Arbitration CAS 2022/A/8865 FC Zenit JSC v. Union des Associations Européennes de Football (UEFA) & CAS 2022/A/8866 FC Sochi v. UEFA & CAS 2022/A/8867 PFC CSKA Moscow v. UEFA & CAS 2022/A/8868 FC Dynamo Moscow v. UEFA, award of 25 November 2022 (operative part of 15 July 2022)

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

Football
Removal of a member association and of its teams from the access list to participate in UEFA competitions
Existence of a decision
Standing to sue
Nature of the decision
Scope of review of the CAS
Political neutrality
Personality rights
Proportionality of the measure

1. **The existence of a decision does not depend on the form in which it has been issued. A communication intended to be considered a decision shall contain a ruling which aims to affect the legal situation of its addressee or other parties. A ruling issued by a sports-related body refusing to deal with a request can be considered under certain circumstances to be a decision. The decisive criterion is the objective effect of a decision on its addressee and not the subjective intent of the authority that renders the decision.**

2. **The issue of standing to sue is a matter of substantive law, and is treated as an issue of merits and not as a question relating to the admissibility of an appeal. A party must have a current interest worthy of protection that can be addressed or rectified by the claims or the appeal being made. Generally, in order to have standing to sue a party must be sufficiently affected by an appealed decision and have a tangible interest of a financial or sporting nature at stake. Also relevant to the issue of standing is any provision in a sports association's statutes that permit a party to appeal a decision. The UEFA Statutes provide in Article 62.2 that, *"only parties directly affected by a decision may appeal to the CAS".***

3. **A decision taken by a sports association can be characterised as either an administrative decision or a disciplinary decision. The decision to remove a member association and its teams from the access list to participate in UEFA club competitions and to adjust the competition coefficient points assigned to the member association for a football season may be properly characterised as an administrative decision. It is clearly not a sanction imposed to enforce compliance with international law obligations, encourage the peaceful settlement of international disputes or to maintain security, as sanctions**

adopted by governments are typically imposed to achieve.

4. **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.**

5. **The principle of political neutrality requires that no political interference whatsoever is exercised on the activities of a sporting organisation. Indeed athletes and sport organisations must be free to exercise their sport without any political interference. Although a military conflict undoubtedly raises political issues, that does not lead automatically to the conclusion that any decision taken by a sports organisation that touches on a military conflict breaches the principle of political neutrality. A decision can be taken in response to a set of extraordinary and unforeseen circumstances induced by a military conflict, and not because the sports organisation favours a particular political position.**

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.**

7. **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.**

I. PARTIES

1. FC Zenit JSC, the Appellant in CAS 2022/A/8865, is a professional football club situated in St Petersburg, Russia. It is affiliated to the Football Union of Russia ("FUR"), which, in turn, is a member of the Union des Associations Européennes de Football ("UEFA"). It plays in the Russian Premier League which is the top professional league in Russia.

2. FC Sochi, the Appellant in CAS 2022/A/8866, is a professional football club situated in Sochi, Russia. It is affiliated to the FUR, which, in turn, is a member of UEFA. It plays in the Russian Premier League which is the top professional league in Russia.

3. PFC CSKA Moscow, the Appellant in CAS 2022/A/8867, is a professional football club situated in Moscow, Russia. It is affiliated to FUR, which, in turn, is a member of the UEFA. It plays in the Russian Premier League which is the top professional league in Russia.

4. FC Dynamo Moscow, the Appellant in CAS 2022/A/8868, is a professional football club situated in Moscow, Russia. It is affiliated to FUR, which, in turn, is a member of UEFA. It plays in the Russian Premier League which is the top professional league in Russia.

5. UEFA (the "Respondent") is the 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 the Fédération Internationale de Football Association ("FIFA").

6. Collectively, FC Zenit JSC, FC Sochi, PFC CSKA Moscow, and FC Dynamo Moscow shall be referred to as "the Appellants" or "the Clubs".

7. Collectively, the Appellants and the Respondent shall be referred to as "the Parties".

II. INTRODUCTION

8. This is an appeal against a decision taken by the UEFA Executive Committee on 2 May 2022 to remove the FUR and Russian clubs from the access list to participate in UEFA club competitions and to adjust the competition coefficient points assigned to FUR for the 2022/23 football season (the "Appealed Decision"). Access to the UEFA Champions League, UEFA Europa League and UEFA Europa Conference League (collectively, "the Various Club Competitions") for UEFA's member associations and their clubs is determined by a coefficient system that ranks UEFA's member associations on an access list, which in turn determines the number of clubs that a member association may enter into the Various Club Competitions and the seeding of those clubs.

9. The Appealed Decision amended Annex A of the Regulations of the UEFA Champions League 2022/2023 ("Champions League Regulations"), Annex A of the Regulations of the UEFA Europa League ("Europa League Regulations") and Annex A of the Regulations of

the UEFA Conference League ("Conference League Regulations") (collectively, "the Competition Regulations") and provided as follows:

"…5. ***2022/23 UEFA club competitions***

- *UEFA Champions League (UCL), UEFA Europa League (UEL), UEFA Europa Conference League (UECL), UEFA Women's Champions League (UWCL) and UEFA Youth League (UYL)*

  As Russia will have no affiliated clubs participating in UEFA club competitions in the 2022/23 season, the respective access lists of the club competitions for the coming season will be adapted accordingly, taking into account the non-participation of the Russian clubs by applying the rebalancing principles set out in the competition regulations (see enclosed rebalanced access lists for UCL/UEL/UECL/UWCL). Furthermore, with regards to the coefficient points calculation for the 2022/23 season, Russia will be assigned with the lowest amount of coefficient points they have earned over the last five seasons, i.e. 4.333 points for the men's association club coefficient and 1.750 for the women's association club coefficient. …".

10. The Appealed Decision arose as a consequence of the Respondent's decision of 28 February 2022 to suspend all Russian representative teams and clubs from participation in UEFA competition matches *until further notice* (the "Suspension Decision"). The catalyst for the Suspension Decision was the commencement of a military conflict between Russia and Ukraine on 24 February 2022, which is continuing at the time of the Panel's Award. The Suspension Decision was the subject of an appeal under CAS 2202/A/8709 *Football Union of Russia v. Union of European Football Associations et al.* brought by FUR against UEFA and 11 of UEFA's member associations, which was submitted to this Panel. At the time that this proceeding was filed and heard, the outcome of CAS 2202/A/8709 was unknown.

11. The present proceedings primarily concern the exercise of UEFA's discretion to make amendments to the organisation of impending competitions to give effect to the Suspension Decision, which itself was taken in circumstances that the Panel considers merit the descriptive adjectives "extraordinary" and "unforeseen". The Panel in so describing them has in mind: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community, including the International Olympic Committee (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 bear in mind from a football perspective: the increasing number of UEFA national associations publicly stating their intention to not participate in matches against the FUR's teams; serious concerns about UEFA's ability to ensure the safety and security for all those who attended its matches; and the impact of travel bans to and from the Russian territory on the organisation of UEFA competition matches. All these circumstances provided the background to which the Suspension Decision, and subsequently the Appealed Decision, were taken and are relevant to the Panel's analysis.

12. When reaching its decision in the present case, 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 Appellants describe it as Russia's *"special operation in Ukraine"*. The Respondent refers instead to *"Russia's invasion of Ukraine"*. Be that as it may, the Panel repeats that it considers it unnecessary in the exercise of its adjudicative role to enter the debate or to offer a view on the nature of the conflict. It is concerned only with the correctness or otherwise of the exercise of a sports federation's discretion in the circumstances arising from the conflict.

III. FACTUAL BACKGROUND

A. Background Facts

13. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing on 11 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.

14. On 24 February 2022, a military conflict involving Russia and Ukraine started to unfold in Ukraine.

15. 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 also expressed concern and appealed for restraint and dialogue.

16. 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.

17. On 25 February 2022, the Executive Board of the International Olympic Committee ("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. …".*

18. On 25 February 2022, UEFA issued Circular No. 08/2022 in which it informed its 55 member associations, amongst other things, that: (i) the 2022 Champions League Final would be moved from St Petersburg in Russia to Paris in France; (ii) no UEFA competition match was to be played on the territories of either Russia or Ukraine until further notice; and (iii) it would continue to assess developments in the situation and that it *"may meet again in the following days to potentially take further decisions"* (the "First Decision").

19. On various dates between 26 February 2022 and 10 March 2022, the English FA, Irish FA, French Football Federation, the Football Association of Wales, the Scottish FA, the Czech Republic FA, the Norwegian FA, the Liechtenstein FA, the Polish FA, the Swedish FA, the Royal Netherlands FA, and the Icelandic FA informed publicly that their national teams would not play against the FUR's national teams, including in UEFA competitions.

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

21. 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 […]".*

22. On 28 February 2022, at an extraordinary meeting of the UEFA Executive Committee, the Suspension Decision was taken and stated that, *"in order to be able to achieve its statutory objectives, all Russian representative teams and clubs are suspended from taking part in UEFA competition matches, until further notice"*. The Suspension Decision was communicated to UEFA's member associations by way of Circular No. 10/2022.

23. On 1 March 2022, the European Clubs' Association ("ECA") issued a press release confirming that it endorsed the Suspension Decision. The ECA Executive Committee also suspended the involvement of its Russian members in ECA activities until further notice.

24. 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 Russian 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.

25. On 3 March 2022, at a meeting of the UEFA Executive Committee, it was decided that *"all Belarusian clubs and national teams competing in UEFA competitions will be required to play their home matches at neutral venues with immediate effect. Furthermore, no spectators shall attend matches in which the teams from Belarus feature as a host"*. The decision was communicated to member associations by Circular No. 12/2022.

26. On 7 March 2022, and in view of the Suspension Decision, UEFA made changes to some of its competitions, including the UEFA Women's U17 European Championship, the U17 European Championship, and the U19 Championship.

27. 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"*.

28. On 7 April 2022, the UEFA Executive Committee met to approve changes to the content of the Competition Regulations for the forthcoming 2022/23 football season.

29. On 2 May 2022, the UEFA Executive Committee took the Appealed Decision, together with a number of other decisions, and communicated all decisions to member associations in Circular No. 21/2022.

30. On 3 May 2022, the UEFA Executive Committee issued Circular No. 22/2022 which provided the following relevant registration procedure for UEFA's club competitions in Enclosure 1:

"1. …Regarding the admission to UEFA's club competitions, please refer to the criteria and procedures set out in Articles 3 and 4 of the regulations of the various competitions. The access list, which applies the coefficient ranking system to determine admission to these competitions, is included in annex A to these regulations.

…

4. Draws

The schedule of draws for the 2022/23 season is given below. Please also note that the 2022/23 fixture and draw list in FAME and TIME gives details of all UEFA club competition draws: dates, times, venues, competition stages and dates of matches.

…

- *UCL & UECL second qualifying round*	*Wednesday, 15 June 2022*
- *UCL, UEL & UECL third qualifying round*	*Monday, 18 July 2022*
- *UCL, UEL & UECL play-offs*	*Tuesday, 2 August 2022*
- *UCL group stage*	*Thursday, 25 August 2022*

UYL (UEFA Champions League path group stage)

…".

31. Since the military conflict commenced on 24 February 2022, other international federations, including the FIFA, Fédération Internationale de l'Automobile (FIA), World Athletics, the Union Cycliste Internationale (UCI), the Fédération Internationale de Ski (FIS), the International Biathlon Union (IBU), the International Boxing Association (IBA), the Fédération Internationale de Gymnastique (FIG) and the Fédération Internationale de Natation (FINA), and federations representing archery, badminton, baseball, basketball, canoeing, ice hockey, rugby, and volleyball, have taken various measures to suspend the participation of Russian federations and athletes.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 12 May 2022, the Appellants and FC Spartak Moscow each filed an appeal with the Court of Arbitration for Sport ("CAS") against the Respondent with respect to the Appealed Decision. In their respective Statements of Appeal, the Appellants and FC Spartak Moscow: nominated Mr Jeffrey G Benz, Attorney-at-law and Barrister in London, United Kingdom and Los Angeles, United States of America, as arbitrator; requested that the proceedings be consolidated, and that the proceedings be submitted to the same Panel as appointed to CAS 2022/A/8709 *Football Union of Russia v. Union of European Football Associations et al.*; and that there be an expedited procedure.

33. On 20 May 2020, the CAS Court Office initiated five arbitration procedures under the following references:

CAS 2022/A/8865 FC Zenit v UEFA

CAS 2022/A/8866 FC Sochi v UEFA

CAS 2022/A/8867 PFC CSKA Moscow v UEFA

CAS 2022/A/8868 FC Dynamo Moscow v UEFA

CAS 2022/A/8869 FC Spartak Moscow v UEFA

34. On 22 May 2022, in accordance with Article R51 of the Code of Sports-related Arbitration (2020 edition) (the "Code"), the Appellants and FC Spartak Moscow filed a joint Appeal Brief.

35. On 24 May 2022, the Respondent informed the CAS Court Office of its agreement to refer the procedures to the same Panel appointed to the case of CAS 2022/A/8709 and stated that it did not agree to an expedited procedure.

