respect to Path B of the European qualifiers for the FIFA World Cup 2022™, Poland, who were scheduled to play Russia on 24 March 2022, shall be granted a bye and play the winner of Sweden/Czech Republic on 29 March 2022".

36. Still on 8 March 2022, the sports ministers of 37 nations, including Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom signed a joint statement supporting the sporting sanctions against the Russian Federation, in particular the fact that *"teams representing the Russian or Belarusian state should be banned from competing in other countries".*

37. On 11 March 2022, the Appellant submitted an appeal to the Court of Arbitration for Sport (the "CAS") against the World Cup Qualifying Matches Decision and a procedure was initiated in CAS 2022/A/8117, which was subsequently withdrawn on 30 March 2022.

38. Other international federations, including the Fédération Internationale de l'Automobile ("FIA"), World Athletics, The International Tennis Federation ("ITF"), the Union Cycliste Internationale ("UCI"), the Fédération Internationale de Ski ("FIS"), the International Biathlon Union ("IBU"), UEFA and federations representing archery, badminton, baseball, basketball, canoeing, ice hockey, rugby, swimming and volleyball, have also taken measures to suspend the participation of Russian federations and athletes.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 7 March 2022, the Appellant lodged an appeal with the CAS against the Respondents with respect to the Appealed Decision. In its Statement of Appeal, the Appellant made an application for provisional measures (the "First Request") pursuant to Article R37 of the Code of Sports-related Arbitration (2021 edition) (the "Code"), asking for the Order to be issued by 19 March 2022. It also nominated Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom and Los Angeles, United States of America, as arbitrator.

40. On 8 March 2022, the CAS Court Office initiated the present procedure and invited the Respondents to comment on the Appellant's First Request by 15 March 2022.

41. On 15 March 2022, the First and Second Respondents both filed their Answers to the Appellant's First Request. The other Respondents did not file their position on the Appellant's First Request within the prescribed time limit.

42. On 16 March 2022, the CAS Court Office acknowledged receipt of the Answers filed by FIFA and UEFA and informed the Parties that the President of the CAS Appeals Arbitration Division (the "Division President"), or her Deputy, would issue an Order on the First Request in short order.

43. On 18 March 2022 and in accordance with Article R37 of the Code, the Division President issued an Order, rejecting the Appellant's First Request.

44. On 29 March 2022, the Respondents informed the CAS Court Office that they appointed The Honourable Mr Michael Beloff K.C. as arbitrator.

45. On 30 March 2022 and in accordance with Article R51 of the Code, the Appellant filed its Appeal Brief.

46. On 4 and 5 April 2022, the First, Second and Third Respondents respectively requested that the time limit to file their Answers be fixed after the receipt of the advance of costs.

47. On 5 April 2022, the CAS Court Office informed the Parties that the time limit for the First Respondent, Second Respondent and Third Respondent to file their Answers was set aside and a new limit would be fixed upon receipt of the advance of costs.

48. On 8 April 2022, the Division President issued the reasoned Order on the First Request.

49. On 25 April 2022, the CAS Court Office informed that the Parties that the advance of costs had been paid and set the time limit for the filing of the First, Second and Third Respondents' Answers. It also noted that the other four Respondents did not file their Answers within the prescribed time limit.

50. On 5 May 2022, the First Respondent requested of the CAS Court Office an extension of 20 days to file its Answer.

51. Also on 5 May 2022, the CAS Court Office informed the Parties of the First Respondent's request and invited a response by 9 May 2022.

52. Still on 5 May 2022, the Appellant notified of its objection to the First Respondent's request for an extension.

53. On 9 May 2022, the CAS Court Office notified the Parties that the First Respondent's request to file its Answer was partially granted and the First Respondent had a two-week extension of time to file its Answer.

54. On 10 May 2022, and noting the extension provided to the First Respondent, the Second Respondent requested of the CAS Court Office an extension of two weeks to file its Answer.

55. On 11 May 2022, the CAS Court Office invited the Parties to comment on the Second Respondent's extension request. It also suspended the Second Respondent's deadline to file its Answer.

56. Also on 11 May 2022, the Appellant informed the CAS Court Office that it did not object to the Second Respondent being provided with a similar extension to the First Respondent.

57. Still on 11 May 2022, the CAS Court Office informed the Parties that the Second Respondent's time limit for filing its Answer had been extended to 30 May 2022.

58. On 12 May 2022, the Third Respondent requested that the deadline to file its Answer be extended until 30 May 2022, which was duly granted on the same date.

59. On 24 May 2022, the CAS Court Office issued, pursuant to R54 of the Code and on behalf of the President of the Appeals Arbitration Division, the Notice of Formation of a Panel in the parallel proceedings CAS 2022/A/8709, constituted as follows:

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

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

Hon. Michael J. Beloff K.C., Barrister in London, United Kingdom

60. Also on 24 May 2022, the same panel was appointed to hear the present proceedings.

61. On 30 May 2022 and in accordance with Article R55 of the Code, the First and Second Respondents filed their respective Answers. Despite being provided with an extension of time, the Third Respondent did not file an Answer. The Fourth to Seventh Respondents did not submit an Answer and have not participated in these proceedings.

62. On 31 May 2022, the CAS Court Office invited the Parties to confirm whether a hearing was required. It also notified the Parties that under Article R56 of the Code and unless exceptional circumstances arose, the Parties were not permitted to supplement or amend their requests or their argument, produce new exhibits or specify further evidence on which they intend to rely, after the submission of the Appeal Brief and of the Answer.

63. Also on 31 May 2022, the Appellant informed the CAS Court Office of its preference for a hearing as a matter of urgency.

64. On 2 June 2022, the Appellant filed a Second Request for Provisional Measures (the "Second Request") under Article R37 of the Code.

65. Also on 2 June 2022, the CAS Court Office invited the Respondents to respond to the Second Request by 10 June 2022.

66. On 7 June 2022, the First and Second Respondents respectively informed the CAS Court Office of the preference for the matter to be decided without a hearing.

67. On 8 June 2022, the CAS Court Office informed the Parties that a hearing would be held and invited the Parties to confirm their availability for 24 June 2022 or 5 July 2022. The Appellant was also invited to confirm whether it maintained its Second Request should the dates be confirmed and the Operative Part of the Award issued shortly thereafter.

68. On 10 June 2022, the First and Second Respondents filed their Answers to the Appellant's Second Request.

69. On 13 June 2022, the CAS Court Office confirmed 5 July 2022 as the hearing date. It also invited the Parties to confirm the names of those witnesses and other people attending the hearing, no later than 20 June 2022.

70. On 13 June 2022, the Third Respondent notified the CAS Court Office that it would attend the hearing.

71. On 14 June 2022, the Operative Part of the Order on the Second Request was issued. The Panel rejected the Second Request.

72. On 20 June 2022, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Appellant on 27 June 2022, by the First

Respondent on 28 June 2022, by the Second Respondent on 27 June 2022, and by the Third Respondent on 22 June 2022.

73. On 28 June 2022, the CAS Court Office notified the Parties that in light of the Third Respondent's announcement of its attendance at the hearing, in accordance with Article R56 of the Code, and in view of the procedure's exceptional circumstances, the Panel had decided to invite the Third Respondent to present general remarks and comments only. Any specific factual and legal arguments would be disregarded by the Panel. The Appellant, First and Second Respondents did not object.

74. On 5 July 2022, a hearing took place in these proceedings together with the parallel proceedings, CAS 2022/A/8709, by videoconference. Besides the Panel and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following people attended the hearing:

For the Appellant:

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

For the First Respondent:

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

For the Second Respondent:

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

For the Third Respondent:

Mr Grzegorz Knap, Legal Counsel

75. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the Panel. The Panel's jurisdiction over the present dispute was also confirmed. The Parties were each given the opportunity to present their oral submissions and reiterated the arguments already put forward in their written submissions. The Third Respondent was heard with regards to general comments only. The Appellant and Second Respondent were also heard with regards to the procedure in the parallel proceedings, CAS 2022/A/8709.

76. Before the hearing concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

77. On 13 September 2022, the Panel issued the reasoned Order on the Second Request.

V. SUBMISSIONS OF THE PARTIES

A. The Appellant's Submissions

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

a) Jurisdiction, Admissibility and Applicable Law

- The Appealed Decision was communicated publicly by press release on 28 February 2022 and the grounds for the decision notified to the Appellant by email on 3 March 2022. The 21-day time limit for appeal to CAS provided in Article 57(1) of the FIFA Statutes expired on 24 March 2022. The time limit to file the Appeal Brief expired on 4 April 2022. Both the Statement of Appeal and the Appeal Brief are filed in due form and time and are admissible.

- Relying on Article R58 of the Code, the applicable law are the various UEFA (sic) regulations and subsidiarily, Swiss Law.

b) Consequence of the Appealed Decision

- The consequences of the Appealed Decision are that the Appellant was deprived of its right to take part in FIFA competitions with its representative teams. The right to participate is the most important and profitable right for a FIFA member and generates income, prestige, and competitive opportunities. All other rights and obligations arising from the Appellant's membership of FIFA are maintained.

c) Essence and Nature of the Appealed Decision

- The Appealed Decision is a *"purely disciplinary decision"*. Relying on CAS 2008/A/1583 & 1584, the Appellant submits that the Appealed Decision pronounces a sanction against the Appellant and should be construed as a decision of a disciplinary nature or as *"having at least an inherent disciplinary aspect"*. The Appealed Decision suspends the Appellant's representative teams and imposes negative consequences on the Appellant.

d) Alleged Procedural Flaws with the Appealed Decision

- FIFA denied the Appellant fundamental procedural rights e.g., the right to be heard, the right to be served process in a fair and timely manner, the right to inspect evidence leading to a

decision, and the right to access files when rendering the Appealed Decision. It is a general principle of sports law and consistently recognized by CAS jurisprudence that the right to be heard must be respected (*see* CAS 2021/A/7220). FIFA never invited the Appellant to provide its position on the matter. It accepted the Polish FA, Swedish FA, and Czech FA's refusals to play the Appellant's national teams and violated the principle of equal treatment.

e) Alleged Material Flaws of the Appealed Decision

- It lacks a legal basis because there is no superior decision or order to justify it. The IOC Resolution served as an additional basis for FIFA to pronounce the Appealed Decision. It is a recommendation that has no binding effect on FIFA. FIFA should have assessed compliance with the IOC Resolution based on political neutrality principles.

- The Appealed Decision infringes Articles 4(1), 13, 14(1)(b), 15(a) and (c), 16(1) and 19(1) of the FIFA Statutes.

