



Arbitration CAS 98/201 Celtic Plc / Union of European Football Associations (UEFA), award of 7 January 2000

Panel: Dr. Hans Nater (Switzerland), President; Mr. Jan Paulsson (France); Mr. George Abela (Malta)

Football

Transfer of a football player

Jurisdiction of FIFA and UEFA

Transfer fee

Freedom of movement for workers within the EC

1. According to the FIFA regulations, the member confederations can draw up their own regulations to rule over any dispute relating to the payment of a transfer fee in connection with an international transfer between two clubs within the relevant confederation's jurisdiction, without distinction as to whether the conflict at issue between such clubs regards the principle of the fee or only its amount.
2. UEFA has not drawn up its own rules to settle “any” differences in connection with a transfer fee between clubs within its jurisdiction, but only used the option to draw up its own rules to settle differences between clubs which agree on the principle of a compensation, but not on its precise amount. Accordingly, in the case of a dispute between European clubs concerning not only the amount of the compensation to be paid, but primarily the question of entitlement to such compensation, it is to be considered that no regulations of a confederation are in force in Europe within the meaning of the FIFA Regulations.
3. In the organisation of professional football, the criterion used to determine whether the transfer of a player from one club to another is of an international nature rests in the fact that the transfer implies the move from a club affiliated to one national association to a club affiliated to another national association; therefore, the concepts of “nation” or “country” have different meanings than in the usual language, it being understood that those concepts – within the context of football – do not correspond systematically and/or strictly to the existing political borders of the concerned territories.

The Claimant Celtic FC is a Scottish football club incorporated under the laws of the UK and has its seat in Glasgow. Celtic FC, which is affiliated to the Scottish Football Association (“SFA”), participates in the Scottish Premier League and has often qualified for the European competitions organised by UEFA.

The Defendant UEFA is an association incorporated under the laws of Switzerland and has its seat in Nyon, Switzerland. It is a sports federation whose members are all of the national football associations of Europe. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players.

At the same time, UEFA is itself affiliated to the Fédération Internationale de Football Association ("FIFA") together with the other continental confederations and all national associations. As such, UEFA is bound to abide by FIFA's applicable rules and regulations.

C. is a professional football player and a UK national.

C. was under contract with Celtic Plc (hereafter: "Celtic FC") until 30 June 1996. The player's contract with Celtic FC expired on 1 July 1996.

On 27 June 1996, C. entered into a contract as a professional football player with the Association Sportive de Monaco ("ASM") with effect as of 1 July 1996.

On 9 July 1996, the SFA wrote to Celtic FC to confirm that an International Transfer Certificate concerning C. had been issued to the French Football Federation ("FFF") on 2 July 1996.

In this Certificate, the SFA certified that "*in accordance with the provisions of the FIFA Regulations governing the status and transfer of non-amateur player, C., 31.01.68, formally a member of Celtic FC, having duly fulfilled his obligations towards both his former club and our national association, is therefore free to pursue sports activities and register with another national association affiliated to FIFA*".

On 2 July 1996, Celtic FC wrote to ASM requesting the latter club's proposals for compensation payable for training and/or development of a player in respect of the signing of C., on the basis of article 14.1 of the FIFA Regulations governing the Status and Transfer of Football Players (the "FIFA Regulations").

By letter dated 3 July 1996, to which a previous correspondence from ASM to Celtic FC dated 10 June 1996 was attached, ASM gave a negative response to the Claimant and did not make any offer of compensation for training and/or development of the player, relying on the then recently published decision of the European Court of Justice in the so-called "Bosman case".

In the following weeks, the Chief Executive of the SFA contacted UEFA officials informally by telephone in order to ask them to determine whether Celtic FC was entitled to compensation on account of the transfer of C. to ASM.

UEFA considered it was not competent to take a decision on the question of Celtic FC's entitlement to compensation for training and/or development of C. and decided to submit the matter as a preliminary question to FIFA in Zurich.

By fax dated 18 September 1996, FIFA informed SFA, with copies to the FFF and UEFA, that the question of principle as to whether compensation was due for the transfer of C. from Celtic FC to ASM would be submitted to the FIFA Players' Status Committee on 7 November 1996.

On 25 September 1996, the Claimant formally requested from the General Secretary of UEFA that the amount of compensation for training and/or development of C. following his move from Celtic FC to ASM be fixed by the appropriate UEFA Board of Experts, as provided under the FIFA Regulations and the UEFA Regulations governing the fixing of a Transfer Fee (the "UEFA Regulations").