36. On 25 May 2022, the CAS Deputy Division President rejected the Appellants' request for an expedited procedure.

37. On 7 June 2022, the CAS Court Office issued, pursuant to R33, R52, R53 and R54 of the CAS Code and on behalf of the President of the Appeals Arbitration Division, the Notice of Formation of a Panel, constituted as follows:

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

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom and Los Angeles, United States of America (nominated by the Appellants)

Hon. Michael J. Beloff K.C., Barrister in London, United Kingdom (nominated by the Respondent)

38. On 7 June 2022, following FC Spartak Moscow's withdrawal of its appeal, the President of the Appeals Arbitration Division issued a termination order in the procedure *CAS 2022/A/8869 FC Spartak Moscow v. Union des Associations Européennes de Football (UEFA)*.

39. On 13 June 2022 and following consultation with the Parties, the CAS Court Office confirmed that the proceedings had been set down for a hearing by videoconference on 11 July 2022.

40. On 29 June 2022, in accordance with Article R55 of the Code, the Respondent filed its Joint Answer.

41. On 6 July 2022, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Appellants on 6 July 2022, and by the Respondent on 7 July 2022.

42. Also on 6 July 2022, the Appellants informed the CAS Court Office of their request for the Respondent to disclose a copy of the minutes of the UEFA Executive Committee meeting on 2 May 2022 at which the Appealed Decision was taken.

43. On 7 July 2022, the Respondent informed the CAS Court Office that there were no minutes of the meeting on 2 May 2022 but disclosed in lieu a memorandum and copies of email messages relevant to the taking of the Appealed Decision.

44. On 11 July 2022, a hearing in these proceedings took place by videoconference. Besides the Panel and Mr Antonio de Quesada, Head of Arbitration Services, the following people attended the hearing:

For the Appellants:

Mr Georgi Gradev, Legal Counsel

Mr Mikhail Prokopets, Legal Counsel

Mr Martin Kiss, Legal Counsel

Mr Kirill Korovkin, In-House Counsel for FC Sochi

Mr Ilya Kedrin, In-House Counsel for PFC CSKA Moscow

Mr Eduard Zadubrovsky, In-House Counsel for FC Dynamo Moscow

Mr Dmitri Dubovskikh, In-House Counsel of FC Dynamo Moscow

Mr Oleg Zadubrovskiy, In-House Counsel of FC Zenit JSC

Ms Anastasyia Malyarchuk, In-House Counsel for FC Zenit JSC

For the Respondent:

Mr Antonio Rigozzi, Legal Counsel

Ms Brianna Quinn, Legal Counsel

Ms Michaela Clicque, UEFA Senior Lawyer

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

confirmed. The Parties were then each given the opportunity to present their oral submissions and reiterated the substance of the arguments already put forward in their written submissions.

46. 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.

V. SUBMISSIONS OF THE PARTIES

47. The Appellants' submissions, in essence, may be summarized as follows:

A. General

a) Appellants' Position

- UEFA's amendments to the Competition Regulations were unlawful because of the procedure by which they were adopted and for substantive reasons. The main purpose of UEFA's action was to send a political message to Russia and not to protect the values and objectives of its competitions, their reputation, or their integrity.

b) Jurisdiction, Admissibility and Law

- Relying on Article R47(1) of the Code, Article 62.1 of the UEFA Statutes, and Articles 85 and 86 of the Champions League Regulations, the Europa League Regulations and the Europa Conference League Regulations, CAS has jurisdiction to decide an appeal against an internal final decision of a UEFA organ such as the UEFA Executive Committee.

- Relying on Articles R62.3 and 62.4 of the UEFA Statutes, and Articles R37(1) and R49 of the Code, the appeal was lodged with CAS in due form and time and is admissible.

- Relying on Article R58 of the Code and Article 64.1 of the UEFA Statutes, the applicable law is the UEFA Statutes (edition 2021), the UEFA Organisational Regulations (edition 2020) and the 2022 editions of the Competition Regulations, with Swiss law applying subsidiarily.

c) Burden of Proof

- The burden of proof is on UEFA to establish that for the purposes of the Appealed Decision: (i) there was an urgency to address the impact and consequences of the pending suspension of all Russian clubs from the upcoming UEFA club competitions through *a priori* administrative measures; (ii) the boycott by member associations against FUR's teams included club teams and was lawful; (iii) the condemnation expressed by a majority of European governments was relevant; (iv) its concerns about safety and security were

justified; (v) travelling constraints put UEFA competitions at risk; and (vi) other measures would have been insufficient in the circumstances.

d) Standing to Sue

- The Appellants have standing to sue the Respondent to annul or at least postpone the enforceability of the Appealed Decision. Under Swiss law, there are procedural and substantial elements to the issue of standing to sue (CAS 2017/O/5264-5265, para 187). As to the procedural element, only clubs may enter the UEFA club competitions. The Appellants are affiliated to FUR, which in turn is a member of UEFA, and they have the procedural right to appeal against the Appealed Decision which directly and adversely affects their admission to, and participation in, the 2022/2023 UEFA club competitions. As to the substantive element, the Appellants comply with the admission criteria and procedures provided in Article 4.01 of the Competition Regulations, have qualified on sporting merit, and were granted UEFA licenses for participation in the 2022/2023 UEFA club competitions by the FUR.

B. Procedural Grounds

e) Nature of the Appealed Decision

- Measures taken by an association with respect to its affiliates can be divided into acts of administration and disciplinary measures (CAS 2014/A/3625, para 119). UEFA has a two-stage process with regards to the regulation of its club competitions, namely an administrative stage and a secondary stage that is disciplinary in nature (CAS 2016/A/4650, para 47). Rules that apply *a priori* differ from rules applied *a posteriori*. Both categories respond to different legal purposes and are legally complementary rather than imposed alternatively. Rules that apply *a priori* are designed to prevent undesirable situations that might prove difficult to deal with afterward rather than to impose a penalty for certain behaviour; they contain no moral judgment on the individuals or companies concerned. Rules that apply *a posteriori* and provide penalties or sanctions e.g., disciplinary, or criminal rules, can by contrast only be applied after someone has been found guilty of violating an obligation.

- In the Appellants' view, UEFA aimed to implement an *a priori* administrative measure to address *"the pending suspension of all Russian clubs that may impact the upcoming 2022/2023 UEFA club competitions"*. The amendments did not deal with the conduct on a preventative basis driven by sporting reasons but demonstrated a moral judgment regarding the actions of the Russian Federation in Ukraine. They do not protect the values and objectives of UEFA's competition, its reputation and integrity but rather and simply sanction the Russian Federation.

f) Alleged Breach of Natural Justice Principles

- The procedure followed to adopt the Appealed Decision breached natural justice, particularly the right to be heard (CAS 98/200, para 58). As a matter of natural justice, UEFA was obliged to consult the Appellants before adopting the amendments outlined in Circular No. 21/2022. The Appellants were deprived of an opportunity to know the intended regulatory amendments in advance and to respond to them. UEFA also acted contrary to principles of procedural fairness, good faith, and *venire contra factum proprium,* and the prohibition of arbitrary decisions.

g) Alleged Breach of General Legal Principles

- The Appealed Decision was unlawful because the procedure by which the decision was adopted violated general legal principles.

- The autonomy of a Swiss association is not unlimited. It is constrained by mandatory principles of Swiss law e.g., Article 28 of the Swiss Civil Code ("SCC"), the obligation to act in good faith, the general prohibition of arbitrary decisions in Article 2.2 of the SCC, and the prohibition of anticompetitive agreements and abuse of a dominant position under the Swiss Cartel Act. Article 63.2 of the SCC states that an association's articles of association cannot alter mandatory provisions of law. Admission to the UEFA club competitions cannot be denied to all applicants from a particular country absent justifiable grounds.

- CAS jurisprudence recognizes that a sports association must comply with principles of procedural fairness vis-à-vis the clubs, even if the clubs are not members of the international federation (CAS 98/200, paras 60 – 61 and the Swiss Supreme Court decision in ATF 121 III 350). Estoppel or the concept of *venire contra factum proprium* provides that where the conduct of one party has led to the legitimate expectation on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party. Article 2 of the SCC provides that every person must act in good faith in the exercise of his or her rights and in the performance of an obligation, and the manifest abuse of a right is not protected by law.

- UEFA has breached duties of good faith, procedural fairness, *venire contra factum proprium* and the prohibition against arbitrary decisions, which has affected the Appellants' legitimate expectations because of the timing of the announcement and the immediate application of the Appealed Decision. UEFA suspended all Russian representative teams and clubs from participation in its competitions on 28 February 2022. On 7 April 2022 when it adopted the Competition Regulations, UEFA enacted an access list that included Russia because *"apparently at that time, UEFA was considering that it may have to reinstate all Russian clubs to the 2022/2023 UEFA club competitions when CAS decides on the impending case CAS 2022/A/8709"*. On 2 May 2022, without prior notice or a change in circumstances, the UEFA Executive Committee decided to exclude Russia from the 2022/2023 access list and amend the Russia coefficient ranking points. UEFA could have announced its

intention to exclude Russia from the access list and set the coefficient points in February or in April 2022. Based on UEFA's conduct, the Appellants had a legitimate expectation that they would not be removed from the 2022/2023 access list and the coefficient points not reduced pending the outcome of the appeal in CAS 2022/A/8709, especially since the initial versions of the relevant regulations issued in April included Russia on the access list.

- Russian clubs had already met or knew that they would meet the admission requirements to UEFA club competitions when UEFA adopted the Appealed Decision.

- The timing of UEFA's actions made it materially impossible for the clubs to adjust to the new admission requirement and to plan their future operations. It also left the clubs with little time to appeal against the new measures to CAS. In Circular No. 21/2022, UEFA justified the timing of its actions by the *"urgent need for action due to the pending suspension of all Russian clubs"* but there was no explanation of which new circumstances created the urgency after adopting the UEFA regulations on 7 April 2022 because there were no new circumstances. UEFA could have amended the access list on 7 April 2022. It could have resolved the dispute in CAS 2022/A/8709 earlier by agreeing to an expedited procedure. It could also have avoided the present dispute by making the Appealed Decision subject to the condition that the Russian clubs remained suspended until after the issue of the Award in CAS 2022/A/8709, but instead presumed that the Respondent would prevail in that Award and that there would be no need to restore Russia to the access list. UEFA had not provided an assurance that Russian clubs could return to UEFA competitions if the FUR prevailed in CAS/A/8709 (cf CAS 2021/A/7712, Order on Provisional Measures, para 62). The risk of harm to the Appellants is imminent and all these factors provide the Appellants with the legal interest to appeal.

- During the COVID-19 pandemic, UEFA did not remove countries from the access list that were classified in the "red zone" but enacted specific rules to deal with the situation.

C. Substantive Grounds

h) Alleged Abuse of Regulatory Power and the Principle of Equal Treatment

- UEFA is the sole governing body of European football and enjoys a dominant market position (Cantonal Court of Vaud's decision TC VD, CM11.033798 dated 5 October 2011, para.6(c)(bb)). Entities that occupy a dominant position are required to uphold general principles of law to the highest standards and exercise caution when making decisions. UEFA abused its regulatory power when it adopted the amendments, which the Appellants submit is a *"back up plan"* in case UEFA loses CAS 2022/A/8709. Nothing in Circular No. 21/2022 guarantees that Russia's exclusion from the 2022/2023 access list would be automatically reversed if CAS were to annul the Suspension Decision. The principal purpose of the amendments is to prevent the Appellants from participating in UEFA club competitions irrespective of the Suspension Decision.

- Measures imposed by associations must comply with the principle of equal treatment and it is especially true in sport where equal treatment is fundamental for any competition (CAS 2005/C/976 and 986, para 137). The principle of equal treatment requires that entities do not discriminate on any grounds e.g., nationality or origin during their decision-making or legislative processes. The principle is violated when two similar situations are treated differently. CAS jurisprudence establishes that *"similar cases have to be treated similarly"* (CAS 2020/A/6745, para 90; CAS 2012/A/2750, para 133).

- UEFA has not excluded Ukraine or Belarus from the access list. It has also failed to justify the difference in treatment between Russia, Ukraine, and Belarus. UEFA's unsubstantiated concerns about safety and security and logistical issues apply equally to Ukraine and Belarus.

i) Alleged Breach of the Principle of Political Neutrality

- The principle of political neutrality requires that no governmental or political influence is exercised on the activities of sporting organisations (CAS 2019/A/6500, para 105). Sports organisations must be free to organise their sport without any political interference.

- UEFA is a member of the Olympic Movement and has committed to promoting the ideals and objectives of the IOC and the adherence to fundamental principles such as the principles of political neutrality and non-discrimination (Article 1.1 of the UEFA Statutes). UEFA is bound by the principle of political neutrality.

- It is undisputed that the Appellants have not violated any UEFA regulation. Circular No. 21/2022 records UEFA's justifications and shows that the Appealed Decision is a consequence of the reactions of (i) several Member Associations, (ii) the majority of the governments of European countries and (iii) the general public *"against the actions taken by Russia"* in Ukraine.

- UEFA was influenced by the IOC's political stance that is outlined in the IOC Resolution. The UEFA Executive Committee took the Suspension Decision on the same day as the IOC Resolution and in accordance with that Resolution. UEFA has *"done everything to not invite or allow the participation of Russian"* clubs or national teams.

- The Appealed Decision is politically motivated. The reported comments of the European Commission Vice-President on 11 May 2022 that *"By refusing to play Russian teams, by imposing other sanctions and by supporting the Ukrainian football community, you have demonstrated the strength of our European unity and values"*, and recent decisions taken by other sports against Russian clubs and individuals, confirm that decisions to exclude Russia from sports are politically motivated (International Luge Federation ("FIL") Court of Arbitration decision dated 7 April 2022, paras 4.6.3 – 4.6.5; European Table Tennis Union ("ETTU") Board of Appeal decision dated 26 April 2022, para 3).