- Article 2(b) of the FIFA Statutes outlines FIFA's objective to organize its own competitions. FIFA considers that the decisions of several member associations not to compete with the Appellant's national team are an obstacle to the organization of its competitions, and foresees similar positions being adopted by other member associations. These decisions and *"foreseeable positions"* breach the FIFA Statutes. Article 14(1)(b) of the FIFA Statutes obliges member associations to take part in FIFA competitions. The Polish FA, Swedish FA and Czech FA breached this provision by refusing to play the Appellant's national team. The Appealed Decision supports and endorses this position. A violation of Article 14(1)(b) may lead to disciplinary sanctions. Article 70 (sic) of the FIFA Statutes states that the international match calendar is binding for associations and confederations.

- Article 16(1) of the FIFA Statutes provides that a member can only be suspended immediately if it has seriously violated its obligations. The Appellant has not breached its obligations and its suspension contravenes the FIFA Statutes. Pursuant to Article 13 of the FIFA Statutes, the Appellant has a statutory right to take part in FIFA competitions. The FIFA Statutes and Regulations do not expressly permit FIFA to limit this right and the Appealed Decision violates this right.

- Articles 15(a) and (c) of the FIFA Statutes oblige member associations to include provisions in their own statutes on political neutrality and independence from political interference. Article 19(1) of the FIFA Statutes provides that *"each member association shall manage its affairs independently and without undue influence from parties"*. The Appellant's statutes contain these provisions. FIFA does not assert that the Appellant is in breach of these obligations. However, the Appellant submits that some FIFA member associations (e.g., the Polish FA, Swedish FA, and Czech FA) have addressed their refusal to play against its teams by using phrases such as *"the brutal aggression of the Russian Federation against Ukraine"* or *"the Russian aggression"*. It contends that FIFA was under pressure from member associations and breached political neutrality when passing the Appealed Decision.

- Article 4(1) of the FIFA Statutes prohibits discrimination of any kind. The Appellant is independent of governmental institutions and the member associations (e.g., the Polish FA, Swedish FA, and Czech FA) incorrectly attribute the Russian State's actions to the Appellant. FIFA upheld this behaviour, obstructing and discriminating against the Appellant on a political basis.

- The concept of *force majeure* is not applicable. Relying on CAS 2018/A/5779, the Appellant asserts that neither FIFA nor the Respondents are prevented from fulfilling their obligations and duties towards the Appellant. The matches can be played on neutral grounds. If security concerns exist, matches should be played behind closed doors. For this concept to be relevant, the party invoking it must have been prevented from doing something, which is not the present situation.

f) The Decision Ignores Fundamental Principles of Disciplinary Proceedings

- The Appealed Decision is disproportionate. In sports disciplinary matters, the doctrine provides that the competent bodies must weigh up the individual interest of the member and the general interest of the federation. The individual is entitled to the mildest possible measure that is still likely to achieve the intended goal. There are many less incisive measures than suspensions available to FIFA e.g., organizing the Appellant's matches behind closed doors. The Appellant submits that the suspension is *"an extreme measure"* which is not justified and that it *"suffers a real boycott and is forced to bear the responsibility for an unfortunate situation"* which it did not create.

- FIFA refers in the Appealed Decision to the need to *"guarantee the smooth running of its flagship competition"*. In the Appellant's view, FIFA overreacted and should have considered milder consequences rather than an immediate suspension e.g., changes to the schedule such as the postponement granted to the Ukrainian Football Association on 8 March 2022. The final draw of the World Cup 2022 took place on 1 April 2022 prior to the completion of qualification and the two winners of the inter-confederation playoffs will not be known at the time of the draw. The final draw could therefore have been made without a final determination of the qualifier on the Appellant's pathway. Regarding safety and security, the Appealed Decision does not consider in detail the possibility of holding matches on a neutral pitch or other measures which could secure these objectives. The Appealed Decision does not provide specific grounds for the imposition of a suspension instead of other measures.

- The Appealed Decision breaches the principles of equal treatment and *venire contra factum proprium*. Relying on CAS 2013/A/3297, the Appellant submits that when deciding the matter, FIFA was required to react in a similar manner to previous situations of conflict between States. It asserts that FIFA and UEFA are aware of, and have taken steps to address, the conflict between Russia and Ukraine *"for years"*. Since 2014 a Russia/Ukraine team match has been prohibited for political reasons in all tournaments except for play-offs of the final stage of tournaments. The escalation of tension between the two countries is not a *"new argument"* on which FIFA may adopt the Appealed Decision.

- There have been other examples of States involved in military action which have not resulted in the suspension of a sports federation or representative teams. For example, the Vietnam War between 1955 – 1975, Iran/Iraq War in 1980 – 1988, and military operations in Afghanistan in 1979-1989 and 2001-2021 did not result in the suspension of representative teams or sports federations. There is no act of any competent international body obliging States and other entities to suspend Russian sports teams from international competitions such as, for example, a United Nations resolution. There have been rare occasions when athletes of certain nationalities were banned from participation in international competitions and there is nothing similar at this time. For example: in 1948 German athletes were not allowed to compete in the Munich Games following the decision of the International Military Tribunal at Nuremberg in 1946; and in 1992, paragraph 8(b) of Resolution 757 of the United Nations Security Council resulted in the expulsion of Yugoslav athletes from international competitions.

- Belarusian teams are not suspended from FIFA competitions. They are required only to play on neutral fields without spectators, at least in UEFA competitions.

- The Appealed Decision violates the fundamental principle of *nulla poena sine lege clara*. Relying on CAS 2017/A/5272 and CAS 2017/A/5086 and the cases mentioned therein, the Appellant contends that there should be a certain level of predictability of the sanction. When political circumstances exist to prevent a match being held in a particular country, the standard practice of FIFA and UEFA is to transfer the match to a neutral pitch. FIFA erred in construing its regulations as permitting it to impose a sanction against the Appellant when its regulations: a) do not mention a sanction for these circumstances; b) liability for the Russian State's action cannot be transferred to the Appellant; and c) the Appellant is not in breach of FIFA Statutes and regulations.

- The Appealed Decision violates the Appellant's personality rights under Article 28 of the Swiss Civil Code ("SCC"), in particular its rights to economic development and fulfilment, and to honour (*see* ATF 134 III 193, 4.3 to 4.6). The suspension deprives the Appellant of important bonuses and implies that the Appellant's qualification would bring the world of football into disrepute. The Appellant's right to play in FIFA competitions has been violated, the decision infringes the Appellant's right to its own economic development, and there is no overriding FIFA interest to justify the serious violation of the Appellant's personality rights.

g) Alleged Violation of Swiss Competition Law

- The Appealed Decision infringes Swiss competition law. FIFA is an association within the meaning of Article 60 ff of the SCC and an enterprise within the meaning of the Swiss Cartel Act (*see* TC VD, CM11.033798). It has a dominant position on the market for professional football activities throughout the world and occupies a dominant position within the meaning of Article 4 of the Swiss Cartel Act because it is the only organizer of the sport at the world level. An entity occupying a dominant position in the market has a special responsibility when exercising their functions. It must be careful not to impose *"disciplinary obstacles"* or adopt

behaviour that can be qualified as *"abusive retaliation"*. The Appealed Decision is an act of obstruction within the meaning of Article 7 of the Swiss Cartel Act and is not justified.

- FIFA has excluded the Appellant from the world football competition market in a wholly abusive manner, in violation of its Statutes, and in violation of the Appellant's right to participate in competitions, the Appellant's personality rights, and Swiss law. Removing the Appellant's national teams from competitions in which they are involved is tantamount to a refusal to maintain commercial relations. Furthermore, the decision was made in violation of all fundamental procedural safeguards as the Appellant was at no time consulted or invited to present its views. It establishes a real boycott because the Appellant and its affiliates by the sole fact of their nationality are declared *non grata* by FIFA in its competitions. This violates the rule of the prevalence of sporting results, according to which only sports results determine the right of access to competitions. To provide FIFA with the right to remove a competitor from the market to influence a government to adopt a certain position, when it has no competence in the area, and when the competitor has no responsibility or power to influence, *"would be to open the door to all kinds of abuse"*.

h) Requests for Relief

The Appellant submits the following requests for relief:

"1. Set aside the decision of the Bureau of the FIFA Council dated 28 February 2022.

*2. Reinstate all Russian teams, whether national representative teams or club teams, for participation in FIFA competitions, including, but without limitation, in the competitions mentioned in the Statement of Appeal, and **in particular**, order FIFA to take all necessary steps to:*

- *reschedule (replay and/or take any other measure necessary) the qualification matches between the Appellant and Respondent 3 in the FIFA World Cup 2022, European qualifiers, Path B, and*

- *if the Appellant prevails in the aforementioned match, reschedule (replay and/or take any other measure necessary) the qualification match between the Appellant and Respondent 4 in the in the FIFA World Cup 2022, European qualifiers, Path B.* (sic)

3. Order FIFA to bear all costs incurred with the present procedure.

4. Order FIFA to pay FUR a contribution towards its legal and other costs, in the amount to be determined at the Panel's discretion.

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

B. The First Respondent's Submissions

79. The First Respondent's submissions may be summarised as follows:

a) Jurisdiction, Admissibility and Applicable Law

- It does not dispute CAS jurisdiction or contest the admissibility of the Appellant's appeal.

- Relying on Article 57(2) of the FIFA Statutes and Article R58 of the Code, it submits that the Regulations of the FIFA World Cup Qatar 2022™ Preliminary Competition (the "World Cup Regulations") constitute the applicable law to the matter at hand and that Swiss law applies subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

b) The FIFA Bureau Was Competent to Take the Decision

- It rejects all the Appellant's factual and legal arguments and contends that the Appealed Decision was taken by the competent body in accordance with FIFA's regulations and was entirely warranted.

- Pursuant to Articles 34(12) and 38(1) of the FIFA Statutes and Article 31 of the World Cup Regulations Preliminary Competition, the FIFA Council is competent to deal with matters not provided in the World Cup Regulations or any case of *force majeure*. Relying on TAS 2020/A/7065, it contends that a military invasion of a country qualifies as *force majeure*. Alternatively, the FIFA Council was competent on the basis that the matter was not provided for in the World Cup Regulations.

- The FIFA Bureau was competent to take the decision because of the urgency in view of the impending Playoffs, which were scheduled to take place between FIFA Council meetings.

- The decision was warranted and necessary in the face of the unprecedented and widespread reaction of the international community, the imposition of financial and other sanctions against the Russian State which prevent the *"smooth-running"* of FIFA's competitions insofar as the Appellant involvement was concerned.