The Defendant wrote to the Claimant on 27 September 1996 acknowledging receipt of the latter's request for a UEFA Board of Experts Ruling on the amount of compensation for the transfer of C. to ASM.

In that same letter, UEFA informed the Claimant about the SFA's previous informal approach, the Defendant's decision to refer the question to FIFA as a preliminary question and FIFA's decision to submit this same question to its Players' Status Committee on the occasion of its meeting of 7 November 1996.

On 10 October 1996, the Claimant wrote to the Defendant questioning the latter's authority to submit the matter to FIFA unilaterally, given the terms of article 3.2 of the UEFA Regulations.

There followed a series of communications involving Celtic FC, ASM, UEFA and FIFA, evidencing the different positions of the Claimant, on the one hand, and of ASM and the Defendant, on the other hand.

In a letter addressed to UEFA on 25 October 1996, Celtic FC accordingly stated that "*in the absence at this stage of any forum other than FIFA, however procedurally improper that may be, our Club will lodge submissions in relation to this matter with FIFA before the deadline of 31 October. Our Club will do so, however, under protest and without prejudice to, and under reservation of its whole rights and pleas in relation to its dispute with AS de Monaco which may turn out to require resolution other than by FIFA or UEFA*".

On or before 30 October 1996, both ASM and Celtic FC lodged written submissions with FIFA Players' Status Committee.

On 8 November 1996, the FIFA Players' Status Committee notified the SFA and FFF of its decision whereby "*the Committee concluded that as both Celtic FC and AS de Monaco are subject to the EC Court Ruling mentioned above [i.e. the Bosman case], AS de Monaco may not be obliged to pay compensation to Celtic FC for the development of the player C. (article 14, par. 1 of the above mentioned FIFA Regulations is not applicable in the present case - see FIFA circular N° 592, dated 12.06.1996)*".

Such decision was taken on the following main grounds:

- this case involves the transfer of a player from a club affiliated to a national association in a EU member country to a club affiliated to the national association of another EU member country;

- according to article 7 of the FIFA Regulations, the International Transfer Certificate must be issued on behalf of one FIFA Member Association to another, bearing in mind that in this case both associations involved are located within EU territory;
- the fact that the legal domicile of ASM is located outside EU territory could not be taken into consideration because (i) ASM is affiliated to the FFF and has no possibility of other affiliation as the Principality of Monaco has no national association of its own and (ii) a decision to the contrary would allow any club based in EU territory to transfer such legal base to a territory outside EU in order to be able to circumvent the effect of the ruling of the EC Court in the Bosman case.

Celtic FC appealed to the FIFA Executive Committee on 27 November 1996 against the decision of the FIFA Players' Status Committee. This appeal was rejected on 11 September 1997 on the formal ground that the SFA had failed to lodge the appropriate appeal fee in time.

The FIFA Executive Committee nevertheless decided to comment on the merits of the appeal and approved FIFA Players' Status Committee's position, underlining in particular that *"it was imperative for a club which has no choice but to be affiliated to an association belonging to another country to be subject to the same rules as those applying to other sport associations with which it contests a competition"*.

The Claimant subsequently requested FIFA Executive Committee to reconsider its position in relation to the procedural impropriety. This request was rejected, and the prior ruling of the appeal body reaffirmed in its entirety, on 27 May 1998.

On 4 June 1998, the Claimant wrote a letter to UEFA whereby it re-submitted its request to obtain a decision from UEFA Board of Experts on the amount of compensation for training and/or development of C..

In that same letter, the Claimant recalled that on 25 October 1996, it had described the reference of the dispute by UEFA to FIFA as procedurally improper and only agreed to follow the directions of UEFA under protest and without prejudice to its whole rights and pleas in relation to its dispute with ASM.

The Defendant replied to the Claimant on 8 June 1998 stating that the latter's request to the appropriate UEFA Board of Experts could only be submitted by UEFA if a final decision from FIFA was obtained, according to which a compensation fee for training and/or development of C. was due to Celtic FC as per the applicable regulations.

The parties hereto are bound to refer any dispute between them to arbitration before CAS in accordance with articles 56 and 57 of the UEFA Statutes 1997 edition and with the "Recognition of a Court of Arbitration"-form signed by Celtic FC on 9 June 1998.

On 18 June 1998, Celtic FC filed with the CAS a Request for Arbitration together with 4 Exhibits petitioning that UEFA be ordered to fix the amount of compensation for training and/or development of C. in respect of his move from Celtic FC to ASM, and that the Defendant UEFA

be ordered to pay the costs and expenses of the arbitration proceedings and to reimburse the Claimant for its costs.