- The measures adopted by UEFA are directed against the FUR and Russian clubs only. The actions are discriminatory and prohibited. The allegations of various constraints are not convincing and are unproven e.g., contrary to UEFA's position, there is no ban on Russian civilian flights to Turkey. There is a regular civilian airline flight between Moscow and Istanbul serviced by Aeroflot; only military flights are banned. UEFA has failed to argue convincingly that measures adopted by the UEFA Executive Committee against Russia are about more than a political reaction or statement against the Russian Government.

j) Alleged Discrimination Based on Nationality

- UEFA's objective is to *"promote football in Europe in the spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason"*. It is undisputed that the amendment to Annex A concerned only Russia. The Appellants fulfilled the criteria and procedures provided in Articles 3 and 4 of the Competition Regulations and yet UEFA took the Appellants out of the 2022/2023 access list. In contrast, it has previously admitted the football associations of other countries involved in military conflict (e.g., Israel, France, Azerbaijan, Turkey, Armenia and even Russia during the military conflict with Ukraine in 2014). None of the Appellants have made a public statement in support of the military actions of the Russian Government.

- By comparison, the ATP condemned Wimbledon's ban on Russian and Belarusian players from competing in the United Kingdom this summer, describing it as *"discrimination"*. Other international federations did not ban Russian national teams and clubs from participating in international tournaments. IBA, FINA and FIG sanctioned only those who supported the military conflict.

- The Appealed Decision breaches the prohibition of discrimination provided in Article 2.1(b) of the UEFA Statutes based on nationality by taking Russia out of the access list to the 2022/2023 UEFA club competitions and setting its coefficient ranking points at the minimum.

k) Alleged Violation of Personality Rights

- Article 28 of the SCC provides that an infringement of personality rights is unlawful unless justified *"by the consent of the person whose rights are infringed or by an overriding private or public interest or by law"*. Personality rights include the rights of sporting economic activities of individuals and legal entities such as associations and federations. The Swiss Federal Tribunal has previously held, for example, that the level of freedom of an association to exclude a member is limited by the member's "personality right" to pursue an economic activity (ATF 123 III 193, paras 197-198). The same principle applies by analogy to excluding clubs from UEFA club competitions.

- Article 8 of the Swiss Constitution prohibits any kind of discrimination before the law on the grounds of origin. A violation of Article 28 of the SCC, especially if it consists of discriminatory behaviour, may lead to an obligation on the discriminator to enter a contract with the discriminated person (Article 28a para 1.1 SCC; Gauch/Schluep, Schweizerisches Obligationenrecht Allgemeiner Teil, Zurich 2008, N 1111).

- UEFA's discriminatory actions violated the Appellants' personality rights, specifically their rights to engage in sporting and economic activities through participation in UEFA competitions. The sporting activities that the Appellants engage in at the UEFA level and those they engage in at the domestic level are markedly different. The FUR's activities and competitions are geographically limited to Russia and involve a limited number of Russian clubs. UEFA's activities stretch across Europe and involve clubs from 66 member associations. Non-admission to UEFA competitions deprives the Appellants of participation in the qualifying rounds and final stages of the 2022/2023 UEFA club competitions, and the related economic benefits that participation provides. These economic advantages are not the same as those derived from membership of the FUR. Exclusion from the access list impedes the Appellants from advancing their international objectives to promote their brands and Russian football as a whole and impedes the de-escalation of the political tension in the situation.

l) The Appealed Decision is Disproportionate

- There were many other alternative measures that UEFA could have adopted. Provided the Appellants could not satisfy the requirements to hold matches under the Competition Regulations, an *a posteriori* disciplinary measure would have been sufficient. Disciplinary proceedings may also have been an option (Article 51 of the UEFA Regulations). UEFA claims there was an urgency to address the impact and consequences of the suspension, *"in order to ensure the smooth staging of [its] competitions in a safe and secure environment for all those concerned"* and to protect the competitions' integrity, but UEFA has not substantiated these claims concerning travel, safety, and security. UEFA simply relies on the fact that (i) European governing bodies have adopted sanctions against Russia, (ii) national associations publicly voiced their opinion against FUR and (iii) the general public's reaction.

- UEFA's objectives with implementing the Appealed Decision are broader than ensuring the need for a safe and secure environment for all concerned parties, and to protect the integrity of the UEFA competitions. Its real objective is to have a backup plan in case the FUR prevails in its appeal in CAS 2022/A/8709.

- There were other options available to UEFA. The IOC Resolution recommended excluding Russian and Belarusian athletes and officials from participation in international competitions or at least prohibiting the identification of their nationality. UEFA chose the first option. UEFA did not engage in discussions with the FUR, the Appellants and third parties to find acceptable solutions for all parties. UEFA could also have accepted the expedited calendar in CAS 2022/A/8709 or adopted special rules for the Appellants'

situation, e.g., playing on neutral venues, in a similar way to which it dealt with the COVID-19 pandemic by implementing the UEFA Return to Play Protocol which enabled UEFA competitions to take place in a safe and undisturbed environment. It could also have used disciplinary measures to deal with any issues that arose during UEFA club competitions. Previous CAS jurisprudence has upheld disciplinary decisions in the sport of basketball that were imposed against clubs that refused to play matches due to security concerns. The UEFA Emergency Panel, UEFA President or the UEFA General Secretary could have taken the necessary decisions on a case-by-case basis, if problems arose later (Articles 84.01 of the Champions League Regulations, and 83.01 of the Europa League Regulations and the Conference League Regulations). Cost and organisational hurdles are insufficient reasons for UEFA to exclude the Appellants completely. FC Zenit JSC and FC Sochi have received letters from the Russian Ministry of the Interior confirming that the Ministry would ensure safety and security during an international football event.

- UEFA has experience of dealing with similar situations. For example, in 2002, during the Israel-Palestine conflict, UEFA suspended all competition matches in Israel. In August 2006, UEFA relocated all UEFA competitions out of Israel and when it later lifted the ban, matches were initially limited to the Tel Aviv area. On 16 July 2014, because of the Israel-Gaza conflict, UEFA again banned all UEFA competition matches in Israel and asked Israeli clubs to propose alternative venues. Also on 16 July 2014, consequent to Russia's annexation of Crimea, UEFA decided that Ukrainian and Russian clubs and national teams were not to play against each other until further notice. On 20 October 2020, due to the tense security situation in the Nagorno-Karabakh region, UEFA decided that UEFA club and national team competitions would not be held in Armenia or Azerbaijan and asked those football associations and their clubs to propose alternative venues. On 3 March 2022, UEFA decided that Belarusian clubs and national teams were to play their matches at neutral venues.

- The alternative options available to UEFA support the Appellants' view that the Appealed Decision is disproportionate.

m) Requests for Relief

- FC Zenit JSC, the Appellant in CAS 2022/A/8865, submitted the following requests for relief:

"FC Zenit respectfully asks that the Panel:

Primarily

1. Annul point 5 of the UEFA Executive Committee decisions on the impact and consequences resulting from the ongoing suspension of Russian representative teams and clubs in UEFA competitions and other matters dated May 2, 2022, communicated through UEFA Circular 21.

Alternatively, only if the above request under item 1 above is rejected

2. Stay the execution of point 5 of the UEFA Executive Committee decisions on the impact and consequences resulting from the ongoing suspension of Russian representative teams and clubs in UEFA competitions and other matters dated May 2, 2022, communicated through UEFA Circular 21, until the end of the 2022/2023 season.

In addition and separately from the above

3. Order UEFA not to deny admission or to exclude Russian clubs from the 2022/2023 UEFA tournaments; in particular, order UEFA to admit the Appellant to participate in the 2022/2023 UEFA Champions League and 2022/2023 UEFA Youth League, provided it complies with all admission criteria, and to adopt all measures necessary for that purpose.

Alternatively, only if the above request regarding the coefficient points under item 3 above is rejected

4. Calculate the Appellant's coefficient points for the 2022/2023 season as the average amount of coefficient points it has accumulated over the last five seasons, i.e., 9.2 points, or use any other method of calculation the Panel deems fair, reasonable, non-discriminative, and justified.

In any event

5. Order UEFA to bear all costs incurred with the present procedure.

6. Order UEFA to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the Panel's discretion".

- FC Sochi, PFC CSKA Moscow and FC Dynamo Moscow, the Appellants in CAS 2022/A/8866 – 68, respectively, submitted the following joint requests for relief:

"FC Dynamo Moscow, FC Sochi and PFC CSKA Moscow ask that the Panel:

Primarily

1. Annul point 5 of the UEFA Executive Committee decisions on the impact and consequences resulting from the ongoing suspension of Russian representative teams and clubs in UEFA competitions and other matters dated May 2, 2022, communicated through UEFA Circular 21.

Alternatively, only if the above request under item 1 above is rejected

2. Stay the execution of point 5 of the UEFA Executive Committee decisions on the impact and consequences resulting from the ongoing suspension of Russian representative teams and clubs in UEFA competitions and other matters dated May 2, 2022, communicated through UEFA Circular 21, until the end of the 2022/2023 season.

In addition and separately from the above

3. Order UEFA not to deny admission or to exclude Russian clubs from the 2022/2023 UEFA tournaments; in particular, order UEFA to admit the Appellant to participate in whichever UEFA tournament the Appellant's men's team qualifies on sporting merits in the 2022/2023 season and the 2022/2023 UEFA Youth League, provided it complies with all admission criteria, and to adopt all measures necessary for that purpose.

Alternatively, only if the above request regarding the coefficient points under item 3 above is rejected

4. Calculate the Appellants' coefficient points for the 2022/2023 season using any other calculation method the Panel deems fair, reasonable, non-discriminative, and justified.

In any event

5. Order UEFA to bear all costs incurred with the present procedure.

6. Order UEFA to pay the Appellants a contribution towards its legal and other costs in an amount to be determined at the Panel's discretion".

48. The Respondent's submissions, in essence, may be summarized as follows:

A. General

a) Respondent's Position

- Contrary to the Appellants' position, these proceedings arise because of the Suspension Decision, namely UEFA's decision on 28 February 2022 to suspend *"all Russian representative teams…from taking part in UEFA competition matches, until further notice"*. The Suspension Decision is the subject of an appeal brought by the FUR and not the Appellants in proceedings CAS 2022/A/8709. Despite not appealing or reacting in any way to the Suspension Decision, the Appellants have filed these proceedings against Circular No. 21/2022. The Appealed Decision is not an independent decision, but merely a consequence of the Suspension Decision and is not itself an appealable decision; the Clubs' respective appeals are, therefore, inadmissible. UEFA had no choice but to address the effects of the military conflict on its competitions and despite the Respondents' protestations to the contrary, the Suspension Decision and the Appealed Decision were taken to *"protect the values and objectives of UEFA's competition[s], reputation, and integrity"*.

- The global reaction to the military conflict has been *"strong and united, spanning from European (and world) governments to sporting organisations and the general public"*. The Council of Europe, the EU, and the United Nations General Assembly reacted swiftly. The EU has to date imposed six packages of sanctions on Russia and Russian individuals and entities, with many countries around the world following suit. The international sports community

has been forced to take measures in reaction to the impact of the conflict on their competitions e.g. FINA, IBA, FIG, FIFA etc, including measures to address the general effects of the conflict and, in some cases, disciplinary proceedings against individual athletes who publicly supported the conflict. At least two Russian sports organisations that were not suspended have voluntarily withdrawn their teams from competitions because of safety and security reasons and/or in protest e.g. the Russian Judo Federation and the Russian Biathlon Union.

- It is wrong to assert that certain recent decisions *"confirm that the expulsion of Russia from sports has no sporting merits but is politically motivated"*. The decisions of the FIL Court of Arbitration and the ETTU Board of Appeal do not support the Appellants' case. The former appeal was successful because the FIL sanctioned its Russian member, which UEFA has not done. The latter appeal was only partially accepted, with the ETTU expressly holding that it was legitimate to suspend Russian teams from competitions when there was a risk to security.

- There has also been a strong public reaction to the conflict, which has provoked widescale protest, counterprotests and attacks on Russian diplomats in Europe. In view of all these points, the global reaction to the conflict has been, and continues to be, intense. The Respondent submits that the *"global reaction has led to significant threats to UEFA's ability to protect the security, integrity and viability of its competitions, in line with its statutory objectives and in the best interests of its stakeholders – if Russian teams participate in same"*. In CAS 2022/A/8708 Order on Provisional Measures dated 8 April 2022, it was expressly recognized that the participation of the FUR's teams would severely jeopardize the smooth and safe conduct of competitions, even if staged on a neutral pitch with no spectators, that it was highly doubtful whether enhanced security measures would be sufficient to guarantee the security of all interested stakeholders, and that the safety issue went beyond the boundaries of the pitch and stadium. There was also a risk of a *"wave of defections"* if the FUR's teams were participating in competitions.

- The Appellants have not engaged with the logistical, safety and security threats that would be associated with their participation in UEFA competitions. Whilst they contend that UEFA's concerns are "unsubstantiated", the Respondent submits that: (i) it has produced more than enough material to demonstrate the risks to the viability, safety and security of its competitions if the Appellants were present in its competitions; (ii) such risks are self-evident; and (iii) the Appellants have failed to produce anything to refute those clear risks. In light of the high visibility of European football, *"UEFA is not prepared to take the risk to see whether, when, where and to what extent such security (and other) risks could and/or would materialise"*.

b) Jurisdiction, Admissibility and Law

- The jurisdiction of the Panel is common ground between the Parties.