- FIFA's flagship competition is the World Cup and it is essential that the competition is not disrupted. The relevant Playoff match involving the Appellant's national team could not be played because air travel restrictions were likely to prevent the Appellant's team from participating in matches abroad, and the Polish FA, Swedish FA and Czech FA had stated that they would not compete against the team. This would have led to the Appellant's national team qualifying for the World Cup 2022 and causing irreparable harm to the competitive balance and integrity of the competition and to FIFA's reputation. Even assuming that the opposing teams were willing to play against the Appellant's team, when considering the security risks, it was unlikely that a venue would agree to host the Appellant's team. It would be impossible to hold any matches with the Appellant's national team whilst ensuring the safety and security of all participating teams, delegations, and officials.

- FIFA, as a private sports association, has a wide autonomy and a margin of discretion when deciding on matters relating to the competition that it organizes (*see* CAS 2020/A/7572). Deference must also be given to the autonomy of sports federations and the decisions of their main bodies (*see* CAS 2020/A/7090). The CAS has confirmed that pursuant to Article 69 SCC, an association's board has the right and duty to manage the association which includes the right to issue decisions aimed at promoting its statutory objectives (*see* TAS 2020/A/7065). FIFA's statutory objectives include: to improve and promote the game of football globally considering its unifying, educational, cultural, and humanitarian values; to organize competitions; and to take steps to prevent the infringement of FIFA Statutes, regulations, decisions, or Laws of the Game.

- It rejects the Appellant's assertion that *"nothing changed"* between the FIFA Bureau's First Decision and the Appealed Decision. In a press release that accompanied the First Decision, the FIFA Bureau reserved its right to adopt additional measures. Moreover, the First Decision was submitted to the FIFA Bureau prior to the Swedish FA's and Czech FA's statements of refusal to play the Appellant's national team. It was an element that was considered as part of the Appealed Decision. After considering all factors on 28 February 2022 and finding that *"organizing competitions with the participation of [the Appellant's] national team was no longer possible"*, the FIFA Bureau exercised its discretionary powers to issue the Appealed Decision.

c) Essence and Nature of the Appealed Decision

- The Appealed Decision is not disciplinary in nature and the Appellant's arguments that it is disciplinary or a sanction in nature are wrong. It is a decision that concerns *"the imposition of several emergency measures in order to address the crisis situation following the well-documented case of force majeure in order to guarantee the efficient organization and smooth running of the FIFA competitions"*. A judicial body did not take the decision. The Appellant has not been sanctioned nor have the Russian State's actions been attributed to the Appellant.

d) Alleged Procedural Flaws with the Appealed Decision

- There were no violations of the Appellant's rights and/or fundamental principles of disciplinary proceedings as erroneously alleged, no violation of the principle of equal treatment, *nulla poena sine lege clara,* or the Appellant's personality rights. Even if the Appellant's due process rights were violated (which is denied), FIFA submits that any breaches are cured in the scope of these arbitration hearings by Article R57 of the Code.

e) Alleged Material Flaws of the Appealed Decision

- The Appellant's allegations regarding material flaws in the Appealed Decision also fail. The absence of a superior decision or order is irrelevant because the Appealed Decision was not taken on the basis of an order from any other body or institution. The fact the Appealed Decision is in line with IOC recommendations and with the decisions of several other sports organizations does not render it illegal. The Appealed Decision contains three separate but

related legal bases: Articles 2(b) and 34(12) of the FIFA Statutes and Article 31 of the World Cup Regulations.

- The Appealed Decision does not violate Articles 4(1), 13(2), 14(1)(b), 15(a) and (c), 16(1) or 19(1) of the FIFA Statutes.

- It does not violate Article 16(1) of the FIFA Statutes because the Appellant has not been suspended and continues to exercise its membership rights and organize football at a domestic level. It does not violate Article 13(2) of the FIFA Statutes because the right to participate in FIFA competitions is limited by other provisions such as Article 2 of the FIFA Statutes and Article 31 of the World Cup Regulations.

- The Appellant appears to rely on the alleged breach of political neutrality by the three federations that refused to play against its national team. The Appealed Decision does not violate Article 15 of the FIFA Statutes or political neutrality because it is not a political decision. It was objectively necessary and justified to organize the Qualification Competition and other FIFA competitions.

- The Appealed Decision does not infringe Article 4(1) of the FIFA Statutes because FIFA did not uphold politically discriminatory behaviour when it issued the Appealed Decision. The Appellant has not provided an explanation of how the views of the relevant national associations are based on political reasons and has also failed to explain how the alleged discrimination results in the illegality of the Appealed Decision.

- The Appellant has failed to explain how the alleged violation of its right under Article 14(1)(b) of the FIFA Statutes results in the illegality of the Appealed Decision. FIFA acknowledges that pursuant to Article 69 of the FIFA Statutes, the international match calendar is binding for associations and confederations and contends that non-compliance with Article 69 of the FIFA Statutes *"is not at stake per se"*. Permitting the Appellant's national teams to participate in FIFA competitions creates *"an enormous security risk for all participating teams and delegations (including the FUR's), as well as for officials, referees and other persons involved in the organization of such matches, regardless of where the relevant matches are held"*.

- Warfare creates a situation of *force majeure* and it applies in this case. The invasion is an *"objective impediment"* that was beyond the control of FIFA or its sphere of activity, that was unforeseeable and extraordinary, imposed in an *"irresistible manner"* and cannot be resisted (*see* CAS 2018/A/5779). It is evident that the sanctions, other worldwide measures, and reactions against the Russian State prevent FIFA competitions from being carried out in an organized and proper manner and do not allow the participating teams to compete in a safe and secure environment. In any event, the situation is not provided for in the FIFA Statutes or regulations and would be dealt with in the exact same manner to safeguard the integrity and smooth running of FIFA competitions.

f) The Decision Ignores Fundamental Principles of Disciplinary Proceedings

- The Appealed Decision is not a sanction so arguments regarding proportionality are moot. If it is considered a sanction (which is denied), CAS can only review the sanction when it is grossly and evidently disproportionate or otherwise arbitrary (*see* CAS 2019/A/6345, para 71; CAS 2019/A/6315, para 62). The Appealed Decision is proportionate because it limits participation to the Appellant's national teams to FIFA competitions and still allows the Appellant to continue all its domestic activities and organize football competitions in Russia. The Appellant was not suspended or expelled from FIFA. Furthermore, on the balance of interests, granting the relief sought would *"lead to sporting chaos for FIFA"* whose competitions (including its flagship World Cup 2022) would be disrupted.

- The principle of equal treatment has not been breached (*see* CAS 2020/A/6690). The invasion is not like any other military conflict. It has resulted in the refusal of member associations to have any engagement with the Appellant's national team. Comparisons with other military conflicts, the boycott of the 1980 Moscow Olympics, and the United Nations Security Council Order in relation to the conflict in Yugoslavia, are irrelevant. Belarusian national teams are not suspended from FIFA competitions because at the time the Appealed Decision was taken, the more pressing aspect was in relation to the Appellant's national teams. The Belarusian national team ended its World Cup 2022 qualifying campaign on 13 November 2021 when it finished last in Group E and did not qualify for the Playoffs. There was no disruption to the integrity or the smooth-running of the World Cup 2022 and no need for a decision in respect of the Belarusian Football Association.

- The principle of *nulla poena sine lege clara* does not apply because the Appealed Decision does not concern a disciplinary matter. There is no misconduct and no sanction. FIFA has not criticized the Appellant's behaviour and does not seek to influence the Appellant's behaviour. It is also not holding the Appellant responsible or sanctioning it for the Russian State's actions. FIFA has clearly stated through the Appealed Decision that, *"under the current circumstances, its competitions cannot be organized with the participation of [the Appellant's] national teams"*. The war in Ukraine has been condemned by most countries and has caused FIFA member associations to refuse to play against the Appellant's national teams.

- The Appealed Decision does not infringe the Appellant's personality rights. Any breach of Article 28(2) SCC is permissible when justified by an overriding private interest. FIFA's statutory objectives include the right to organize international football competitions. It has an interest in ensuring that its competitions run smoothly, in the spirit of fair play and that their integrity is always protected (*see* Article 2(g) of the FIFA Statutes). This interest prevails when considering amendments to the international match calendar a few months ahead of the World Cup 2022 and the security threats for the organization of a FIFA competition in which the Appellant's national team may participate (*see* CAS 2020/A/7572, para 112; CAS 2022/A/8708 Order on Provisional Measures, paras 103-104). Any decision reinstating the Appellant's national teams for participation in FIFA competitions would undermine FIFA's discretionary power to organize competitions thereby affecting its legal rights as a private association and the fulfilment of its statutory objectives.

g) Alleged Violation of Swiss Competition Law

- FIFA denies that it has breached Article 7 of the Swiss Cartel Act. The Appellant's claim under Swiss competition law: is too broad; does not disclose the market in which FIFA has allegedly abused a dominant position; and does not disclose which undertakings it has allegedly hindered. FIFA is not a competitor on a market and has not sought to restrict competition and overcome rival competitors through the Appealed Decision. It is a private association that wants to guarantee the efficient organization and smooth running of its competitions in the face of *force majeure*. The Appealed Decision does not constitute an abuse of a dominant position but is the justified exercise of an international federation's power to protect its competitions.

h) Requests For Relief

The First Respondent submits the following requests for relief:

"Based on the foregoing, FIFA respectfully requests the Panel to:

(a) Reject the requests for relief sought by the Appellant;

(b) Confirm the Appealed Decision;

(c) Order the Appellant to bear the full costs of these arbitration proceedings;

(d) Order the Appellant to make a contribution to FIFA's legal costs".

C. The Second Respondent's Submissions

80. The Second Respondent's submissions may be summarised as follows:

a) Jurisdiction, Admissibility, Applicable Law and Power of Review

- UEFA does not dispute the Panel's jurisdiction or the admissibility of the appeal.

- It submits that the rules of law applicable to the merits of the proceedings are determined by Article R58 of the Code. The FIFA Statutes and associated regulations and, subsidiarily, Swiss law apply to the dispute.

- Pursuant to Article R57 of the Code, the Panel has a *de novo* power of review. CAS jurisprudence establishes that even in the context of a *de novo* hearing, a level of deference should be given to an association when assessing the proportionality measure (*see* CAS 2019/A/6665, para 157).

b) The FIFA Bureau Was Competent to Take the Decision

- The FIFA Council had jurisdiction to render the Appealed Decision and had valid reasons to make it. UEFA submits that the Appealed Decision was a necessary measure to ensure the viability, integrity, and security of FIFA's competitions as well as to best protect the interests of international football's stakeholders.