The Claimant presented in its Request for Arbitration of 19 June 1998 and specified in its Statement of Case of 24 February 1999 the following requests for relief:

- order UEFA to fix the amount of compensation for training and/or development of the player C. in respect of his transfer from Celtic FC to ASM within 20 days from the issuance of the Arbitral Tribunal's Award, under penalty of section 292 of the Swiss Criminal Code for the Officers of UEFA in case of non-compliance with such Award;
- order UEFA to request ASM to remit such compensation (together with relevant interests thereon) to the Claimant or, alternatively, to order UEFA to remit such compensation and interests to the Claimant, both within seven days from the fixing of such compensation; and
- order UEFA to pay the costs and expenses of this arbitration and of all other proceedings leading to and connected with this arbitration, and to reimburse the Claimant for all its costs, including legal and other professional fees, incurred in pursuit of its claim for compensation in relation to the transfer of C.

The Claimant, Celtic FC, principally submits that:

- a) UEFA did not have authority to refer the transfer dispute between Celtic FC and ASM to FIFA, and a Board of Experts should have been seized in accordance with Article 3.2 of the UEFA Regulations for the purposes of determining a transfer fee (the "Regulatory Issue");
- b) The relevant FIFA bodies erred in their application of EU law and of the FIFA Regulations in relation to this dispute on the transfer of C. from Celtic FC to ASM (the "Substantive Issue").

The Defendant filed its Answer, accompanied by 14 Exhibits, on 27 July 1997 requesting the CAS to dismiss all legal petitions submitted by the Claimant, with all costs and compensations to be charged to the Claimant.

The Defendant submitted in both its Answer of 27 July 1998 and Response of 30 April 1999 the following request for relief:

"UEFA respectfully requests the Court of Arbitration for Sport to dismiss all legal petitions submitted by the Claimant with all costs and compensations to be charged to the Claimant."

The Defendant is principally of the opinion that:

- a) it is rightfully a matter for FIFA and not UEFA to determine whether compensation is due in principle in this case in the light of applicable FIFA and UEFA Regulations (the "Regulatory Issue"). FIFA has determined that no compensation is payable in this case to the Claimant in a final decision. UEFA is bound to apply the ruling of FIFA, which logically leads to the conclusion that there is no point in convening a Board of Experts if there is no open question left to discuss for such Board;
- b) the situation of the transfer of C. from Celtic FC to ASM falls within the scope of the European Court of Justice judgement of 15 December 1995 in Case 415/93 (the "Bosman ruling"), this

conclusion is fully consistent with the FIFA Circular letter N° 592 (the “Circular”), and even if it was not, the transfer of C. would be covered by the provisions of the EC Treaty on freedom of movement for workers (now Article 39) and on free competition (now Articles 81 and 82) (the “Substantive Issue”).

The hearing was held on 23 November 1999 at the Villa du Centenaire in Lausanne. The parties were present and assisted by their respective counsel and other representatives.

LAW

1. The CAS has jurisdiction over this dispute on the basis of Articles 57 and 58 of the UEFA Statutes and of the “Recognition of a Court of Arbitration”-form signed by the Claimant.

Furthermore, during the hearing in Lausanne on 23 November 1999, it was explicitly acknowledged by the parties that the competence of the CAS is not in dispute.

2. Pursuant to Article R45 of the Code, the dispute must be decided “*according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law*”.
3. The Panel considers that Swiss civil law is applicable to all aspects of the dispute relating to the construction of the FIFA and UEFA Regulations, in accordance with Article R45 of the Code, Article 4, par. 3 a) of the FIFA Statutes and Article 59, par. 1 of the UEFA Statutes.
4. As for the rules applicable to the Substantive Issue, the Panel holds that, apart from a possible agreement of the parties in connection therewith, EC Treaty provisions on the free movement of workers and on free competition must be taken into account insofar as they are applicable. Indeed, in accordance with Article 19 of the Swiss Federal Act on Private International Law (“LDIP”), an arbitration tribunal sitting in Switzerland must take into consideration foreign mandatory rules, even of a law different from the one determined through the choice of law process, provided that three conditions are met:
 - such rule must belong to that special category of norms which need to be applied irrespective of the law applicable to the merits of the case;
 - there must be a close connection between the subject matter of the dispute and the territory where the mandatory rules are in force;
 - from the point of view of Swiss legal theory and practice, the mandatory rules must aim at protecting legitimate interests and crucial values and their application must allow an appropriate decision.