- UEFA also does not dispute that the Appellants filed their respective appeals in time and in the correct form.

- The Respondent disputes the admissibility of the Appellants' requested relief and their appeals in these proceedings and submits that their present appeals ought to have been filed against the Suspension Decision because: (i) the purpose of Circular No. 21/2022 was to address the impact and consequences of the Suspension Decision in view of certain impending competitions; (ii) the definition of an appealable decision is that it must affect the legal situation of its addressees (CAS 2005/A/899, para 61; CAS 2020/A/6921, para 116); (iii) Circular No. 21/2022 did not change the Appellants' legal situation; (iv) confirmation that Russian clubs were not included in the access list and that their coefficient points would be impacted by such suspension does not *"in and of itself impact the Appellants' legal position"*; and (v) the Appellants did not appeal the Suspension Decision meaning that it became final and binding prior to the Appealed Circular and to the filing of an appeal in these proceedings.

- The rules of law applicable to the merits of the proceedings are determined by R58 of the Code. It is not disputed that the Panel must decide the dispute according to the UEFA Statutes and regulations and, subsidiarily, Swiss law.

c) Burden of Proof and Scope of Review

- The concept of burden of proof under Article 8 of the SCC is well known and not in dispute. However, the only facts UEFA needs to prove are those upon which it relies in its submission and the Appellants must prove those facts upon which it relies in their Appeal Brief.

- Pursuant to Article R57 of the Code, the Panel has the full power to review the facts and the law and established CAS case law confirms that the power of *de novo* review cures procedural flaws at the first instance. Any procedural flaws in the initial decision-making process need not be considered by the Panel.

- Even in the context of a *de novo* hearing, a level of deference should be given to an association when assessing the proportionality of a measure (CAS 2019/A/6665, para 157; CAS 2018/A/5800, para 73). While this principle has been primarily discussed in cases concerning sanctions and the present case does not involve the imposition of a sanction, UEFA submitted that the same principles should apply analogically in cases of measures taken to address objectively unforeseen circumstances such as the present case.

d) Standing to Sue

- UEFA does not challenge that to the extent that the Appellants are invoking a right of their own, they have standing to sue. However, the Appellants waived their right to sue

by not challenging the Suspension Decision, and have now artificially constructed a new appealable decision in order for their claim not to be time-barred.

B. Procedural Grounds

e) Nature of the Appealed Decision

- The Appealed Decision is not a "moral judgment" or a "sanction"; it is purely administrative in nature and implements the Suspension Decision. CAS 2014/A/3625 is not relevant to the present proceedings because the Appealed Decision was not in any way based on anything that the Clubs did. The analogy with CAS 98/200 is also irrelevant as the Appealed Decision was not issued to prevent the Clubs from doing something but rather to implement the Suspension Decision, which in turn was issued to address an objective situation that had arisen following the commencement of a military conflict in Ukraine. To the extent that the Appellants rely on legal arguments which specifically apply to sanctions, these too do not apply and can be disregarded.

f) Alleged Breach of Natural Justice Principles

- The Appealed Decision did not breach principles of natural justice. The right to be heard is one of the procedural flaws that can be cured by a *de novo* hearing (CAS 2016/A/4387, para 148). UEFA was not obliged to consult with the Appellants before taking the Appealed Decision because: (i) Circular No. 21/2022 did not contain regulatory amendments but simply implemented the Suspension Decision; (ii) the only parties that deprived themselves of the opportunity to respond to the Appealed Decision were the Clubs by failing to appeal the Suspension Decision, which was the only appealable decision. The Appellants have not shown how the combined effect of Articles R47 and R57 of the Code did not provide the chance to be heard in the ambit of an appeal against the Suspension Decision. The Clubs have not established that the alleged breaches of basic principles of natural justice have caused their procedural rights to be "irreparably impaired" (CAS 2012/A/2913, para 87).

- CAS 98/200 suggests that the right to be heard shall primarily be applied in cases against individuals where a federation adopts an *ad hoc* administrative or disciplinary decision that is directly and individually addressed, which is not the situation in the present case.

- It is not sufficient to casually list general principles of law as the Appellants have done in their Appeal Brief (e.g. procedural fairness, good faith, *venire contra factum proprium* and arbitrariness). A party must show that the principles were breached and how those breaches should entail the reversal of the Appealed Decision, neither of which the Appellants have established.

g) Alleged Breach of General Legal Principles

- It is unclear how Articles 2, 2.2, 28 and 63.2 of the SCC, together with Swiss competition law, *venire contra factum proprium* or legitimate expectations may be considered procedural grounds that annul the Appealed Decision. The Respondent submits that the Appellants had provided a long list of legal principles without establishing how they have in fact been breached.

- When UEFA issued the access list on 7 April 2022, the Clubs were already suspended and had no legitimate expectation that they would be admitted to UEFA competitions while the Suspension Decision remained in force. UEFA did not need to announce its intention to exclude Russia from the access list because it was already excluded by operation of the Suspension Decision. Any urgency in UEFA's action came about because of the need to clarify the consequences of the Suspension Decision for impending UEFA competitions and not from new circumstances.

- The fact that UEFA refused FUR's request for expedited proceedings in CAS 2022/A/8709 is irrelevant. The Appellants did not appeal the Suspension Decision so cannot legitimately complain and, in any event, UEFA was within its procedural rights to refuse.

- The Suspension Decision made the technical requirements for participation in UEFA's competitions "moot" which meant that it did not matter when the Appellants knew they had met or would meet requirements for admission to UEFA club competitions.

- UEFA rejected the Appellants' submission that the Appealed Decision was a "back up plan" in case it lost the case in CAS 2022/A/8709 so that the Appellants would still not be admitted to UEFA competitions. UEFA submitted rather that the Appealed Decision gave effect to the obvious and inevitable consequences of the Suspension Decision.

- Even assuming that the Clubs' appeal is admissible (which is denied), UEFA submitted that from a substantive point of view the only argument that the Clubs could potentially run would be that the Appealed Decision impacts their legal rights/prerogatives further than did the Suspension Decision, which UEFA denied.

C. Substantive Grounds

h) Alleged Abuse of Regulatory Power and the Principle of Equal Treatment

- Dominant position is a competition law concept that should be defined by reference to a relevant market. The Appellants have not conducted any competition law analysis and have not claimed or even established that UEFA has abused a dominant position. Any argument based on competition law should be summarily dismissed.

- There has been no breach of the principle of equal treatment. The examples provided by the Appellants did not establish two situations similar to the present. The reasons for the different treatment of the two nations' teams are self-evident and it is not appropriate to suggest that Belarus and Ukraine have the same issues as Russia. The Clubs' claim that the logistical problems are equally applicable to the situation of Ukraine and Belarus is unsubstantiated.

i) Alleged Breach of the Principle of Political Neutrality

- The Suspension Decision (and by extension the Appealed Decision) was a necessary measure taken by UEFA in order to ensure the viability, integrity and security of its competitions and to protect the interests of European football stakeholders. It was not taken for political reasons. Russian teams and clubs were suspended as a result of an objective situation created by the military conflict and not because UEFA politically agrees with Ukraine. It was also fully justified in light of UEFA's statutory objectives in Article 2 of the UEFA Statutes, which include: to promote football in Europe in the spirit of peace, understanding and fair play; to organise international football competitions whilst respecting the players' health; and to safeguard the overall interests of its Member Associations and take the needs of its stakeholders into account. UEFA took the Suspension Decision because it considered that its statutory objectives could not be met because of the effects of the military conflict.

- UEFA took the Suspension Decision primarily based on Articles 2.1(b) and 2.1(d) of the UEFA Statutes but it also gave effect to other important statutory objectives e.g. Article 2.1(a) to deal with the pressing "question" of what European football should do in face of the consequences of the military conflict in Ukraine; Article 2.1(j) to safeguard the interests of Member Associations; Article 2.1(k) to ensure that the needs of the different stakeholders in European football are properly taken into account; Article 2.1(l) to act as a representative voice for the European football family; and Article 2.1(o) to respect the interests of Member Associations.

- The decisions of the FIL Court of Arbitration and the ETTU Board of Appeal are irrelevant to the Clubs' allegation that the Appealed Decision was politically motivated. There is a substantial amount of evidence that demonstrated the real threats to the viability, integrity, security and safety of UEFA's competitions. The fact these risks have not yet materialised is because UEFA took action.

j) Alleged Discrimination Based on Nationality

- UEFA does not accept that the Suspension Decision or the Appealed Decision were discriminatory in nature. Even if the Panel were to conclude that discrimination had, prima facie, occurred (*quod non*), *"this is merely the starting point, and not the end, of the Panel's legal analysis"* (CAS 2018/A/5794 and 5798, para 548). Any assessment of the lawfulness of a discriminatory measure must also take into account whether such measure was *"a*

necessary, reasonable and proportionate means of attaining a legitimate objective" (CAS 2018/A/5794 and 5798, para 548).

- UEFA submitted that, whilst regrettable, the Suspension Decision was *"a necessary, reasonable and proportionate means of attaining a legitimate objective"*. The exclusion of Russian teams and clubs was based not on the military conflict *per se* but on the objective impact of the unprecedented reaction to the conflict, and was an objective assessment of the potential consequences of having Russian teams participate in UEFA competitions in the current global context.

k) Alleged Violation of Personality Rights

- The main alleged breach of the Appellants' personality rights is the fact that they were allegedly discriminated against, which, UEFA submitted has not been established. As to their right to *"engage in sporting and economic activities"*, UEFA does not challenge that the Suspension Decision affected the Appellants' personality rights. It noted, however, that the Clubs did not appeal the Suspension Decision and, in any event, an infringement is only illicit under Swiss law if it is not justified by an overriding public or private interest (Article 28(2) of the SCC).

- UEFA has a legitimate interest in protecting the integrity and safety of its competitions. In ATF 134 III 193, the Swiss Federal Supreme Court acknowledged that the integrity of a competition is a fundamental interest worthy of protection. UEFA submitted that since the Court in ATF 134 III 193 considered that the safety of horses taking part in the competition was a compelling interest for a horse racing governing body, *a fortiori*, so must the safety of human participants, including players, staff and fans (as well as those not interested in the game but in the general vicinity). It also submitted that in ATF 134 III 193, the Court made clear that the way in which those legitimate interests are safeguarded *"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"* (ATF 134 III 193, 203-204).

- The travel and security situation is volatile and inherently unpredictable, which jeopardises the integrity of UEFA's competitions if, for example, a Russian team was not in a position to play or travel. It also jeopardises the safety of participants, if the participation of a Russian team should inflame and cause trouble in or around a competition. Playing matches behind closed doors does not rule out security concerns. It also affects the other team's prerogative to play in front of an audience and the organizer's legitimate right to have fans at their events. For these reasons the Appealed Decision does not unlawfully infringe the Appellants' personality rights.

l) The Appealed Decision Is Not Disproportionate

- The Respondent's evidence supported its assessment of the risks of having Russian clubs participate in its competitions. The CAS had also confirmed that (i) such risks are obvious;

and (ii) the participation of the FUR's national teams in the competitions would severely jeopardise the smooth and safe conduct of these, even if matches involving the FUR's teams were to be staged on a neutral pitch with no spectators (CAS 2022/A/8709 Order on Provisional Measures (reasoned) dated 8 April 2022).

- The Respondent rejected the Appellants' analogy with the measures UEFA had taken during COVID-19, which, unlike the military conflict, was an issue that affected all member associations in the same way, therefore, the measures taken by UEFA applied equally to all of its member associations and affiliate clubs.

- In UEFA's view, disciplinary measures and case-by-case decisions would not have ensured the viability and fairness of its club competitions, and would potentially have harmed third parties. They would also not have prevented the risks and would have been of no help if the risks had materialised. Neutral venues and assurances from the Russian authorities are also not helpful. Football matches do not happen in a vacuum and incidents outside the stadium cannot be ruled out. Neither can security situations arising during travel, at the team hotel, outside the stadium and generally in the city or country where the competition is taking place. Even if the Panel accepted the assurances from the Russian Ministry of the Interior, the fact is that the risks go beyond the Russian territory, such is the nature of international football competitions.

m) Requests for Relief

- The Respondent submitted the following requests for relief:

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

(i) Declaring the appeals of FC Zenit JSC, FC Dynamo Moscow, FC Sochi and PFC CSKA Moscow inadmissible.

(ii) Alternatively, dismissing the appeals of FC Zenit JSC, FC Dynamo Moscow, FC Sochi and PFC CSKA Moscow.

(iii) *In any event, ordering that FC Zenit JSC, FC Dynamo Moscow, FC Sochi and PFC CSKA Moscow are jointly liable to pay the costs of the arbitration as well as a contribution towards UEFA's legal fees and other expenses".*

VI. JURISDICTION

49. 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".

50. Article 86 of the Champions League Regulations - which is mirrored in Article 85 of the Europa League Regulations and the Conference League Regulations - provides that:

"In the case of litigation resulting from or in relation to these regulations, the provisions regarding the Court of Arbitration for Sport (CAS) laid down in the UEFA Statutes apply".