- The Appellant does not challenge the competence of the FIFA Bureau to render the decision under Appeal nor discuss its powers under Article 34(12) of the FIFA Statutes and Article 31 of the World Cup Regulations in any meaningful way.

- The Appellant acknowledges that its membership was not suspended. The right to have its teams participate in competitions is important but it is not inalienable irrespective of the circumstances.

c) Essence and Nature of the Appealed Decision

- The Appealed Decision was not a *"purely disciplinary decision"* nor was it a *"disguised disciplinary sanction"* (*see* CAS 2011/O/2422). A disguised sanction is a measure that is not called a sanction but is meant to punish a certain behaviour of the addressee of the measure. The Appealed Decision does not seek to punish the Appellant for its behaviour, *"but rather addresses an objective situation that has arisen as a result of Russia's invasion of Ukraine"*. The Appellant relies on CAS 2008/A/1583-84 which is irrelevant to the present proceedings because the specific rule in question in those proceedings was disciplinary in nature and its purpose was to sanction the relevant club for past conduct.

d) Alleged Procedural Flaws with the Appealed Decision

- The Appellant alleges the Appealed Decision was taken in breach of fundamental procedural rights such as the right to be heard, the right to be served process in a fair and timely manner, the right to inspect evidence leading to a decision and the right to access files when rendering the Appealed Decision, all allegations which FIFA denies. The procedural rights allegedly breached apply primarily to disciplinary matters and any breach would, in any event, be cured by the present *de novo* appeal.

e) Alleged Material Flaws of the Appealed Decision

- UEFA understands that the Appealed Decision's legal basis arises from Article 2(b) and Article 34(12) of the FIFA Statutes, as well as Article 31 of the World Cup Regulations, which the Appellant does not challenge. FIFA had no need to base its decision on the IOC Resolution or any other *"superior decision or order"*. Nevertheless, UEFA submits that the Appealed Decision is consistent with the IOC Resolution and in line with the fundamental tenets of Olympism and of the Olympic Truce. Russian athletes have not been prohibited from practising sport, but rather suspended from international competitions; Russian athletes are still able to

continue practicing sport generally. Ukrainian athletes have been prevented from participating in sports events because of the invasion, which impinges on Ukrainian athletes' ability to continue practicing their sports and reduces the relative impact of the measure against Russian teams when put in context.

- UEFA submits that the Fundamental Principles of Olympism outlined in the Olympic Charter support the Appealed Decision. The situation in Ukraine cannot be reconciled with *"the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles"* or the *"harmonious development of humankind"* or a *"peaceful society concerned with the preservation of human dignity"*. Football is an Olympic sport, and the Russian invasion was an unprecedented breach of the Olympic Truce under international law. The Appellant's reliance on the principles of Olympism is undermined by the Russian State's actions.

- The Appealed Decision did not breach Article 16 of the FIFA Statutes because FIFA only suspended the Appellant's national teams and not the Appellant's membership. It also does not violate Article 13 of the FIFA Statutes because the right to participate in competitions is not absolute. There are no infringements of Articles 15 and 19 of the FIFA Statutes regarding political neutrality either. The Appellant was suspended because of the objective situation arising from Russia's invasion of Ukraine and not because FIFA (or UEFA) politically agrees with Ukraine. It follows also that there is no discrimination on a *"political basis"* arising from the Appealed Decision in breach of Article 4(1) of the FIFA Statutes.

f) The Decision Ignores Fundamental Principles of Disciplinary Proceedings

- The Second Respondent further submits that the Appealed Decision does not ignore the fundamental principles of disciplinary proceedings because: the present proceedings do not concern a disciplinary matter; the Appealed Decision is not disproportionate; it does not violate the principle of equal treatment; and does not violate the principle of *nulla poena sine lege clara.*

- The Appellant's suggestion that *"it would be perfectly possible to organize the Appellant's matches […] on neutral territory and behind closed doors if necessary"* does not address the legitimate security concerns that have been raised or explain how this measure would be proportionate to the other teams. It is unrealistic to claim that playing in neutral venues and/or without spectators would avoid trouble when considering the current worldwide sentiment against the Russian State.

- The Appellant's arguments regarding equal treatment are misconceived. The example of the war in Yugoslavia and the subsequent UN Security Council resolution that requested states take measures to prevent the participation of people representing the Republic of Yugoslavia (Serbia and Montenegro) in sporting events is not relevant because Yugoslavia did not have a veto right whereas Russia does. The Appellant has also not shown that sports governing bodies can render a decision suspending a member association's national teams from participation in competition only if the UN Security Council adopts a resolution to that effect. UEFA is not able to comment on the reasons why FIFA took no measures against the Belarus

Football Association but understands that at the time the Appealed Decision was taken, no Belarusian team was involved in FIFA competitions to the extent that its participation would be problematic for a competition's organization or security.

- The Appealed Decision does not violate *nulla poena sine lege clara* because it does not sanction the Appellant for misconduct.

- The Appealed Decision does not infringe the Appellant's personality rights that derive from Article 28 of the SCC. An infringement of Article 28 of the SCC is illicit only if it is not justified by an overriding public or private interest (Article 28(2) SCC). The present case discloses a legitimate interest namely that of FIFA in protecting the integrity and safety of its competitions (*see* ATF 134 III 193). In ATF III 193, at paragraphs 203-204, the Swiss Federal Supreme Court acknowledged that *"the way in which the safeguard of those legitimate interests is implemented is not a matter for judicial scrutiny and should be left to the governing body as they are in a better position to make such an assessment"*.

g) Alleged Violation of Swiss Competition Law

- The Appellant has not conducted a serious competition law analysis. It has not provided a definition or serious discussion of relevant market. Its reference to FC Sion v UEFA is of limited or no relevance with respect to UEFA's position on the Swiss market and the Appellant has not explained the extent to which the same finding applies to FIFA's position on the Swiss market. Furthermore, it has not proved FIFA's dominance on a specific market or established an abuse of such a dominant position. It invites the Panel to summarily dismiss the claim that the Appealed Decision is in breach of Swiss competition law.

h) Requests for Relief

The Second Respondent submits the following requests for relief:

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

(i) Dismissing the FUR's Appeal and all prayers for relief.

(ii) Condemning FUR to pay the costs of the arbitration as well as a contribution towards UEFA's legal fees and other expenses, in light of the circumstances of this case".

VI. JURISDICTION

81. Article R47 of the Code provides that:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific

arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

82. Pursuant to Article 57(1) of the FIFA Statutes:

Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.

83. The Appellant relies on Article 57(1) of the FIFA Statutes, as conferring jurisdiction on the CAS. The Respondents agreed at the outset of the hearing that there were no objections to the jurisdiction of the CAS when requested to offer their views by the Panel and the jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.

84. Accordingly, on the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY

85. Article R49 of the Code provides as follows:

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

86. According to Article 57 of the FIFA Statutes:

1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

87. The Panel observes that the FIFA Bureau rendered the Appealed Decision on 28 February 2022 and, following the Appellant's request, notified the grounds of the Appealed Decision by email to the Appellant on 3 March 2022.

88. The Appellant submits that the FIFA Statutes and various regulations do not provide an internal channel to challenge the Appealed Decision and that it filed the appeal in time. The Respondents do not contest the admissibility of the appeal.

89. The Panel notes that the Appellant filed its Statement of Appeal on 7 March 2022, well within the deadline of 21 days prescribed in the FIFA Statutes and the Code and that there were no other channels for appeal internal to FIFA. The Statement of Appeal also complies with the requirements of Article R48 of the Code.

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

VIII. APPLICABLE LAW

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

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

92. Furthermore, Article 56(2) of the FIFA Statutes provides that:

> *The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*

93. The Appellant submits that the Panel should primarily apply the *"various UEFA regulations and subsidiarily, when relevant, Swiss law"*. The First and Second Respondents respectively submit that the FIFA Statutes and associated regulations are applicable, with Swiss law applying subsidiarily.

94. The Panel notes that the Appealed Decision was rendered by the FIFA Bureau and that at the time the appeal was filed, the FIFA Statutes (May 2021 edition) was in effect. Furthermore, since the merits of the dispute touch on matters pertaining to the World Cup 2022, the World Cup Regulations are also relevant.

95. Accordingly, the Panel considers that the FIFA Statutes (May 2021 edition), the World Cup Regulations and any other FIFA regulations constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

IX. MERITS

96. In light of the Parties' respective submissions, the Panel considers that there are three main issues for determination:

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

b. Did the FIFA Bureau have the competence or power to take the Appealed Decision?

c. If so, was the Appealed Decision an improper use of power?

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

a) The Nature of the Appealed Decision

97. The Appellant submitted that the decision was a *"purely disciplinary decision"* that had deprived it of the right to enter its national teams and clubs in competitions organised by FIFA and thereby profit from all *"income, prestige and competitive opportunities"* that participation in such competitions provides. In its view the decision imposed a sanction that was penal in nature and should be variously but properly characterised as a decision of a disciplinary nature, a disguised disciplinary sanction or, relying on the reasoning in CAS 2008/A/1583 & 1584, a decision that had *"an inherent disciplinary aspect"*.

98. The First Respondent rejected the Appellant's contention that the Appealed Decision was a disciplinary decision and submitted that it was a decision to impose measures necessary for the *"smooth-running and integrity"* of FIFA's competitions. The First Respondent emphasised that the Appellant had not been sanctioned nor had the actions of the Russian State been attributed to the Appellant. Accordingly, any suggestion that the Appealed Decision was disciplinary in nature, was wrong.

99. The Second Respondent also rejected the Appellant's submission that the Appealed Decision was a disciplinary decision. It submitted that the concept of a disguised disciplinary sanction stemmed from CAS 2011/O/2422 or the so-called "Osaka Decision" where a measure taken by the IOC to deny an athlete's eligibility to participate in the Olympic Games for previous infringement of anti-doping rules was classified as a sanction. However, the measure in the Osaka Decision was imposed because of an athlete's past behaviour, whereas by material contrast the Appealed Decision did not seek to punish the Appellant for its past behaviour, but was taken to address an objective situation being the consequences that had arisen from a military conflict. The Second Respondent submitted that the reasoning of the CAS Panel in CAS 2008/A/1583 & 1584 where the specific rule in question excluded a club from participation in the Champions League was also irrelevant. In that particular case, the rule was held to be disciplinary in nature because its purpose was to sanction the relevant club for a particular past conduct, which was not the purpose of the Appealed Decision.