The Panel is of the opinion that all such conditions are met in this case and that, pursuant to Article 19 LDIP, relevant EC Treaty provisions have to be taken into account.

In any event, in view of the parties' respective arguments raised in their written pleadings and oral submissions, which are widely based on such EC Treaty provisions, the Panel understands that the Claimant and the Defendant do not contest the applicability of such provisions and are in agreement thereupon.

5. Association football, commonly known as "Football", is played as an organised sport in clubs which belong to national associations or federations in each country. In Europe, each national association or federation is a member of UEFA, the confederation body for Europe which is also an association incorporated under the laws of Switzerland.

Both the national associations or federations in each European country and the association constituting the confederation for Europe (UEFA) are members of the Fédération Internationale de Football Association (FIFA), which is also an association incorporated under the laws of Switzerland. FIFA organises football at world level.

6. The members of UEFA have undertaken and are bound to comply with the UEFA Statutes and with regulations and decisions of UEFA, while UEFA itself and the other members of FIFA have undertaken and are bound to comply with the FIFA Statutes and with regulations and decisions of FIFA.
7. Each football match organised under the auspices of a national association must be played between two clubs which are members of that association (or of a secondary or subsidiary association affiliated to it). The team fielded by each club must consist of players who are registered by a national association to play for that club. Every professional player must be registered as such with his national association and is entered as the present or former employee of a specific club.
8. In accordance with Article 1, par. 3 of the FIFA Statutes, only one association shall be recognised in each country. As an exception to that principle, only in the United Kingdom are there more than one national association, in fact four: England, Wales, Scotland and Northern Ireland respectively.

The Principality of Monaco, which is a sovereign and independent country and not a member of the EU, has no national football association of its own. The only professional club of the Principality of Monaco, ASM, is therefore affiliated to the French Football Federation (and has been for more than 70 years). As a member of the FFF, ASM is assimilated to a French football club and its players must be registered with the French football association. ASM is also bound by the French football regulations, it being underlined that ASM participates in all French football competitions and, based on application by the FFF, competes in the European club competitions organised by UEFA as a French club.

9. The rules and regulations applicable to the transfer of non-amateur football players from one club to another in Europe, as well as the basic principles deriving from the provisions

of the EC Treaty which may have effect in connection therewith, will be exposed and construed in the following sections V.2.2 and V.2.3, in the light of the above explanations concerning the organisation of football in Europe and the particular situation of ASM in that context.

10. It is necessary to ascertain whether the Defendant (UEFA) was right in transmitting as a preliminary question to FIFA the question of the Claimant's entitlement to a transfer fee in this case, rather than to take a decision about it within its own organisation, particularly through UEFA Board of Experts.

The question asked is thus that of FIFA's and UEFA's respective competence in this regard. To answer this question requires that the applicable FIFA and UEFA Regulations be thoroughly examined and, if necessary, construed.

11. The relevant provisions contained in the FIFA Regulations which were in force at the time of C.'s move to ASM (January 1994 edition) are the following:

Under chapter IV – International Transfer Certificates

Art. 7 par.1: “An amateur or non-amateur player who has become eligible to play for a club affiliated to a national association may not be registered with a club affiliated to another national association unless the latter has received an International Transfer Certificate issued by the national association which the player wishes to leave”.

Under chapter V – Players transferred from one national association to another

Art. 14, par. 1: “If a non-amateur player concludes a contract with a new club, his former club shall be entitled to compensation for his training and/or development”.

Art. 15, par. 1: “The amount of compensation mentioned in Art. 14 shall be agreed upon between the two clubs involved. Any agreement made between a player and his former club or between a third party and the former club regarding the amount of compensation shall be disregarded.”

Art. 16: “If, thirty days after the International Transfer Certificate has been issued, the two clubs have not reached agreement on the amount of compensation in respect of the training and/or development of a player (c.f. Art. 14), the dispute shall be submitted to FIFA unless the dispute is to be dealt with by a confederation under the terms of par. 4 below.

² *A confederation may draw up its own regulations to settle any differences of the kind described in par. 1 between two clubs based in countries under its jurisdiction.*

³ *Confederations exercising the right mentioned in par. 2 shall submit the regulations they have drawn up to the FIFA Executive Committee for approval.*

⁴ *When the regulations of a confederation are in force and a financial dispute exists between two clubs under its jurisdiction, the two clubs may refer the dispute only to that confederation.*

⁵ *Any decisions taken by such bodies are final and binding on all the parties involved.*

⁶ *The right to submit a dispute to FIFA or to the confederations as provided for under this article shall be barred twelve months after the date of issue of the International Transfer Certificate.”*

Art. 17: "If two clubs which disagree on the amount of compensation for training and/or development refer the matter to FIFA, the dispute shall be submitted to a special committee. If, however, the disagreement extends to the terms of the contract, the dispute shall be submitted to the Players' Status Committee."