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

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

52. The Appellants rely on Article 86 of the Champions League Regulations, Articles 85 of the Europa League Regulations and the Conference League Regulations, and Article 62.1 of the UEFA Statutes as conferring jurisdiction on the CAS. The Respondent agreed at the outset of the hearing that there was no objection to the jurisdiction of the CAS when requested to offer its views by the Panel, and the jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.

53. On the basis of the above, the Panel is satisfied that it has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY

54. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

55. Pursuant to Article 62 of the UEFA Statutes (2021 edition):

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

2. Only parties directly affected by a decision may appeal to the CAS.

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

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

56. In the present case, UEFA challenges the admissibility of the Clubs' appeal on the basis that point 5 of Circular No. 21/2022 is not an appealable decision. UEFA submits that the Clubs' appeals ought to have been filed against the Suspension Decision because:

(i) The purpose of Circular No. 21/2022 was to address the impact and consequences of the Suspension Decision in view of certain impending competitions; it simply implemented the Suspension Decision;

(ii) The definition of an appealable decision is that it must affect the legal situation of its addressees (CAS 2005/A/899, para 61 and CAS 2020/A/6921, para 116);

(iii) Circular No. 21/2022 did not change the Appellants' legal situation. The Clubs' legal position was affected by the original Suspension Decision;

(iv) Confirmation that Russian clubs were not included in the access list and that their coefficient points would be impacted by such suspension does not *"in and of itself impact the Appellants' legal position"*; and

(v) The Appellants did not appeal the Suspension Decision meaning that it became final and binding prior to Circular No. 21/2022 and to the filing of an appeal in the matter at hand.

57. The Appellants submitted that point 5 of Circular No. 21/2022 was an appealable decision because:

(i) The Appealed Decision was taken by the UEFA Executive Committee by email consultation and the email messages, Circular No. 21/2022 and the amended Annex A of the Competition Regulations, all refer to the contents of Circular No. 21/2022 as a "decision".

(ii) The access list in Annex A provided access for the Clubs to UEFA club competitions. Removing Russia from the access list, effectively removed the Clubs' admission to UEFA competitions in the 2022/23 season. It was not until the access list was amended and the coefficients determined that the Appellants had a legal interest which was adversely affected.

(iii) At the time that Circular No. 21/2022 was issued, the Clubs had qualified on sporting merit for the Various Club Competitions. FC Zenit JSC had qualified for the Champions League Group Stages for the 2022/2023 competition and was awaiting the draw on 2 August 2022. FC Sochi and FC Dynamo had qualified in Q3 and were awaiting the draw on 18 July 2022.

(iv) The Appellants did not have a legal interest to challenge the Suspension Decision on 28 February 2022 because only one club, Spartak Moscow, was involved in the 2021/2022 Champions League competition at the time the Suspension Decision was taken and it was not a party to the present appeal.

(v) The Appealed Decision also reduced the Clubs' coefficient points and the UEFA Executive Committee had not followed the formula prescribed in the Competition Regulations when it adjusted the coefficient.

(vi) If FUR were successful in CAS 2022/A/8709, it was not guaranteed that the Clubs would be restored to the Various Club Competitions because UEFA had not provided an assurance that that would occur.

58. The issue for the Panel to determine is whether point 5 of Circular No. 21/2022 is an appealable decision. The Panel recalls the general principles established in CAS jurisprudence and summarised in CAS 2012/A/2854, paras 54 and 69 as follows:

a) The existence of a decision does not depend on the form in which it has been issued (CAS 2005/A/899; CAS 2007/A/1252).

b) A communication intended to be considered a decision shall contain a ruling which aims to affect the legal situation of its addressee or other parties (CAS 2005/A/899; CAS 2007/A/1251; CAS 2004/A/654).

c) A ruling issued by a sports-related body refusing to deal with a request can be considered under certain circumstances to be a decision (CAS 2007/A/1251; CAS 2005/A/994; CAS 2005/A/899; CAS 208/A/1633).

d) The decisive criterion is the objective effect of a decision on its addressee and not the subjective intent of the authority that renders the decision.

59. The Panel observes that Article 3 of the Competition Regulations prescribes entry for the respective club competitions as follows:

"3.01. UEFA member associations (hereinafter associations) may enter a certain number of clubs for the competition through their top domestic championship, in accordance with the association coefficient rankings, drawn up in accordance with Annex D. No more than four clubs may qualify for the competition through each domestic championship. These rankings also determine the associations' positions in the access list (Annex A), which in turn determines the stage at which each club enters the competition. Only one single team per club may be entered".

60. Annex A provides a list of countries that are ranked according to their association coefficient, known as the access list. Russia's ranking on the access list determines the number of clubs that the FUR is permitted to enter in the Various Club Competitions. The Panel observes that Russia's position on the access list, as with all other countries on the list, is determined by a coefficient ranking system outlined in Annex D of the Competition Regulations. Annex D describes the system as follows:

*"**D.1 System Overview***

UEFA calculates the coefficient of each club and association each season based on the clubs' results in the UEFA Champions League, UEFA Europa League and UEFA Europa Conference League. The season coefficients from the five most recent seasons are used to determine the positions of the associations in the access list (association coefficient) and to rank the clubs for seeding purposes (sporting club coefficient). In addition, the season coefficients from the ten most recent seasons are used to calculate revenue club coefficients for revenue distribution purposes only.

D.2 Reference periods for rankings

The associations' positions in the 2022/23 UEFA Champions League, UEFA Europa League and UEFA Europa Conference League access list (Annex A) are determined on the basis of the five-season association coefficients established at the end of the 2021 season, i.e. the cumulative total of the associations' season coefficients from seasons 2016/17 to 2020/21 inclusive.

The five-season sporting club coefficients for the 2022/23 UEFA Champions League, UEFA Europa League and UEFA Europa Conference League are established before the start of the 2022/23 season, on the basis of each club's season coefficients from seasons 2017/18 to 2021/22 inclusive.

The ten-season revenue club coefficients for the 2022/23 UEFA Champions League, UEFA Europa League and UEFA Europa Conference League are established before the start of the 2022/23 season, on the basis of each club's season coefficients from seasons 2012/13 to 2021/22 inclusive.

D.3 Association coefficient calculation

The season coefficient of an association is calculated by adding up the points obtained by all its clubs in a given season (UEFA Champions League, UEFA Europa League and UEFA Europa Conference League) then dividing the total by the number of clubs from that association that took part in the three UEFA club competitions in question.

Points are awarded as follows:

a. *2 points for a win (one point for qualifying and play-off matches);*

b. *1 point for a draw (0.5 point for qualifying and play-off matches);*

c. *0 points for a defeat.*

If a club refuses to enter a UEFA competition for which it qualified, or is excluded from or not admitted to the competition and is not replaced by another club from the same association, the association's coefficient is calculated by dividing the total number of points obtained by its clubs by the number of points the association was entitled to enter according to the access list.

D.4 Sporting club coefficient calculation

The season coefficient of a club is calculated by adding the total number of points it obtains in a given season (UEFA Champions League, UEFA Europa League and UEFA Europa Conference League) in accordance with this Annex D of the competition regulations for that season. A club's five-season sporting coefficient is the cumulative total of its five season coefficients from the reference period stipulated in Annex D 2, or 20% of its association's five-season association coefficient, whichever is higher. Points awarded each season are in accordance with the relevant competition regulations for that specific season, so Annex D.4.1 to Annex D.4.3 apply only to the awarding of points in the 2022/23 season.

…".

61. The Panel accepts the Respondent's averment that it intended the decisions to be incidental and necessary consequences of the Suspension Decision in order to provide for the smooth running of its impending club competitions. This cannot be decisive (see paragraph 58(d) of this Award). The Panel agrees with the Appellants that the Appealed Decision has a legal effect for them over and above the inherent effect of the Suspension Decision for the following reasons. First, the Panel observes that at the time the Appealed Decision was taken, the FUR's appeal against the Suspension Decision in CAS 2022/A/8709 had not been decided. Had the appeal been decided in FUR's favour, the Panel notes that there was no guarantee that FUR and, consequently, the Clubs would have been automatically reinstated to the access list and admitted to the Various Club Competitions for which the Panel accepts that the Clubs had qualified on sporting merit. In that regard, the Panel considers that the Clubs were required to bring these proceedings in order to protect their legal position in the event the outcome of CAS 2022/A/8709 favoured FUR.

62. Secondly, the Panel observes that the coefficient ranking system determines FUR's position in the access list, which, in turn, determines the number of clubs that FUR may enter in UEFA club competitions. The lower FUR's coefficient, the lower the position for FUR in the access list and the fewer number of clubs that FUR may enter in UEFA competitions. The Panel notes that there is no guarantee that Russia will be re-entered into the access list at position 8, being the position it was in when it was removed from the access list. In fact, it is more likely than not that it will not enter the access list at position 8 because of the non-participation of FUR's teams and clubs in UEFA competitions and the way in which the coefficient is calculated by reference to participation in UEFA competitions during the preceding five seasons. The coefficients over time, and depending on the amount of time that FUR, its teams and clubs are suspended, will reduce the longer that FUR is absent from the access list. Considering, in particular, that the circumstances which led to the Suspension Decision were not of the FUR's or the Appellants' making, the Panel considers that the Appellants have a sporting interest in how UEFA calculates the coefficient during FUR's absence and their own absence from the access list.

63. The Panel considers that the adjustment to the coefficient was not known to the Appellants at the time of the Suspension Decision because the Competition Regulations had not been adopted for the 2022/23 football season, nor was the legal effect apparent when the first

version of the access list was issued on 7 April 2022, because at the Executive Committee meeting on that date, the Committee did not discuss the access list and it appears that the copy provided at the meeting had not been populated with the country rankings. The Panel finds that the true extent of the legal effect only became apparent when the decision in point 5 of Circular No. 21/2022 was taken because prior to the date of that decision it was not known whether or how the UEFA Executive Committee would adjust the coefficients, if at all, and despite the fact that the Suspension Decision was in place. Since the UEFA Executive Committee exercised its discretion to determine the coefficient in a manner that was unknown to the Clubs and which appears, *prima facie*, not to have followed the formula prescribed in the Competition Regulations and for which no explanation was provided in Circular No. 21/2022, the Panel finds that the decision recorded at point 5 of Circular No. 21/2022 is an appealable decision.

64. The Appellants submit that the UEFA Statutes provide a time limit of ten days and that the appeal was filed in time and in proper form. It submits that the appeal is admissible. The Respondent does not challenge the time and form of the appeal.

65. The Panel recalls that Article 62.3 of the UEFA Statutes prescribes a deadline of 10 days to file an appeal against a decision made by a UEFA organ and, therefore, the 10-day time limit prevails over the default 21-day time limit outlined in Article R49 of the Code. It observes that the Appealed Decision was notified on 2 May 2022, that the Appellants filed their respective Statements of Appeal on 12 May 2022, within the deadline of 10 days, and that there appears to have been no other channels for internal appeal. The Statements of Appeal also comply with the requirements of Article R48 of the Code.

66. Accordingly, on the basis of the above, the Panel is satisfied that the Appellants' appeals were filed in time, in proper form and are admissible.

VIII. APPLICABLE LAW

67. 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".*

68. The Appellants submit that the Panel should primarily apply the *"various UEFA regulations and subsidiarily, when relevant, Swiss law"*. The Respondent submits that the UEFA Statutes are applicable, with Swiss law applying subsidiarily.

69. The Panel notes that the Appealed Decision was rendered by the UEFA Executive Committee on 2 May 2022 and that at the time the appeal was filed, the 2021 edition of the UEFA Statutes was in effect.

70. Accordingly, on the basis of the Parties' agreement to the applicable law, the Panel considers that the UEFA Statutes (2021 edition) and other UEFA regulations constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

IX. MERITS

71. On the basis of the Parties' respective submissions, the Panel considers that there are four issues for determination:

a. Do the Appellants have standing to sue?

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

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

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

A. Do the Appellants have standing to sue?

72. The Respondent submitted that the Appellants had standing to sue the Suspension Decision but waived their right to sue by not challenging the Suspension Decision, and that the Appellants had artificially constructed a new appealable decision in order for their claim not to be time-barred.

73. The Appellants rejected the Respondent's submission and submitted that they had not, and did not, waive their right to sue. The Appellants submitted that: (i) the term "standing to sue" describes a party's entitlement to benefit from a claim, that it suffices for someone to have standing to sue if the person invokes a right of their own, and that it has two elements: a procedural element and a substantive element; (ii) as to the procedural element, only clubs may enter UEFA club competitions and as the Appellants are football clubs affiliated to the FUR, which in turn is a member of UEFA, they have the procedural right to bring an appeal against point 5 of Circular No. 21/2022 which bars their admission to the 2022/23 club competitions and affects the coefficient upon which admission to the 2022/23 club competitions and seeding in future years will be determined; (iii) as to the substantive element, at the time the decision was taken the Clubs had qualified on sporting merit and had been issued with licences by FUR to compete in the 2022/23 UEFA club competitions.

74. The Panel recalls the established CAS jurisprudence that the issue of standing to sue is a matter of substantive law, and is treated as an issue of merits and not as a question relating to the admissibility of an appeal (CAS 2016/A/4787, para 106 and ATF 126 III 59, 1(a)). The Panel observes that it is well-established in Swiss law that a party must have a current interest worthy of protection that can be addressed or rectified by the claims or the appeal being made (Article

59(2) of the Swiss Civil Code of Procedure). Generally, in order to have standing to sue a party must be sufficiently affected by an appealed decision and have a tangible interest of a financial or sporting nature at stake.