100. The Panel recalls that a decision taken by a sports association can be characterised as either an administrative decision or a disciplinary decision (*see* CAS 2007/A/1381, para 55; and CAS 2008/A/1583 & 1584, para 35). In the present case, the Panel finds that the Appealed Decision is clearly not a disciplinary decision, a disguised sanction or a decision that has an inherent disciplinary aspect. There is no evidence or suggestion that the Appellant breached any FIFA regulation or a provision of the FIFA Statutes or engaged in misconduct such as could attract a disciplinary process or a disciplinary sanction imposed to penalise such conduct. The Panel accepts the uncontradicted evidence of the First Respondent that the suspension was not imposed to sanction past conduct. The Panel also notes that the decision was taken by the FIFA Bureau that exercises powers on behalf of the FIFA Council, which in turn is one of the executive decision-making bodies in the FIFA governance structure, and not taken

by the FIFA Disciplinary Committee or any other FIFA judicial body as is normally the case for a disciplinary decision. For all the foregoing reasons, the Panel finds that the Appealed Decision is not a disciplinary measure imposed on the basis of past conduct.

101. The Panel recognizes that suspending a member association's right of participation in FIFA competitions, will have economic effects for a member association, and its players, teams and clubs that are all denied the opportunity to participate and the commercial opportunities and prestige that participation in FIFA competitions provides. The Panel was not presented with any specific evidence of the extent of the economic impact that the Appealed Decision has had or will have in the future, but it accepts that there will necessarily be an adverse impact on the Appellant, its players, teams, clubs and the entirety of Russian football, albeit the Appellant bears no responsibility for the situation that has led to its suspension. But whatever its effect, its intention was not penal. In that context, the Panel agrees with the submissions of the Second Respondent that the reasoning in CAS 2008/A/1583 & 1584 does not apply to the present case; there is no disciplinary aspect inherent to the Appealed Decision.

102. The Panel finds that the Appealed Decision is also not a disguised sanction. A disguised sanction is a measure that is not described as a sanction but is, nonetheless, intended to punish a certain behaviour of the person to whom the measure is addressed, as was the measure under consideration in CAS 2011/O/2422. As the Panel has found above, the Appealed Decision is not designed as a punishment for the Appellant's previous conduct.

103. The Panel determines that, in the circumstances of the present case, the Appealed Decision may be properly characterised as an administrative decision taken by the FIFA Bureau to impose a measure to deal with the consequences of a military conflict for football competitions that it organizes. On that basis, the Panel finds that the Appellant's claims that it was denied fundamental procedural rights that apply to a disciplinary process (such as the right to be heard) or that the First Respondent allegedly breached other legal substantive principles that apply to disciplinary decisions (such as non-discrimination) or disciplinary sanctions (such as proportionality) are misdirected and have no application.

b) Scope of the Panel's Review

104. The Panel finds that the Appellant's allegations of procedural failings, would in any event, have been cured by the present proceedings. The Panel observes that its duty pursuant to Article R57 of the Code is to decide the case *de novo,* which means that any denial of due process at the lower-level proceedings (if any) is cured by the CAS proceedings, a principle that is well-established in CAS jurisprudence (*see* CAS 2016/A/4648, para 74; CAS 2012/A/2913, para 87; CAS 2009/A/1880-1881 paras 142-146; CAS 98/208, para 10; TAS 2009/A/1879, para 71; CAS 2008/A/1394, para 21; TAS 2008/A/1582, para 54; CAS 2008/A/1594, para 109; CAS 2006/A/1153, para 53; and CAS 2003/O/486, para 50).

105. On the basis that the Appellant considered the Appealed Decision to be disciplinary in nature, it submitted that the suspension was disproportionate (*see* CAS 2017/A/5031, para 72). Given that as the Panel has found above, the Appealed Decision was not a disciplinary decision, nor

imposed a disciplinary sanction, the CAS approach to review of a sports association's disciplinary decision is not engaged or in issue in this appeal.

106. The First Respondent submitted that a private sports association, such as FIFA, has a wide autonomy and margin of discretion when deciding on matters related to the competitions that it organises (CAS 2020/A/7572, para 106). It also contended that established CAS jurisprudence required a Panel to defer to the autonomy of a sports federation and the decisions of their main bodies (*see* CAS 2020/A/7090, paras 148 – 151). The First Respondent acknowledged that the principle of deference and respect for the autonomy of an association is not absolute and the principle may yield when there are *"exceptional circumstances"* such as arbitrariness, a misuse of an association's discretionary power, discrimination or breaches of any relevant mandatory legal principle (*see* CAS 2020/A/7090, para 150).

107. The Second Respondent also referred to a sports association's autonomy to make decisions and submitted that a level of deference should be extended to an association when assessing the proportionality of a measure (*see* CAS 2019/A/6665, para 157). It submitted that although such principles had primarily been considered by CAS in cases concerning disciplinary sanctions, it nonetheless, invited the Panel to apply the same principles to measures taken by a sports association to address objectively unforeseen circumstances as occurred in the present case.

108. The Panel recalls that in determining the scope of review for an administrative decision such as the one in the present case, under Article 69 of the SCC, the board of an association *"is entitled and obliged to manage and represent the association"*, and that in accordance with the Swiss law of private associations, a sports association has a high degree of autonomy to regulate its own affairs and make decisions that are in line with its statutory objectives and in accordance with its statutes (*see* CAS 2018/O/5830, para 118; CAS 2017/O/5264, 5265 & 5266, para 193). Nonetheless, the Panel emphasises that the administrative decisions of a sports association are not immune to review and observes that under Article 75 of the SCC a decision can be challenged if there is a violation of the association's statutes or mandatory legal rules.

109. The Panel also notes that when reviewing the decisions of a sports association similar to one adopted in the present case, it is not engaged in an exercise of evaluating the merits or the substantive value of the decision, nor of substituting its own view for that of the sports association. The Panel is mindful of the principle well-established in CAS jurisprudence, even taking account of the *de novo* review enjoyed under Article R57 of the Code, that a sports association is best placed to make decisions that further its statutory objectives, and that respect for the principle of freedom of association requires a certain level of deference to be afforded to a sports association.

110. CAS jurisprudence establishes that the principle of deference and respect for the autonomy of a sports association is not absolute, and that these principles *"may yield when there are exceptional circumstances"* such as arbitrariness, a misuse of an association's discretionary power, discrimination or breaches of any relevant mandatory legal principle (*see* CAS 2020/A/7090, para 150). The threshold for determining those exceptional circumstances is set high, and *"[the]*

arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice" (CAS 2020/A/7090, para 150). This deference to the decisions of sports decisions is not in conflict with the principle of de novo review; both can and do coexist under CAS jurisprudence. Even though CAS panels may review sporting decisions made by sporting bodies with some deference, that review is *de novo* and anew and CAS panels have and will consider evidence of violation of the relevant rules, statutes, and law *de novo* in determining whether a decision should stand.

111. The Panel therefore concludes that in the present case, in which it is reviewing the exercise of a sports association's discretion, it is concerned not with the merits or substantive value of the decision made but with whether the decision and the measure it imposed violates the association's statutes or mandatory legal rules or amounts to an improper use of the association's discretionary power. In weighing up whether the decision amounts to an improper use of the association's discretion, the Panel considers that the reasonableness and proportionality of the sports association's actions are also factors for consideration. It addresses the application of such approach to the present appeal in paragraphs 129 to 173 of this award.

B. Did the FIFA Bureau have the competence to take the Appealed Decision?

112. Having established that the Appealed Decision was an administrative decision and the nature of the Panel's scope of review, the Panel now turns first to the issue of competence and whether the First Respondent had the power to take the decision.

113. The Appellant submitted that there was no legal basis for the Appealed Decision because: (i) no situation of *force majeure* arose; and (ii) there was no superior decision or order that justified taking the decision e.g. an IOC recommendation.

114. The Respondents submitted that by application of Article 34(12) and Article 38(1) of the FIFA Statutes, and Article 31 of the World Cup Regulations, and in light of FIFA's statutory objectives outlined in Article 2(a), (b) and (d), the FIFA Bureau was competent to take the decision. They contended that there was no need for a superior decision or order from an entity such as the IOC.

115. The Panel recalls that a private sports association established in Switzerland, such as FIFA, must act within the powers conferred on it by its statutes, and in line with its statutory objectives and mandatory legal rules under Swiss law. In that regard, the Panel notes FIFA's objectives in Article 2 of the FIFA Statues and, in particular, Article 2(a), (b) and (d) which provide as follows:

"The objectives of FIFA are:

(a) to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes;

(b) to organise its own international competitions;

[…]

(d) to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game.

[…]".

116. Although the First Respondent referred the Panel to its objectives in Articles 2(a) and (d), the Panel finds that of primary relevance in the present case is Article 2(b), namely, FIFA's objective to organise its own international competitions.

117. The Panel recalls that insofar as FIFA's administrative decision-making is concerned, one of the principle decision-making bodies within the FIFA governance structure is the FIFA Council. It is empowered under Article 34(12) of the FIFA Statutes to:

"[…] deal with all matters relating to FIFA that do not fall within the sphere of responsibility of another body, in accordance with these Statutes".

118. When the FIFA Council is between meetings and in cases of urgency, the FIFA Bureau is empowered under Article 38(1) of the FIFA Statutes to take decisions:

"The Bureau of the Council shall deal with all matters within the competence of the Council requiring immediate decision between two meetings of the Council. The Bureau of the Council shall consist of a maximum of seven members. The FIFA President and the six confederation presidents are ex officio members of the Bureau of the Council".

119. The Panel observes that the present case concerns, in particular, FIFA's flagship competition, the World Cup 2022. The World Cup Regulations came into force on 15 March 2019 and Article 2, establishes an organising committee that is responsible for supervising the organisation of the World Cup 2022 Preliminary Competition and taking decisions in respect of that competition's organisation. Pursuant to Article 31:

"Matters not provided for in these Regulations or any cases of force majeure shall be decided by FIFA".