75. Also relevant to the issue of standing is any provision in a sports association's statutes that permit a party to appeal a decision. The Panel observes that the UEFA Statutes provide in Article 62.2 that, *"only parties directly affected by a decision may appeal to the CAS"*.

76. The Panel considers that, in the present case, the issue of standing to sue is intimately related to the question of whether the Appealed Decision is an appealable decision. Notwithstanding that the Clubs' rights are derivative in the sense that they are dependent on FUR, whose members they are, being in good standing with UEFA, since the Panel has previously found that point 5 of Circular No. 21/2022 is an appealable decision because it has a legal effect for the Clubs, it follows that the Clubs are *directly affected* by the Appealed Decision and, therefore, are entitled, under Article 62.2 to appeal to CAS. The Panel finds that the Clubs have a tangible interest of a sporting nature worthy of protection that can be addressed or rectified by the current claim, namely: the interest in protecting their position in the access list pending the outcome of CAS 2022/A/8709, which if in favour of FUR, will provide entry to the 2022/23 UEFA club competitions for the Appellants who have qualified on sporting merit; and their interest in challenging the coefficient calculation, which will determine the number and seeding of Russian clubs entered into future competitions.

77. The Panel notes the Respondent's arguments that the Appellants have waived their right to sue and observes that such argument was premised on a finding that the Appealed Decision was not appealable and that the relevant appealable decision against which the Clubs ought to have proceeded was the Suspension Decision. Since the Panel has previously found that there is an appealable decision in this Appeal, the Panel rejects the Respondent's argument. Further, the Panel finds no evidence that the Appellants have waived their right to sue against the Appealed Decision in the present proceedings. As the Suspension Decision is not the subject of these proceedings, the Panel is not required to determine whether the Clubs had standing to sue against the Suspension Decision.

78. For the foregoing reasons, the Panel concludes that the Appellants have standing to bring their respective appeals against the Appealed Decision.

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

a) Nature of the Appealed Decision

79. The Appellants submit that the Appealed Decision is a *"moral judgment on the actions of the Russian Government in Ukraine"* and a *"sanction"*. The Appellants refer to the difference between *a priori* and *a posteriori* measures (relying on CAS 2014/A/3625 and CAS 98/200) and submit that while UEFA may have *"intended to adopt an a priori administrative measure"*, UEFA's reference in Circular No. 21/2022 to the *"reaction of national governments to the actions of the Russian Government*

in Ukraine" is incompatible with UEFA's intended purpose and demonstrates otherwise i.e. that it is in point of fact an *a posteriori* measure. The Respondent denies that the Appealed Decision is a *"moral judgment"* or a *"sanction"* and submits that it is purely administrative in nature adopted to further implement the Suspension Decision.

80. The Panel observes that the decision of a sports association can be characterised as either an administrative decision or a disciplinary decision (CAS 2007/A/1381, para 55; and CAS 2008/A/1583 & 1584, para 35). Insofar as there is on the part of the Appellants a contention that the Appealed Decision is a disciplinary sanction, the Panel finds that in the present case, the Appealed Decision is not a disciplinary sanction. There is indeed no evidence or suggestion that the Appellants breached any UEFA regulation or a provision of the UEFA Statutes or engaged in misconduct such as could attract a disciplinary process or a disciplinary sanction imposed to penalise such conduct. The Panel also notes that the decision was taken by the UEFA Executive Committee, which is UEFA's executive decision-making body, and not taken by any UEFA judicial body as is normally the case for a disciplinary decision. For these reasons, the Panel finds that the Appealed Decision is not a disciplinary sanction imposed on the basis of past conduct.

81. The Panel considers that the Appellants' submissions regarding the difference between *a priori* rules and *a posteriori* rules and in that context its reliance on CAS 2014/A/3625 and CAS 98/200 are irrelevant to the present case. The Panel recalls that CAS 98/200 concerned a challenge brought by two professional clubs to the validity of a rule regarding the participation of clubs with a common controlling ownership in the same UEFA club competition. The rule provided that only one club could participate in a UEFA club competition and that in cases where two or more clubs with common controlling ownership had qualified for a competition, the club with the highest coefficient would be permitted entry. The challenged rule was implemented to limit conflicts of interest and remove any adverse public perception regarding the authenticity of match results. CAS 2014/A/3625 involved a challenge to a regulatory measure which main purpose was to exclude from UEFA competitions a UEFA member association or club that had been directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level, without prejudice to any possible disciplinary measures. The Panel accepts that while the challenged measures in CAS 98/200 and CAS 2014/A/3625 had an exclusionary effect, they were implemented to prevent a situation arising that could affect public perception of the authenticity of match results or to respond to and inhibit particular behaviour (i.e. match-fixing). In short, they were precautionary and not penal. The Panel accepts the Respondent's explanation that the Appealed Decision was not adopted by way of punishment in response to something the Clubs had done or not done but was implemented proactively to remove Russia from the access list to participate in UEFA club competitions in light of the Suspension Decision.

82. The Panel also finds that the Appealed Decision is not *"a moral judgment"* adopted by UEFA in response to the military conflict in Ukraine and is clearly not a sanction imposed to enforce compliance with international law obligations, encourage the peaceful settlement of international disputes or to maintain security, as sanctions adopted by governments are

typically imposed to achieve. There is simply no evidence before the Panel that the Appealed Decision was implemented as a sanction against the Russian Federation. The Panel accepts the Respondent's submission that the Appealed Decision implemented changes to its Competition Regulations, which the Respondent considered necessary in light of the ongoing suspension of Russian clubs from participation in its competitions.

83. The Panel determines that, in the circumstances of the present case, the Appealed Decision may be properly characterised as an administrative decision taken by the UEFA Executive Committee to make the necessary adjustments to the Competition Regulations which apply to the Champions League, Europa League and Europa Conference League, respectively, in light of the Suspension Decision, which in turn, was a measure put in place to deal with the consequences of a military conflict for the football competitions that UEFA organises.

b) Scope of the Panel's Review

84. Relying on CAS 98/200, the Appellants allege that the Respondent breached principles of natural justice when it adopted the Appealed Decision because the Appealed Decision concerned only the Appellants, a limited number of designees, and the Respondent was obliged to consult with the Appellants prior to amending the Competition Regulations, which denied the Appellants the opportunity to know the regulatory amendments in advance and to respond to them. The Respondent disputes the Appellants' submissions and submits that Circular No. 21/2022 did not contain regulatory amendments, that CAS 98/200 establishes that the right to be heard shall be primarily applied in cases of sanctions against individuals, which is not relevant to the present case, and that the Appellants did not have the right to be consulted regarding changes to the access list or the coefficients.

85. As the Panel has noted above, CAS 98/200 concerned a challenge to the validity of a regulatory rule regarding the participation of clubs with a common controlling ownership in the same UEFA club competition. In the course of that case, the CAS Panel concluded that in certain limited situations a right to a hearing may exist in respect of *"administrative measures or penalties adopted by a sports governing body with regard to a limited and identifiable number of designees"* (para 58) and concluded that while advisable for a regulator to hear the views of those affected by a regulatory measure, it was not a legal obligation, and in any event would not invalidate a regulatory measure given that the lawfulness of a regulatory measure must be evaluated on its merits (para 62).

86. The Panel has found above that the Appealed Decision was an administrative decision that amended the access list and coefficients for FUR and the Clubs in light of the on-going suspension of Russian representative teams and clubs. The Panel accepts the Respondent's uncontradicted submission that the access list is a standard form annex to the Competition Regulations which is updated each year for a specific competition. It is an excel document that is compiled based on the member association coefficient and the club coefficient and determines the entry stage to a respective competition for each club that qualifies for a UEFA competition. There was no evidence put to the Panel that there was a common, indeed any, practice of consulting clubs and associations regarding their eventual position on the access

list or the coefficient before compiling the access list, which, the Panel considers, in any event, appears to be an administrative matter undertaken on a yearly basis to determine those clubs participating in UEFA club competitions according to a pre-determined formula. The Panel considers that the Appealed Decision was not a substantive regulatory measure that would normally engage an obligation to consult with associations and clubs prior to finalising competition rankings and entry points into a competition.

87. The Appellants submitted that there were a number of other procedural failings, which it identified as: the urgency with which the Appealed Decision was taken when no new circumstances had arisen; their legitimate expectations that they would not be removed from the access list or the coefficient points reduced pending the appeal outcome of CAS 2022/A/8709, *venire contra factum proprium* and the prohibition against arbitrary decisions. The Panel finds that the Appellants' allegations of procedural failings if otherwise sustainable, e.g. a breach of natural justice and the right to be heard, would have been rectified by the present proceedings and would not invalidate the Appealed Decision: its duty pursuant to Article R57 of the Code is to decide the case *de novo,* and means that any denial of due process at the lower-level proceedings (if any) is cured by the CAS proceedings, a principle that is well-established in CAS jurisprudence (CAS 2016/A/4648, para 74; CAS 2012/A/2913, para 87).

88. The Panel accepts 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. Nonetheless, the Panel recalls that in determining the scope of review for an administrative decision such as the one in the present case, under Article 69 of the SCC, the board of an association *"is entitled and obliged to manage and represent the association"*, and that in accordance with the Swiss law of private associations, a sports association has a high degree of autonomy to regulate its own affairs and make decisions that are in line with its statutory objectives and in accordance with its statutes (CAS 2018/O/5830, para 118; CAS 2017/O/5264, 5265 and 5260, para 193).

89. The Panel also notes that when reviewing the decisions of a sports association similar to the one adopted in the present case, it is not engaged in an exercise of evaluating the merits or the substantive value of the decision, still less of substituting its own view for that of the sports association. The Panel is mindful of the principle well-established in CAS jurisprudence, even taking account of the *de novo* review enjoyed under Article R57, that a sports association is best placed to make decisions that further its statutory objectives, and that respect for the principle of freedom of association requires a certain level of deference to be afforded to a sports association.

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

91. 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 100 to 145 of this award.

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

92. The Appellants submitted during the hearing that the Competition Regulations applied to the present dispute because the Clubs had qualified on sporting merit and been issued with licences by FUR to participate in the Various Club Competitions, and submitted that the Appealed Decision was not taken by the UEFA Emergency Panel which it contended was the competent body to take the Appealed Decision under Article 84 of the Champions League Regulations and Articles 83 of the Europa League Regulations and Conference League Regulations respectively. The Respondent submitted that the Competition Regulations did not apply to the present case and that the Appealed Decision was taken by the UEFA Executive Committee exercising its discretionary power under Article 65 of the UEFA Statutes.

93. The Panel observes that Article 1 of the Champions League Regulations (which is mirrored in the Europa League Regulations and the Conference League Regulations) provides that:

"The present regulations govern the rights, duties and responsibilities of all parties participating and involved in the preparation and organisation of the 2022/23 UEFA Champions League including its qualifying phase and play-offs…".

94. Article 84 of the Champions League Regulations (which is mirrored in Articles 83 of the Europa League Regulations and the Conference League Regulations) provides that:

"Any matters not provided for in these regulations, such as cases of force majeure, will be decided by the UEFA Emergency Panel or, if not possible due to time constraints, by the UEFA President or, in his absence, by the UEFA General Secretary. Such decisions are final".

95. The Panel accepts the Respondent's argument that the Competition Regulations do not apply to the present dispute. Article 1 of the Competition Regulations clearly states that the regulations govern the rights, responsibilities and duties *of all parties participating and involved in the preparation and organisation of the 2022/23 UEFA Champions League including its qualifying phase and play-offs.* The Panel accepts the Appellants' submission that they all qualified on sporting merit for the Various Club Competitions after the Suspension Decision, but also notes that, at the time they qualified for admission on sporting merit, they had already been suspended

from UEFA competitions and were never going to be admitted to the Club Competitions unless or until the Suspension Decision had been lifted, which at the time the Appealed Decision was taken had not occurred.

96. Accordingly, although the Clubs may have qualified on sporting merit for the UEFA club competitions for the 2022/2023 season and received a licence from FUR to participate in the Various Club Competitions subsequent to the Suspension Decision, the Suspension Decision removed the clubs from participation in any of the Respondent's club competitions as from 28 February 2022 and accordingly removed their involvement in the preparation and organisation of the 2022/23 competitions, even though they may nominally have appeared as included. The Panel considers, therefore, that the Competition Regulations do not apply to the present dispute to determine the competent entity to take the Appealed Decision.

97. The Panel observes too that the UEFA Executive Committee is tasked with managing UEFA and its duties are outlined in Article 24 of the UEFA Statutes. It also notes that Article 65 of the UEFA Statutes provides that:

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

98. The majority accepts the Respondent's submission that the UEFA Executive Committee was competent on the basis of Article 65 to take the Appealed Decision *as a matter not covered by* the UEFA Statutes and not under a power contained in the Competition Regulations. The Panel observes also that pursuant to Article 4 of the UEFA Organisational Regulations, the UEFA Emergency Panel is an emanation of the UEFA Executive Committee, and is empowered under Article 5 of the UEFA Organisational Regulations to take decisions on behalf of the UEFA Executive Committee on urgent matters between meetings of the UEFA Executive Committee. It appears not to have been required to act on this occasion because the Appealed Decision was able to be taken by the UEFA Executive Committee.

99. For the foregoing reasons, the Panel finds that the UEFA Executive Committee had the competence to take the Appealed Decision.

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

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

101. The Appellants submitted that the Appealed Decision:

a. violated a dominant position;

b. breached the principle of equal treatment;

c. breached the principle of political neutrality;

d. discriminated against the Appellants on the basis of nationality;

e. violated the Appellants' personality rights recognised in Article 28 of the SCC; and

f. was disproportionate.

102. The Respondent rejected all allegations and submitted that the Appealed Decision was a consequence of the Suspension Decision, taking into account the global reaction to the military conflict in Ukraine, was implemented to address the effects of the military action on its competitions, and taken *"to protect the values and objectives of UEFA's competition[s], reputation, and integrity"*.

a) Alleged Violation of a Dominant Position

103. The Appellants argued that UEFA is the sole governing body of European football and enjoys a dominant market position (Cantonal Court of Vaud's decision TC VD, CM11.033798 dated 5 October 2011, para.6(c)(bb)). Entities that occupy a dominant position are required to uphold general principles of law to the highest standards and exercise caution when making decisions. They submitted that UEFA abused its regulatory power when it adopted the amendments, which in their view was a *"back up plan"* in case UEFA did not succeed in CAS 2022/A/8709. The principal purpose of the amendments were to prevent the Appellants from participating in the Various Club Competitions irrespective of the Suspension Decision. The Respondent submitted that dominant position is a competition law concept that should be defined by reference to a relevant market. The Appellants had not conducted any competition law analysis and have not claimed or even established that UEFA had abused a dominant position. In its view, any argument based on competition law should be summarily dismissed *in limine*.

104. The Panel agrees with the Respondent. The Panel notes that the onus is on the Appellants to establish a breach of a dominant position and that it did not submit any economic or expert evidence to support the existence of a market, UEFA's dominant position on that market or any of the alleged breaches of Article 7 of the Swiss Cartel Act. Furthermore, the Panel finds that there is simply no evidence to support the Appellants' contention that the Respondent adopted the Appealed Decision as a *"back up plan"* and with the aim of excluding the Appellants from the Various Club Competitions irrespective of the outcome in CAS 2022/A/8709.

105. Accordingly, the Panel finds that the Appellants have not established that UEFA violated a dominant position and dismisses the claim.

b) Breached the Principle of Equal Treatment

106. The Appellants submitted that measures imposed by associations must comply with the principle of equal treatment and it is especially true in sport where equal treatment is fundamental for any competition (CAS 2005/C/976 & 986, para 137). They contended that the Appealed Decision breached the principle of equal treatment because UEFA did not exclude Ukraine or Belarus from the access list and because UEFA's unsubstantiated concerns about safety, security and logistical issues applied equally to Ukraine and Belarus. The Respondent submitted that there was no breach of the principle of equal treatment. It asserted that the reasons for the different treatment between Russia, Ukraine and Belarus were self-evident and that the Clubs' claim that the logistical problems regarding travel, safety and security applied equally to Ukraine and Belarus, were not correct.

107. The Panel observes that the Suspension Decision removed the right of participation in UEFA club competitions from Russian representative teams and clubs. It notes that Belarusian clubs have so far not been suspended from participation in UEFA competitions. Instead, on 3 March 2022, the UEFA Executive Committee decided that all Belarusian clubs and national teams competing in UEFA competitions would be required to play their home matches at neutral venues and that no spectators would attend matches that feature teams from Belarus as host. The Panel notes that Russia and Russian clubs have been removed from the access list but Ukraine and Belarus still remain on the access list in position 12 and position 29 respectively.

108. The Panel considers that, in reality, the military conflict between Russia and Ukraine has elicited an unprecedented global reaction, including amongst the general public, and that the different treatment of the FUR and the Belarusian FA arose because Belarus' involvement in the military conflict is different to that of Russia, Belarus has not faced the same degree of backlash regarding the military conflict that Russia has and because the UEFA Executive Committee considered that implementing such measures were possible for Belarusian teams and clubs. The Panel finds that, in the present case, removing Russia from the access list was a consequence of the Suspension Decision and that since the Belarusian FA, its teams and clubs had not been suspended from participation in UEFA club competitions, there was no need to amend the access list to remove Belarus. Neither for that matter was there a need to remove Ukraine from the access list.

109. The Panel observes also that the Appellants did not submit any evidence to support their claims that the logistical problems *"are equally applicable to the situation of Ukraine and Belarus"* and from which the Panel could consider whether the principle of equal treatment had been breached.

110. Accordingly, for all these reasons, the Panel finds that the Appealed Decision does not breach the principle of equal treatment.

c) Breached the Principle of Political Neutrality

111. The Appellants submitted that the principle of political neutrality requires that no governmental or political influence is exercised on the activities of sporting organisations (CAS 2019/A/6500, para 105) and that sports organisations must be free to exercise their sport without any political interference. They further contended that UEFA is bound by the principle of political neutrality because it is a member of the Olympic Movement and is committed to adhering to the fundamental principles of political neutrality and non-discrimination outlined in Article 1.1. of the UEFA Statutes. The Appellants contended that UEFA's justifications for the Appealed Decision that were recorded in Circular No. 21/2022 showed that the Appealed Decision was a consequence of the reactions of (i) several Member Associations, (ii) the majority of the governments of European countries and (iii) the general public *"against the actions taken by Russia"* in Ukraine.

112. The Appellants also asserted that UEFA was influenced by the IOC's political stance because it took the Suspension Decision on the same day as the IOC Resolution was taken and in accordance with that Resolution. In their view, the reported comments of the European Commission Vice-President on 11 May 2022 that, *"By refusing to play Russian teams, by imposing other sanctions and by supporting the Ukrainian football community, you have demonstrated the strength of our European unity and values"*, and recent decisions taken by other sports against Russian clubs and individuals, confirmed that decisions to exclude Russia from sports, including the Appealed Decision, were politically motivated. The measures adopted by UEFA were directed against the FUR and Russian clubs only and UEFA has failed to argue convincingly that measures adopted by the UEFA Executive Committee against Russia were about more than a political reaction against, or a statement, to the Russian Federation.

113. The Respondent submitted that the Appealed Decision was not taken for political reasons but repeated that it was a necessary measure taken in order to ensure the viability, integrity and security of UEFA competitions and to protect the interests of European football stakeholders. It contended that Russian teams and clubs were suspended as a result of an objective situation created by the military conflict and not because UEFA politically agrees with Ukraine. It was also fully justified in light of UEFA's statutory objectives in Article 2 of the UEFA Statutes. UEFA took the Suspension Decision because it considered that its statutory objectives could not be met because of the effects of the military conflict. In the Respondent's view, the decisions of the FIL Court of Arbitration and the ETTU Board of Appeal were irrelevant to the Clubs' allegation that the Appealed Decision was politically motivated. There was a substantial amount of evidence that showed the threats to the viability, integrity, security and safety of UEFA's competitions and the fact these risks had not yet materialised was because UEFA had taken action.

114. The Panel recalls that Articles 5 and 6 of the Fundamental Principles of Olympism outlined in the IOC Charter state the following:

> *"5. Recognising that sport occurs within the framework of society, sports organisations within the Olympic movement shall apply political neutrality. They have the rights and obligations of autonomy, which*

include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from outside influence and the responsibility for ensuring that principles of good governance be applied.

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

115. The Panel recalls that UEFA is a part of the Olympic Movement and that its Statutes reflect the Articles 5 and 6 of the Fundamental Principles of Olympism regarding political neutrality and non-discrimination. The Panel observes that Article 1.1 of the UEFA Statutes provides:

"The Union des Associations Européennes de Football (UEFA) shall be a society entered into in the register of companies under the terms of Art. 60 et seq. of the Swiss Civil Code. UEFA shall be neutral, politically and religiously".

116. UEFA's statutory objectives outlined in Article 2 of the UEFA Statutes, include the following:

"The objectives of UEFA shall be to:

a) deal with all questions relating to European football;

b) promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason; …

d) organise and conduct international football competitions and tournaments at European level for every type of football whilst respecting the players' health; …

i) promote unity among Member Associations in matters relating to European and world football;

j) safeguard the overall interests of Member Associations;

k) ensure that the needs of different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account;

l) act as a representative voice for the European football family as a whole; …

o) respect the interests of Member Associations, settle disputes between Member Associations and assist them in any matter upon request".

117. On the issue of whether by taking the Appealed Decision, UEFA breached the principle of political neutrality outlined in Article 1 of the UEFA Statutes, the Panel finds that there is no definition of *"political neutrality"* in the UEFA Statutes, other than the reference in Article 1.1 to the requirement for UEFA to *"be neutral politically and religiously"*. The Panel recalls the description of political neutrality outlined in CAS 2019/A/6500 & 6580, para 105 as:

"The principle of political neutrality, in the view of the Panel, requires that no political interference whatsoever is exercised on the activities of a sporting organisation. Indeed athletes must be free to exercise their sport without any political interference".

118. In those cases, the CAS Panel was concerned with specific instructions provided to an Iranian athlete not to compete against an Israeli athlete, that was supported by a government official and accompanied by a personal threat towards the athlete's family in the event that the athlete did not comply, which the Panel considered demonstrated a political issue interfering with sporting activities and was a clear violation of the principle of political neutrality (*ibid.*, para 105). That is not the situation with which the Panel is concerned in the present case. Based on the information available to it, the Panel finds no evidence that the UEFA Executive Committee arrived at the Appealed Decision other than by its own independent decision-making. There is no evidence, for example, that the Committee took the Appealed Decision because of the IOC Resolution or because of a direction from another external third party.

119. The introduction to Circular No. 21/2022 recorded the following:

"On 28 February 2022, the UEFA Executive Committee (EXCO) decided to suspend all Russian representative teams and clubs from participating in UEFA competition matches until further notice. While this decision is still in force, there was an urgency to address the impact and consequences of this pending suspension on the upcoming UEFA competitions that have not started yet or that will span beyond the current season, such as the UEFA Nations League 2022/23 (UNL) and the UEFA Women's EURO 2022 (WEURO), in order to ensure the smooth staging of said competitions in a safe and secure environment for all those concerned.

In this regard, several UEFA national associations, including the host association of the WEURO (i.e. the English FA) as well as others which have been drawn in the same group as Russia for a specific competition stage, have publicly voiced their intention not to participate in matches against teams from the Football Union of Russia (FUR), which puts these competitions in disrepute and seriously affect their integrity.

Apart from the national associations, the majority of the governments of European countries have condemned the actions taken by Russia in an unprecedentedly strong and united fashion, not limited to the United Kingdom and the European Union, which have further imposed severe sanctions on a number of Russian individuals. Additionally, the general public's reaction, with protests organised in the majority of European cities against the actions taken by Russia, is causing serious concerns about the ability to ensure the safety and security for the team delegations, supporters and anyone else involved in the preparation and staging of the relevant UEFA competition matches. Furthermore, the travelling constraints caused by the war of Russia in Ukraine, are putting the smooth continuation of the competitions at a high risk".

120. As the contents of Circular No. 21/2022 show, the UEFA Executive Committee took into consideration a number of factors when taking the Appealed Decision. Those factors included the Suspension Decision and the "urgency" to make amendments in view of the impending competitions, the refusal of some member associations to play against the FUR's teams, security concerns, flight bans, and the widespread public reaction against the military conflict.

121. The Panel accepts that the military conflict in Ukraine undoubtedly raises political issues but that does not lead automatically to the conclusion that any decision taken by a sports organisation that touches on a military conflict breaches the principle of political neutrality. The Panel considers that the military conflict in Ukraine was the catalyst for a series of extraordinary and unforeseen consequences, 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 certain national associations to play against Russian teams or clubs; the effect that refusals might have for the organisation of events such as UEFA's competitions or the FIFA World Cup 2022; as well as related security concerns.

122. Whilst the positions adopted by member associations, European governments and the general public were clearly considerations in the Executive Committee's decision, the majority accepts the Respondent's submission that the Executive Committee did not arrive at the Appealed Decision because of pressure from member associations or the views of European governments. The Panel considers that the UEFA Executive Committee acted as it did to implement the Suspension Decision, which in turn was taken in response to a set of extraordinary and unforeseen circumstances, and not because UEFA favoured a particular political position. The Panel accepts that the effect of the Suspension Decision and the Appealed Decision may lend itself to the perception that UEFA favoured a political position, but that was an unavoidable consequence of the decisions that it took having considered all of the circumstances.

123. The Panel further finds that while the Appealed Decision may have been consonant with the views implicit in the IOC Resolution or the views of European governments or even the views of the general public, there is no evidence that it was taken only or substantially because of those views or that it was taken in support of those positions or again that it would not have been the same decision irrespective of those views. In the Panel's opinion the Appealed Decision was taken to further UEFA's statutory objectives, specifically those of Articles 2.1(b) and (d), which, the Panel finds was within the UEFA Executive Committee's margin of discretion in the situation with which the Executive Committee was faced.

124. For all those reasons, the Panel finds that no breach of the principle of political neutrality occurred.

d) Discriminated Against the Appellants on the Basis of Nationality

125. The Appellants' submitted that the Appealed Decision breached the prohibition of discrimination provided in Article 2.1(b) of the UEFA Statutes on the basis of nationality because the Appealed Decision concerned only Russia. The Appealed Decision took Russia out of the access list for the 2022/2023 UEFA club competitions and set its coefficient ranking points at the minimum. By contrast, UEFA had previously admitted to its competitions, the football associations of other countries involved in military conflict (e.g.,

Israel, France, Azerbaijan, Turkey, Armenia and even Russia during the military conflict with Ukraine in 2014). The Appellants highlighted that other international federations did not ban Russian national teams and clubs from participating in international tournaments. IBA, FINA and FIG sanctioned only those who supported the military conflict, and the ATP condemned Wimbledon's ban on Russian and Belarusian players from competing in the United Kingdom this summer as *"discrimination"*.