120. The Panel notes that Article 31 of the World Cup Regulations provides for two situations in which FIFA is competent to take a decision, namely: matters not expressly provided for in those regulations or *force majeure*. *Force majeure* is not defined in the FIFA Statutes. The concept of *force majeure* is also not defined in statute under Swiss law. However, according to the Swiss Federal Tribunal, *force majeure* is a valid concept being the presence of an unforeseeable and extraordinary event that occurs with irresistible force beyond the control of the person concerned (CAS 2021/A/7673 and CAS 2021/A/7699, para 85 and authorities cited; CAS 2015/A/3909, para 86 and authorities cited, including SFT 2C_579/2011). The concept is most frequently invoked in the context of a contract, in which one party argues that it is unable to perform a contractual obligation because of a *force majeure* event there being described in

CAS jurisprudence as *"an objective impediment beyond the control of the obliged party that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible"* (CAS 2018/A/5537, paras 69 - 70). The Panel notes that military conflict is considered a classic *force majeure* event, and has been accepted as such by previous CAS Panels (*see* TAS 2020/A/7065, para 111; and CAS 2014/A/3463 & 3464, para 80).

121. A not insubstantial part of the Appellant's case that was put to the Panel at the hearing focussed on the concept of *force majeure*. In the Appellant's view, a *force majeure* situation did not arise and so consequently FIFA had no legal basis on which to take the Appealed Decision. The Appellant argued in its Appeal Brief that a *force majeure* event did not arise because for the concept to apply, the party invoking it, in this case FIFA, would be prevented from doing something, and, in its view, matches involving the Appellant could be played on neutral grounds. In oral submissions, the Appellant's counsel elaborated further and submitted that: there was no contract between the Appellant and the Respondent to which the doctrine applied; the military action was not an unforeseeable or extraordinary event because tension had been building up between Russia and Ukraine for a long time, and it was possible for FIFA to hold football matches involving the Appellant's national teams because several countries had indicated that they would host the matches. There were also no real security problems associated with holding matches involving the Appellant's teams on neutral grounds. The Appellant's counsel submitted that whereas the military conflict was beyond FIFA's control, sanctioning the national associations who refused to play against the Appellant's teams was very much within FIFA's control. The Appellant's counsel contended there were no difficulties with the Appellant's teams travelling to matches; for example, there were no restrictions regarding Russians travelling to Qatar. In the Appellant's view, FIFA's reliance on *force majeure* was misplaced and offered no legal basis for the Appealed Decision.

122. The First Respondent submitted in oral argument that the entire situation was not covered expressly in its Statutes or regulations, that the impossibility of holding matches had to be evaluated, that national associations were refusing to play the Appellant's team, travel restrictions existed, and despite the Appellant's assertions otherwise, the military conflict was not foreseeable, and more specifically, neither were the consequences that followed from it. The First Respondent submitted that the competence to take the decision existed irrespective of the *force majeure* argument since Article 31 of the World Cup Regulations directed that FIFA was competent to take the decision in relation to matters not provided for in the World Cup Regulations. While the Second Respondent's counsel acknowledged the existence of the contractual doctrine of *force majeure,* he submitted that the present case had nothing to do with that doctrine, but rather with the definition of *force majeure* in the context that it appeared in the FIFA Statutes, which was in relation to FIFA's residual power to make decisions within the scope of its objectives for which its Statutes did not expressly provide. These arguments from the Respondents side were not, as appears identical, but did lead to the same conclusion i.e. that there was a legal basis for the Appealed Decision.

123. A majority of the Panel endorses that conclusion. The majority finds that neither the FIFA Statutes nor the World Cup Regulations provided expressly for the situation in which the First Respondent considered that it needed to respond urgently in light of the impending Playoffs

for the World Cup 2022. Therefore, the competence is provided by the first of the situations expressed in Article 31. The majority also accepts that the consequences of the military action were a *force majeure* event. Therefore, the competence is provided for by the second of the situations expressed in Article 31.

124. The majority finds that the military action was the catalyst for a series of extraordinary and unforeseen consequences that in themselves created a *force majeure* event in the context of the justification for the exercise of a sports association's discretion in circumstances for which the sports association's Statutes, in this case FIFA's, did not specifically provide. The majority finds, that the *force majeure* event was in the present case not so much the military conflict *per se*, as the extraordinary and unprecedented consequences that followed, namely: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community to the conflict; the imposition of sanctions and travel bans on Russian people and businesses; the uncertainty of the duration and scope of the conflict; and, the exceptional and widespread international public reaction against it. More specifically, from a football perspective: the refusal of the Third, Fourth and Fifth Respondents to play against Russia in the impending Playoffs for the World Cup 2022; the prospect of other FIFA members adopting a similar stance (which, in the event proved to be so); the effect these refusals might have for the organization of the World Cup 2022; and the related security concerns. The majority considers that the Appellant's arguments failed to take sufficient account of these combined matters for collectively the evidence, even if individually of different weight, was compelling. They could point to no event which provided a precedent which should have prompted a decision from FIFA which preserved the Appellant's right to participate in FIFA's competitions.

125. Since these extraordinary and unforeseen circumstances fell between two meetings of the FIFA Council for which an immediate decision by way of response was required, by virtue of Article 38(1) of the FIFA Statutes, the majority finds that the FIFA Bureau was the appropriate FIFA body to make the decision. Accordingly, the majority finds that the FIFA Bureau was competent to make the Appealed Decision as something that was not expressly provided for within the World Cup Regulations or its Statutes and was a *force majeure* event.

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

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

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

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

128. Since the Appellant did not provide sufficient explanation in its Appeal Brief or at the hearing as to the relevance of its reference to these, the Panel does not find it necessary to consider the relevance of the fundamental principles of Olympism further, other than to say that it is not therefore to be taken as endorsing any suggestion of discrimination in the Appealed Decision. Suffice it to say, that the Panel observes that these principles are not contained in the FIFA Statutes and both Respondents acknowledged, and the Panel accepts, that while the Appealed Decision was in line with the IOC Recommendation and also with decisions taken by other sports organisations, it was not taken on the basis of either the IOC Recommendation or the stance adopted by other international sports organizations.

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

129. Having found that the Appealed Decision was within the FIFA Bureau's competence to take, the issue for the majority to determine is whether it violated the FIFA Statutes, mandatory rules of Swiss law or otherwise amounted to an improper use of a sports association's power, bearing in mind also the sports association's statutory objectives and the margin of discretion afforded to a sports association's decision-making.

130. The Appellant submitted that the Appealed Decision:

a. violated the FIFA Statutes, specifically Articles 16, Article 13, Articles 15 and 19, Article 4, and Article 14(1)(b);

b. was disproportionate;

c. breached the principle of equal treatment;

d. violated the Appellant's personality rights recognised in Article 28 of the SCC; and

e. violated Swiss competition law.

131. The Respondents rejected the allegations. The First Respondent, in particular, stated that the Appealed Decision was *"warranted and necessary"* in view of the unprecedented widespread reaction of the international community, including the imposition of numerous financial and logistical sanctions against Russia, which prevented it from running its competitions smoothly with the participation of the Appellant's national teams. The First Respondent also emphasised the wide autonomy and margin of discretion that it had when deciding on matters related to the competitions which it organised, *"especially under existing circumstances"*.

a) Alleged Violation of the FIFA Statutes

132. Article 16 of the FIFA Statutes empowers the Congress, and the FIFA Council in certain circumstances, to suspend a football association's membership if that member *"seriously violates its obligations"*. The Panel finds that there is no evidence that the Appellant seriously breached its obligations, but also, no evidence that FIFA relied on this provision to suspend the Appellant. On the contrary, the Panel finds that the Appellant is still a FIFA member with all the rights and that obligations that that entails, excepting, of course, the right to participate in FIFA competitions (discussed further in the following paragraphs) which has been temporarily suspended. The Panel finds no breach of Article 16 has occurred.

133. Article 13 of the FIFA Statutes outlines the rights which a member association has, and which include in Article 13(e), *"the right to take part in competitions organised by FIFA"*. The Appellant states that the Appealed Decision violates this right and that the FIFA Statutes do not permit FIFA to limit this right or to otherwise suspend the Appellant from participation. The Panel accepts that FIFA has a legitimate interest in ensuring and maintaining that its competitions run smoothly (*see* also Order on First Request, para 78). The majority is of the view that FIFA's interest, however, must be balanced against other interests as well, which in the circumstances of this case in particular is the Appellant's right to participate in FIFA competitions provided in Article 13(e) of the FIFA Statutes.

134. The Panel accepts that the Appealed Decision temporarily denies the Appellant the right to participate in FIFA competitions. Neither Article 13 nor any other provision of the FIFA Statutes expressly state the circumstances in which a member association may be denied the right to participate, although the Panel accepts that this would be implicit in the exercise of the power under Article 16, which in the present case has not been invoked. The Panel observes that the rights contained in Article 13 are not stated to be *absolute* and the Appellant did not make any submissions that they were. The Panel finds that it would be practically difficult or even impossible for a member's right to participate in competitions to be an *absolute* right, since there are likely other circumstances when the right of participation must give way to other rights or interests, such as another member's right to participate or the wider interests of the football community or a *force majeure* event, similar in impact to the *force majeure* event that the majority finds occurred in the present case.

135. The Panel accepts that denying a member association the right to participate in FIFA's competition when that member has not violated FIFA rules or regulations and for which its membership has not been suspended under Article 16, denies that member and its stakeholders the benefits that participation provides, e.g. financial incentives, commercial opportunities and prestige, amongst others, and is a decision that should not be taken lightly, and even then, only in the rarest of circumstances. Nevertheless, in the case of these unique and unprecedented circumstances, the majority finds that the Appellant's right of participation was surpassed by FIFA's interest of ensuring that its flagship competition, from which considerable income is generated to support the wider football community around the globe, and indeed the rest of its competitions, ran smoothly and with minimum disruption in light of the prevailing circumstances.

136. The majority finds that in the circumstances that existed, and still prevail at the time of writing this decision, maintaining the Appellant's right to participate in FIFA competitions would have made it extremely difficult, if not impossible, for FIFA to stage the kind of World Cup 2022 competition that it envisaged or indeed any other FIFA competition. The majority notes that while the bulk of the submissions in the present case focussed on the impending World Cup 2022, the considerations highlighted here must apply also to other FIFA competitions e.g. the FIFA Women's World Cup 2023.

137. The Panel does not need to consider the degree of likelihood with which a World Cup competition might have been achievable were the Appellant's participation retained. In the majority's view, at the time of taking the decision and with a degree of foreseeability based on all the information available to the FIFA Bureau at the time the decision was taken, it is sufficient to find that staging the kind of competition which FIFA envisaged, and to which the rest of the world is accustomed, would have been all but impossible to achieve when considering the travel bans and sanctions imposed on Russia and Russian people, the heightened security concerns that the Appellant's national team's participation in football presented, the refusal of three national associations to play against the Appellant's national team in the impending Playoffs, and the possibility that other member associations might adopt a similar position. Had it been possible to stage it at all in some severely truncated fashion, it would have been a World Cup in name only. Accordingly, the majority finds that no breach of Article 13 occurred.

138. The Appellant submitted that Article 15 of the FIFA Statutes obliges FIFA's member associations to include in their statutes, provisions relating to certain matters, including the requirement *"to be neutral in matters of politics and religion"* (Article 15 (a)). Furthermore, pursuant to Article 19(1), *"[each] member association shall manage its affairs independently and without undue influence from third parties"*. In relying on these Articles, the Appellant submitted that the Third, Fourth and Fifth Respondents, breached the principle of political neutrality by refusing to play against the Appellant's national team. The Appellant submitted that this was evident from the public statements made by the national associations when communicating their refusal to play against Russia, and by supporting their behaviour, it alleged that FIFA discriminated against the Appellant on a *"clearly political basis"* thereby breaching Article 4.1 of the FIFA Statutes.

139. The Appellant alleged that FIFA breached the principle of political neutrality when taking the Appealed Decision because it was under pressure from the member associations that had publicly announced their refusal to play the Appellant's national teams. In oral submissions, the Appellant elaborated further on that argument, stating that it was clear that the Appealed Decision was a consequence of a reaction to: the views of member associations; the majority of governments of European countries; and the general public's view against the actions taken by the Russia in Ukraine. Further, it submitted that FIFA was also influenced by the IOC's political stance and the IOC Resolution because the Appealed Decision and the IOC Resolution were passed on the same day. Finally, it stated that there was no proof that the Appellant or its players supported the Russian State's actions.

140. The First Respondent denied that the Appealed Decision breached *"any form of political neutrality, insofar as it is simply not a political decision"* but was *"objectively necessary and justified to organize the World Cup 2022 qualifiers and other FIFA competitions given the circumstances which FIFA was facing"*. It further stated that *"although FIFA [disapproves of] the Russian Invasion of Ukraine, this was not the legal reason for taking the Appealed Decision"*. The First Respondent contended that the alleged breach of political neutrality by the national associations was not proven, and that in any event a breach of political neutrality by the national associations (if proven) would not fall under the scope of these proceedings nor constitute a reason for the annulment of the Appealed Decision. The Second Respondent asserted that the Appellant was suspended from participation because of an objective situation created by the military conflict and not because FIFA (or UEFA) politically agrees with Ukraine.

141. The Panel observes that Articles 15 and 19 are obligations directed towards member associations and not towards FIFA. Articles 15 and 19 require member associations to remain neutral in political matters and ensure that their decision-making is independent and not influenced by external parties, such as e.g. a national government. The Panel agrees with the First Respondent that any allegation of a breach of Articles 15 and 19 by a member association falls outside the scope of these proceedings and, accordingly, the Panel considers that it is not required to make findings as to whether the Third, Fourth and Fifth Respondents have in fact breached Articles 15 and 19.

142. On the issue of whether FIFA has discriminated on a political basis against the Appellant contrary to Article 4.1 or breached the principle of political neutrality outlined in Article 4.2, the Panel notes that Article 4 of the FIFA Statutes provides as follows:

> *"1. Discrimination of any kind against a country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion.*
>
> *2. FIFA remains neutral in matters of politics and religion. Exceptions may be made with regard to matters affected by FIFA's statutory objectives".*

143. The Panel finds that the Appealed Decision does not discriminate against *a country, private person or group of people,* on the basis of *political opinion*. There is no evidence that the decision was taken because of the political opinion of the Appellant or that it was taken because of FIFA's view of the military conflict. Whether the Appealed Decision discriminated on account of *national origin* was not an issue for consideration before the Panel.

144. The Panel observes that there is no definition of *"political neutrality"* in the FIFA Statutes, other than the reference in Article 4.2 to the requirement for FIFA to remain neutral in political matters or in Article 19 for member associations to manage its affairs independently and without undue influence from an external third party. Based on the information available to it, the Panel finds no evidence that the FIFA Bureau arrived at the Appealed Decision other than by its own independent decision-making. There is no evidence, for example, that the

FIFA Bureau took the Appealed Decision because of the IOC Resolution or because of a direction from another external third party.

145. As the grounds for the Appealed Decision show, the FIFA Bureau was cognisant of the positions adopted by the Polish FA, the Swedish FA and the Czech Republic FA, and also the reasons why those associations had decided not to compete against the Appellant's national team in the impending Playoffs. The grounds for the Appealed Decision record FIFA's view that, *"[those] decisions are both fully understandable and cannot be criticized from either a legal or moral point of view"*. Whilst the position adopted by the associations was clearly a consideration in the FIFA Bureau's decision-making process, the Panel finds that it was one of many considerations that the FIFA Bureau took into account because the evidence before the Panel showed that all the consequences of the military action for the organization of FIFA competitions were considered. The Panel considers that the FIFA Bureau acted as it did in response to a set of extraordinary and unforeseen circumstances and not because it favoured a particular political position. While the Panel accepts that the effect of that decision may lend itself to the perception that FIFA favoured a political position, that was an unavoidable consequence of the decision it took.

146. The Panel further finds that while the Appealed Decision may have been consonant with the views implicit in the IOC Resolution or the views of European governments or even the views of the general public, there is no evidence that it was taken only because of those views or that it was taken in support of those positions or that it would not have been the same decision irrespective of those views. In the majority's opinion the Appealed Decision was taken to further FIFA's statutory objective of organizing its competition and to ensure minimum disruption to and the smooth running of FIFA's competitions, which, the majority finds was within FIFA's margin of discretion in the circumstances with which the FIFA Bureau was faced. The majority accordingly finds that on the evidence available to it, no breach of Article 4 occurred.

147. The Appellant alleged that the national associations who refused to play against it were in breach of Article 14(1)(b) and also Article 69 of the FIFA Statutes. It alleged that FIFA supported and endorsed this position whereas it ought to have required the national associations to play the matches. The First Respondent submitted that the Appellant had failed to show how the alleged violation of Article 14(1)(b) would render the Appealed Decision null. Furthermore, it contended that the violation of membership obligations may lead to disciplinary sanctions, although noting that the imposition of such sanctions for such violations are not automatic.

148. The Panel observes that Article 14(1) outlines a member association's obligations, which include at 14(1)(b), the obligation to take part in competitions organised by FIFA. The Panel recognizes that, it is at least arguable that the Swedish FA, Polish FA and Czech Republic FA were in breach of their obligations towards FIFA, especially coupling the obligation in Article 14(1)(b) with Article 69 which states, *"[the] Council shall compile an international match calendar that shall be binding upon the confederations, member associations and leagues […]"* which creates a strong inference that it is mandatory for member associations to play in FIFA competitions.

However, the Panel agrees with the First Respondent that whether there was in fact a breach of Article 14(1)(b) of the FIFA Statutes is an issue more properly addressed through disciplinary proceedings, if any – none having to date been taken – than in these proceedings, and in any event such breach would not render the Appealed Decision invalid. Whether the positions adopted by the Polish, Swedish, and Czech FAs violated any proscription against taking action based on political opinion in violation of the relevant statutory provisions is simply not an issue before the Panel.

149. The Panel accepts that, ordinarily, a refusal to play by one member against another in a FIFA competition should expose the former to the risk of sanction and should not result in any form of detriment to the latter, in particular not its exclusion from the competition, and the Panel's Award should not be construed to contrary effect.

150. Nonetheless, the majority can only repeat that the circumstances of this particular case are to date unique. The Panel notes the First Respondent's oral submission that while national associations are obliged to take part in competitions, they cannot be compelled to take part, and that was the situation with which FIFA found itself on 28 February 2022. Not only had the member associations in the Appellant's group for the Playoffs refused to play the Appellant's team but there was the potential for other associations to take the same stance further into the competition, with the potential result, had the Appellant's national team remained in the competition, that the Appellant's team would have progressed through the World Cup for reasons other than sporting merit. Even had FIFA been able to impose immediate sanctions on a number of recalcitrant member associations, that would not itself have guaranteed that those associations would have come to heel and decided to play in the World Cup. The uncertainty of what was to come, coupled with the necessity to make an immediate decision, contributed to the suspension from participation being imposed. On that basis, the majority accepts that given the information available on 28 February 2022, and the extraordinary and unforeseen circumstances that the First Respondent was faced with, the FIFA Bureau's decision to suspend the Appellant's participation despite the refusal of member associations to play against the Appellant's team was a reasonable decision to take.

b) The Appealed Decision is disproportionate

151. The Appellant submitted that in disciplinary matters the principle of proportionality requires the competent decision-making body to weigh up the individual interest of the member and the general interest of the federation. It contends that the individual is entitled to the mildest possible measure that is still likely to achieve the intended goal. In the Appellant's view, FIFA over reacted and could have taken a less draconian measure than a suspension, e.g., it could have organized the Appellant's matches behind closed doors or changed the schedule such as the postponement granted to the Ukrainian Football Association on 8 March 2022. The final draw of the World Cup 2022 took place on 1 April 2022 prior to the completion of qualification and the two winners of the inter-confederation playoffs would not have been known at the time of the draw. The final draw could therefore have been made without final determination of the qualifier on the Appellant's pathway. As to safety and security, the

Appellant submitted that the Appealed Decision did not give detailed or sufficient consideration to the possibility of holding matches on a neutral pitch or other measures which could secure these objectives. The Appealed Decision does not provide specific grounds for the imposition of a suspension rather than other less severe measures.

152. The First Respondent submitted that insofar as the Appellant asserts that the Appealed Decision is a disciplinary decision, then proportionality arguments are irrelevant. Insofar as proportionality may be relevant, the Appealed Decision was proportionate because it excludes participation of the Appellant's national teams from FIFA competitions and still allows the Appellant to continue all its domestic activities and organize football competitions in Russia. In FIFA's view, on the balance of interests, granting the relief sought would *"lead to sporting chaos for FIFA"* whose competitions (including its flagship World Cup 2022) would be disrupted. The Second Respondent also submitted that the Appealed Decision was not disproportionate. It stated that the Appellant's suggestion that *"it would be perfectly possible to organize the Appellant's matches […] on neutral territory and behind closed doors if necessary"* did not address the legitimate security concerns that have been raised or explain how this measure would be proportionate as regards to the other teams who played against the Appellants. It submitted that it was unrealistic to claim that playing in neutral venues and/or without spectators would avoid trouble when considering the current worldwide sentiment against the Russian State.