126. The Respondent rejected the Appellants' submission that the Appealed Decision was discriminatory in nature. It submitted that even if the Panel were to conclude that discrimination, *prima facie*, had occurred (*quod non*), *"this is merely the starting point, and not the end, of the Panel's legal analysis"* (CAS 2018/O/5794 & 5798, para 548), and that any assessment of the lawfulness of a discriminatory measure must also take into account whether such measure was *"a necessary, reasonable and proportionate means of attaining a legitimate objective"* (CAS 2018/O/5794 & 5798, para 548). The Respondent further submitted that whilst regrettable, the Suspension Decision was *"a necessary, reasonable and proportionate means of attaining a legitimate objective"* because of the objective impact of the unprecedented reaction to the military conflict, and was an objective assessment of the potential consequences of having Russian teams participate in UEFA competitions in the existing global context.

127. The Panel observes that the Appealed Decision concerned only Russia because the Suspension Decision related only to FUR, its teams and clubs. The Appealed Decision implemented the Suspension Decision and therefore applied only to FUR and Russian Clubs. When compared to UEFA's response to other military conflicts involving countries such as Israel, France, Azerbaijan, Turkey, Armenia, and based on the limited information that it has in relation to UEFA's response in those situations, the Panel finds no evidence of discrimination on the basis of nationality. The Panel considers that any difference in treatment between the Appellants, and the member associations, teams or clubs involved in past military conflict situations was not because of nationality, but because the military conflict in Ukraine has elicited an unprecedented global reaction, including amongst the general public, unlike previous military conflicts. It was the consequences of that reaction to which UEFA considered it was required to act in order to fulfil its statutory objectives. While the Panel does not find it helpful to compare UEFA's approach to previous conflicts with its response to the military conflict in Ukraine, it emphasises that this particular military conflict has resulted in extraordinary and unprecedented circumstances and necessitated the Suspension Decision. The Suspension Decision is not at issue in these proceedings and so the Panel makes no finding regarding whether UEFA discriminated on the basis of nationality against the Appellants when it took the Suspension Decision.

128. The Panel was referred to the decisions of the ETTU Board of Appeal dated 26 April 2022 and the FIL 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"*.

129. 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 UEFA's. There will also be different factors or different weightings applied to certain factors that were considered when each sport responded in the manner in which it did. The Panel considers 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.

130. Accordingly, for all those reasons, the Panel finds that there was no discrimination on the grounds of nationality.

e) Violated the Appellants' personality rights recognised in Article 28 of the SCC

131. The Appellants submitted that UEFA's discriminatory actions violated the Appellants' personality rights, specifically their rights to engage in sporting and economic activities through participation in UEFA competitions. They submitted that non-admission to the Various Club Competitions deprived them of participation in the qualifying rounds and final stages of those competitions and the related economic benefits that participation provides. Exclusion of FUR from the access list prevented the Appellants from advancing their international objectives to promote their brands and Russian football as a whole, and impeded their efforts to de-escalate the political tension.

132. The Respondent accepted that the Suspension Decision and, therefore the Appealed Decision, affected the Appellants' personality rights. It submitted, however, that the Clubs did not appeal the Suspension Decision and, in any event, an infringement is only illicit under Swiss law if it is not justified by an overriding public or private interest (Article 28(2) of the SCC). UEFA has a legitimate interest in protecting the integrity and safety of its competitions and the Swiss Federal Supreme Court has acknowledged that the integrity of a competition is a fundamental interest worthy of protection (ATF 134 III 193). The travel and security situation is volatile and inherently unpredictable, which jeopardises the integrity of UEFA's competitions and the safety of participants, and are concerns which are not alleviated by playing matches behind closed doors.

133. 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".

134. 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).

135. 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).

136. The Panel accepts that the Suspension Decision, and by extension the Appealed Decision, will have an adverse impact on Russian football, although the extent of that impact was not demonstrated in these proceedings. The Panel was not presented with any evidence that would satisfy it to the appropriate standard that an infringement of the Appellants' 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.

137. In any event, assuming (*quod non*) that an infringement even arises, the majority agrees with the Respondent that an incursion on the Appellants' personality rights in the circumstances of the present case is likely justified by UEFA's overriding interest of protecting the integrity of its competitions and its legitimate security concerns, both of which would amount to an overriding private interest that may justify the infringement if one were found to have occurred, under Article 28(2) of the SCC.

138. Accordingly, for those reasons, the Panel finds that there was no unlawful infringement of personality rights.

f) The Appealed Decision Is Disproportionate

139. The Appellants submitted that the Appealed Decision is disproportionate because UEFA had experience of dealing with similar situations (e.g. in 2002, 2014 and 2020), and there were many other alternative measures that UEFA could have adopted. For example, UEFA could have: brought disciplinary proceedings if the Appellants were unable to play a match; permitted participation without identifying nationality; required the Appellants to play on neutral venues; adopted a similar protocol to that adopted in response to COVID-19; or required the UEFA Emergency Panel, UEFA President or the UEFA General Secretary to take the necessary decisions on a case-by-case basis, if problems arose. The Appellants asserted that UEFA had not substantiated its claims concerning travel, safety, and security, but had simply relied on the fact that (i) European governing bodies have adopted sanctions against Russia, (ii) national associations publicly voiced their opinion against FUR and (iii) the general public's reaction. The Appellants contended that cost and organisational hurdles were insufficient reasons for UEFA to completely exclude the Appellants. FC Zenit JSC and FC Sochi had received letters from the Russian Ministry of the Interior confirming that the Ministry would ensure safety and security during an international football event. The alternative options available to UEFA supported the Appellants' view that the Appealed Decision was disproportionate.

140. The Respondent denied the Appellants' claims regarding proportionality and stated that its evidence supported an assessment of the risks of having Russian clubs participate in its competitions. The CAS had also confirmed that (i) such risks are obvious; and (ii) the participation of the FUR's teams in the competitions would severely jeopardise the smooth and safe conduct of these, even if matches involving the FUR's teams were to be staged on a neutral pitch with no spectators (CAS 2022/A/8709, order on Provisional Measures (reasoned) dated 8 April 2022). The Respondent rejected the Appellants' analogy with the measures UEFA had taken during COVID-19, which unlike the military conflict, was an issue that affected all member associations in the same way. Furthermore, disciplinary measures and case-by-case decisions would not have ensured the viability and fairness of the competitions, and would potentially have harmed third parties. They would also not have prevented the risks and would have been of no help if the risks had materialised. Neutral venues and assurances from the Russian authorities are also not helpful. Football matches do not happen in a vacuum and incidents outside the stadium could not be ruled out. Neither can security situations arising during travel, at the team hotel, outside the stadium and generally in the city or country where the competition is taking place. Even if the Panel accepted the assurances from the Russian Ministry of the Interior, the fact is that the risks go beyond the Russian territory, such is the nature of international football competitions.

141. The Panel notes that while the Appealed Decision is not a disciplinary decision, as it is has found above, the Panel is entitled to assess the proportionality of the measure within the scope of its review of the exercise of UEFA's discretion, and arguments regarding proportionality are relevant. The majority finds that at the time the Appealed Decision was taken, it was a proportionate and necessary response to implement the Suspension Decision, taking into

consideration the Appellants' interest, UEFA's interest and the interests of other European football stakeholders.

142. The Panel observes that UEFA had already, on 28 February 2022, taken the Suspension Decision and, in light of that decision, was required to make amendments to the access list in order to progress the efficient organisation of its impending club competitions. The Panel notes that some of the Appellants' arguments regarding proportionality and the alternatives to taking the Appealed Decision (e.g. participation without identifying nationality, playing on neutral venues, or safety and security concerns) are, in fact, more relevant to a challenge against the Suspension Decision, which is not the subject of this appeal, and which the Panel has not been called upon in these proceedings to consider.

143. In any event, the Panel recalls that a sports governing body has a legitimate interest in protecting the integrity and safety of its competitions. The Panel considers that the very presence of the Appellants' teams (to be distinguished from the presence of Russian individuals in, for example, non-team sports such as tennis) might, in existing circumstances, generate protests that escalate into violence. It observes that unlike some other sports, football, sadly, has proven over the years particularly prone to extreme crowd reactions that are sourced in racism, nationalism or religious differences. It is not unknown for tensions between different groups to spill over into violence at or around football events, creating security and safety concerns inside and outside a stadium. On this issue, however, it is not for the Panel to decide whether it would have reached the same decision, and it defers to UEFA's expertise when it comes to assessing the security risk and safety concerns of its competitions. The Panel notes also that the option of playing behind closed doors would inconvenience other teams who could reasonably expect to play their matches in front of a crowd but for being drawn against the Appellants. The Panel observes that UEFA's initial response to the unfolding circumstances, was the First Decision (which was taken on 25 February 2022, before the Suspension Decision) and which required, amongst other things, that no UEFA competition matches were to be played on Russian or Ukrainian territory. This would have enabled the Appellants to participate in the Various Club Competitions, although outside their own country, and the Appealed Decision would not have been required. As the circumstances evolved after 25 February 2022, however, the Suspension Decision was adopted and the playing option outlined in the First Decision discarded.

144. The majority considers that the alternatives suggested by the Appellants of resolving any issues that should arise if the Appellants were to participate through disciplinary proceedings, or enabling certain UEFA officials to make a decision, are reactive responses, and that it is not disproportionate to adopt a more proactive response to minimise disruption to a sports competition. Although the Russian Ministry of the Interior has provided assurances to two of the Clubs that it would ensure the security and safety of participants and matches that occur at their grounds, the Panel acknowledges UEFA's submission that security risks and safety concerns can extend beyond an individual country's borders. It observes also that many governments in Europe have likely issued travel advisory notices, warning against travel to Russia given the uncertain duration and scope of the existing military conflict, which would prevent the teams and supporters of other member associations, from travelling to Russia,

even if matches were permitted to be played there. Finally, regarding the Clubs' suggestion that UEFA should adopt a similar protocol to that in place for COVID-19, the Panel observes that the global pandemic affected many countries including Russia. The Panel was not provided with evidence of UEFA's COVID-19 protocol and how it might apply to the Clubs, nevertheless, it considers that a protocol designed to limit the spread of a virus would very likely not limit or remove altogether the security concerns for participants and spectators of a match involving one of the Clubs.

145. Accordingly, for those reasons, the majority finds that the Appealed Decision was not disproportionate.

E. Conclusion

146. For the reasons set out above, the Panel finds that in the extraordinary and unprecedented circumstances with which UEFA was faced and to achieve its statutory objectives, the Appealed Decision was a reasonable and proportionate decision to take in order to make necessary amendments to impending competitions in light of the Suspension Decision. It was required to provide safe, secure and orderly international football events for European football's stakeholders. The majority and, in some matters as outlined fully above the Panel, finds that the decision did not breach the principle of political neutrality, nor mandatory provisions of Swiss law, was not disproportionate or discriminatory, and falls within the margin of discretion that UEFA has when making decisions that further its statutory objectives.

147. The Panel notes that it was unfortunate that UEFA was required to take the Suspension Decision, and similarly the Appealed Decision, for which the Clubs and players have themselves no responsibility, but which has had, and will likely have, an adverse effect on them. The Panel recalls that the Suspension Decision is a temporary one, and that *"Russian representative teams and clubs are suspended from taking part in UEFA competitions until further notice"* and very much hopes, for the benefit of the entire European football community, that circumstances develop in a way that the Suspension Decision can properly be lifted and FUR and Russian clubs restored to the access list for UEFA club competitions.

148. 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 12 May 2022 by FC Zenit JSC in the arbitration *CAS 2022/A/8865 FC Zenit JSC v. Union des Associations Européennes de Football (UEFA),* against the decision rendered by the Executive Committee of the *Union des Associations Européennes de Football (UEFA)* on 2 May 2022, is dismissed.

2. The appeal filed on 12 May 2022 by FC Sochi in the arbitration *CAS 2022/A/8866 FC Sochi v. Union des Associations Européennes de Football (UEFA),* against the decision rendered by the Executive Committee of the *Union des Associations Européennes de Football (UEFA)* on 2 May 2022, is dismissed.

3. The appeal filed on 12 May 2022 by PFC CSKA Moscow in the arbitration *CAS 2022/A/8867 PFC CSKA Moscow v. Union des Associations Européennes de Football (UEFA),* against the decision rendered by the Executive Committee of the *Union des Associations Européennes de Football (UEFA)* on 2 May 2022, is dismissed.

4. The appeal filed on 12 May 2022 by FC Dynamo Moscow in the arbitration *CAS 2022/A/8868 FC Dynamo Moscow v. Union des Associations Européennes de Football (UEFA),* against the decision rendered by the Executive Committee of the *Union des Associations Européennes de Football (UEFA)* on 2 May 2022, is dismissed.

5. The decision rendered by the Executive Committee of the *Union des Associations Européennes de Football (UEFA)* on 2 May 2022 is confirmed.

6. (…).

7. (…).

8. (…).

9. (…).

10. (…).

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