153. The Panel notes that while the Appealed Decision is not a disciplinary decision, as it has found above, the Panel is entitled to assess the proportionality of the measure within the scope of its review of the exercise of FIFA's discretion, and arguments regarding proportionality are relevant. The majority finds that at the time the Appealed Decision was taken, the Appealed Decision was a proportionate response to the situation as the FIFA Bureau appraised it to be on 28 February 2022, taking into consideration the Appellant's interest, FIFA's interest and the interests of the global football community.

154. The Panel observes that FIFA had already, on 27 February 2022, taken the First Decision which stated that no match was to be played in Russia and matches against the Appellant's team were to be played on neutral grounds. However, in the very fluid situation that FIFA found itself to be in between 24 February 2022 and 28 February 2022, the majority accepts FIFA's view that maintaining that earlier position had become untenable because of the travel restrictions, sanctions, security concerns, the reaction of member associations, widespread public reaction against the military conflict and, in particular, the uncertainty of the duration and scope of the conflict.

155. The Appellant submitted that while travel is *"more complicated"* it is *"not impossible"*. The Panel acknowledges that since 28 February 2022 travel routes may have been adapted and that travel for Russian players, football administrators and teams, while more complicated may not now be impossible. As noted above, the Panel, however, is not considering events that have occurred since 28 February 2022. Its role is not to assess the ease with which Russian citizens and sports teams may travel around the world now but to consider the proportionality of the Appealed Decision taken on 28 February 2022 under the circumstances as FIFA appreciated

them to be at the time or reasonably predicted them to become. On 28 February 2022, travel restrictions were already in place, making travel to and from Russia challenging, and in the Panel's view, were a relevant consideration for FIFA to take into account when assessing the participation of the Appellant's teams in its competitions.

156. The Appellant submitted that FIFA could have changed the match schedule and postponed its Playoff match or delayed confirming the qualifying team on the Appellant's pathway rather than suspending its national team. Regarding these particular suggestions, the majority defers to FIFA's considerable expertise to manage its competition match schedule as it sees fit. The majority observes that making a decision to suspend the Appellant's national team, rather than delaying matches in the hope that the situation would improve in time, is not a disproportionate response, given the uncertainty of the scope and duration of the military conflict.

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

158. Overall, the majority finds that the Appealed Decision was a proportionate response to the very fluid situation that FIFA found itself to be in on 28 February 2022. The majority finds that FIFA's interest of organizing its competitions prevailed when considering, in particular, amendments to the international match calendar a few months ahead of the World Cup 2022 and the security concerns for the organization of a competition in which the Appellant's national team may participate.

c) The Appealed Decision breached the principle of equal treatment

159. The Appellant submitted that when making its decision, FIFA was required to react in a similar manner to previous situations of conflict between States. It asserts that FIFA and UEFA are aware of, and had taken steps to address, the conflict between Russia and Ukraine *"for years"*. Since Russia annexed Crimea in 2014, a Russia/Ukraine team match has been prohibited for political reasons in all tournaments except for play-offs at the final stage of tournaments. The escalation of tension between the two countries was not a *"new argument"* on which FIFA could

adopt the Appealed Decision. Furthermore, there were other examples of conflict situations which had not resulted in the suspension of a sports federation or representative team e.g. neither the Vietnam War between 1955 – 1975, the Iran/Iraq War in 1980 – 1988, or military operations in Afghanistan in 1979-1989 and 2001-2021. There was also no act of any competent international body obliging FIFA to suspend Russian sports teams from international competitions such as, for example, a United Nations resolution. In 1948, German athletes were not allowed to compete in the Munich Games following the decision of the International Military Tribunal at Nuremberg in 1946; and in 1992, paragraph 8(b) of Resolution 757 of the United Nations Security Council resulted in the expulsion of Yugoslav athletes from international competitions, but these situations were not comparable to the present case. Moreover, FIFA had not suspended the Belarusian teams from its competitions. The Respondents deny a breach of the principle of equal treatment.

160. The Panel does not consider it helpful to compare previous global conflicts and the responses of other international sports federations in relation to a particular country's involvement in those conflicts. The Russian State's annexation of Crimea or the activities of the Assad regime in Syria, both recent examples of military conflict, have not, for better or for worse, elicited the same global reaction from governments, non-governmental organisations, international bodies or the wider public (whether or not in the view of some people or entities, it should have). The reality is that this military conflict has elicited an unprecedented global reaction, including amongst the general public, and it was the consequences of that reaction to which FIFA considered it was required to act in order to fulfil its statutory objectives.

161. The Panel was referred to the decisions of the European Table Tennis Union Board of Appeal dated 26 April 2022 and the Fédération Internationale de Luge de Course Court of Arbitration decision dated 7 April 2022, both of which dealt with the issue of involvement of Russian teams or athletes in their respective sports, and concluded to varying degrees that they should not be so excluded. The Panel was also referred to the Lawn Tennis Association's decision not to permit Russian tennis players to participate in Wimbledon in 2022, and the Women's Tennis Association (WTA), ATP and ITF decisions in response, to remove ranking points for the Wimbledon tournament, and it is a matter of public record that World Athletics have suspended Russian teams and athletes (other than so termed neutral athletes) on the basis that according to its President, such sanctions *"appear to be the only way to disrupt and disable Russia's current intentions and restore peace"*.

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.

163. Finally, with regards to the Belarusian FA and the participation of its national teams, the Panel accepts the First Respondent's explanation that no action was taken with respect to the Belarusian FA because at the time the Appealed Decision was taken, the Belarusian national team had already ended its World Cup 2022 qualifying campaign on 13 November 2021 by finishing last in Group E and did not qualify for the Playoffs. There was, accordingly, no disruption to the integrity or the smooth-running of the World Cup 2022 and no need for a decision in respect of the Belarusian FA.

164. For the above reasons, the Panel finds that the Appealed Decision did not breach the principle of equal treatment.

d) The Appealed Decision violated the Appellant's personality rights recognised in Article 28 of the Swiss Civil Code

165. The Appellant alleged that the Appealed Decision violated its personality rights under Article 28 SCC, in particular its rights to economic development and fulfilment, and to honour (*see* ATF 134 III 193, 4.3 to 4.6) because it deprived the Appellant of important bonuses and implied that the Appellant's qualification would bring the world of football into disrepute. It submitted that there was no overriding FIFA interest to justify the serious violation of the Appellant's personality rights.

166. The First Respondent denied that the Appealed Decision infringed the Appellant's personality rights and submitted that the Appellant had not proved the alleged violation. Even if the Appealed Decision infringed Article 28(2) SCC, (which was denied) the infringement was justified by FIFA's overriding interest and statutory objectives of ensuring that its competitions ran smoothly, in the spirit of fair play and that their integrity was always protected. The Second Respondent did not challenge the Appellant's contention that the Appealed Decision infringed the Appellant's personality rights. It submitted, however, that FIFA's legitimate interest of protecting the integrity and safety of its competitions justified the infringement and that the Appealed Decision did not unlawfully infringe the Appellant's personality rights.

167. Article 28(2) of the SCC provides that:

"1. Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.

2. An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law".

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

"The notion of «personality» (or of «personhood») is to be characterized by reference to the fundamental attributes which every person, and in some measure every legal entity such as an association or a corporation,

has a right to see protected against external intrusion and interference. It is difficult to find definitions in the abstract as there is an indefinite number of liberties, varying from time to time and from country to country, which can be encompassed within the concept of personality rights. Examples are core rights related to privacy, name and personal identity, physical integrity, image, reputation, marriage, family life, sexual life and the like" (CAS 98/200, para 68).

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

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

Freely translated into English this means:

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

170. Although the Panel has accepted elsewhere in this decision that it is likely that the Appealed Decision has had an adverse impact on Russian football, the extent of that impact has not been proven. The Panel was not presented with any evidence that would satisfy it to the level of comfortable satisfaction that an infringement of the Appellant's rights to economic development and fulfilment, and to honour had occurred. The Panel, therefore, finds that on the basis of the evidence available to it, no infringement of Article 28 of the SCC has occurred.

171. In any event, assuming (*quod non*) that an infringement even arises, the majority agrees with the Respondents that an incursion on the Appellant's personality rights in the circumstances of the present case are likely justified by FIFA's overriding interest of ensuring that its competitions run smoothly and FIFA's security concerns, both of which would amount to an overriding private interest that may justify the infringement if one were found to have occurred, under Article 28(2) of the SCC.

e) The Appealed Decision violated Swiss competition law

172. The Appellant alleges that the Appealed Decision violates Swiss competition law because FIFA as an association within the meaning of Article 60 ff of the SCC and an enterprise within the meaning of the Swiss Cartel Act (*see* TC VD, CM11.033798), and occupies a dominant position on the market for professional football activities throughout the world. It further alleges that the Appealed Decision is an act of obstruction within the meaning of Article 7 of the Swiss Cartel Act, which is not justified, as well as alleging several other competition law infringements.

173. The Panel notes that the onus is on the Appellant to establish the breach of Swiss competition law and that it did not submit any economic or expert evidence to support the existence of a

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

D. Conclusion

174. For the reasons set out above, a majority of the Panel finds that in the extraordinary and unprecedented circumstances with which FIFA was faced and to achieve its statutory objectives, the Appealed Decision was a reasonable, proportionate and, arguably, necessary, decision to take in order to provide safe, secure and orderly international football events for the rest of the world. The majority finds that the decision did not breach the FIFA Statutes, nor mandatory provisions of Swiss law, and was not an improper use of FIFA's discretionary power, and falls within the margin of discretion that FIFA has when making decisions that further its statutory objectives.

175. The Panel notes that it was unfortunate that FIFA was required to take the Appealed Decision, for which the FUR, Russian football teams, clubs, and players have themselves no responsibility, but which has had, and will almost certainly continue to have, an adverse effect on them and on Russian football generally, including at the grassroots level. The Panel is cognisant that the majority view is based on extraordinary and unforeseen circumstances arising during a particular four-day period, and that over time the circumstances that persuaded the majority will change. The Panel recalls FIFA's position outlined in the grounds for the Appealed Decision that the decision is a temporary one, *"until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted"* and very much hopes, for the benefit of the entire global football community, that circumstances develop in a way that the suspension can properly be lifted.

176. For the reasons set out above, the Panel dismisses the appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 March 2022 by the Football Union of Russia in the arbitration *CAS 2022/A/8708 Football Union of Russia (FUR) v. Fédération Internationale de Football Association (FIFA) et al.*, is dismissed.

2. The decision rendered by the Bureau of the Council of the *Fédération Internationale de Football Association* on 28 February 2022 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.