Art. 19: "Any dispute, except for disagreement regarding compensation for training and/or development, namely:

- *a dispute concerning amateur or non-amateur status;*
 - *a dispute concerning the interpretation of clauses in contracts between national associations, clubs and/or players;*
 - *a dispute concerning the release of players for representative teams by the associations and/or clubs employing them;*
 - *a dispute about other matters governed by these regulations,*
- shall be dealt with exclusively by the FIFA Players' Status Committee (c.f., Art. 32 of the FIFA Statutes)."*

12. The relevant provisions of the UEFA Regulations are the following:

"Art. 1 – Area of validity:

- 1. The international transfer of football players from one club to another shall be governed by the FIFA Regulations governing the Status and Transfer of Players.*
- 2. The following stipulations shall exclusively govern the procedures and means of calculating the amount of compensation for training and/or development to be paid, in accordance with Art. 14 of the FIFA Regulations. They shall not be applicable unless the player's former club and the new club are unable to reach agreement on the amount of compensation for training and/or development.*

Art. 3 – Request to fix the amount of compensation for training and/or development:

- 1. One of the clubs concerned may submit a request to the UEFA General Secretariat for the amount of compensation for training and/or development to be fixed. The request must be well-founded and may be submitted 30 days at the earliest after the International Transfer Certificate has been issued.*
- 2. The request shall be forwarded by the General Secretariat to the appropriate UEFA Board of Experts for a decision to be taken on the matter.*

Art. 5 – Responsibility:

The Board of Experts shall be responsible for calculating the amount of compensation for training and/or development when a player changes from one club to another (...)."

Art. 6 ("Fixing the amount of compensation for training and/or development for a non-amateur player"), Art. 8 ("Fixing the gross income") and Art. 9 ("Multiplying factors according to age") provide for the technical rules applicable by the Board of Experts for the precise calculation of a transfer fee.

13. The Claimant Celtic FC submits that UEFA having drawn up its own regulations within the meaning of Art. 16, par. 2 and par. 4 of the FIFA Regulations, FIFA had no competence whatsoever to rule on the question of Celtic FC's entitlement to a transfer fee in connection with C.'s move to ASM in 1996.
14. The Defendant submits that it is and should always be FIFA's competence to decide on the conditions upon which a transfer fee may be payable in connection with the international

transfer of a player and that as a consequence thereof, UEFA could not be competent over a dispute between clubs on the entitlement of a transfer fee, but only over a dispute where the player's new club does not object to the principle of the transfer fee but only to the amount demanded by the former club.

15. The Panel is of the opinion that both FIFA and UEFA Regulations are sufficiently clear in their wording that they not need to be completed or clarified through construction. It follows from Art. 16, par. 1, 2 and 4 of the FIFA Regulations that FIFA left the possibility to each of its member confederations to draw up its own regulations (as far as they abide by the principles imposed by FIFA - see Art. 16, par. 3) to rule over any dispute relating to the payment of a transfer fee in connection with an international transfer between two clubs within the relevant confederation's jurisdiction, without distinction as to whether the conflict at issue between such clubs regards the principle of the fee or only its amount.

In particular, Art. 16, par. 2 of the FIFA Regulations clearly states that “*a confederation **may** draw up its own regulations to settle **any** differences of the kind described in par. 1 between two clubs based in countries under its jurisdiction*” (emphasised by the Panel). The expression “*any differences of the kind described in par. 1*” refers to two clubs having “*not reached agreement on the amount of compensation in respect of the training and/or development of a player (c.f. Art. 14)*”, which thus itself refers to the general principle whereby “*if a non-amateur player concludes a contract with a new club, his former club shall be entitled to compensation for his training and/or development*” (Art. 14, par. 1).

- a) It is however not an obligation but only an option conceded by FIFA to each confederation to draw up rules allowing each of such confederations to settle any dispute relating to a transfer fee following an international transfer within its jurisdiction.

Accordingly, each confederation has the possibility not to take advantage of this option, in which case the corresponding competence clearly remains with FIFA (see Art. 17 of the FIFA Regulations).

- b) In this case, at the time of occurrence of the relevant facts, UEFA had drawn up regulations “*governing the fixing of a transfer fee as a supplement to the FIFA Regulations governing the Status and Transfer of Players*”, dated June 1993.

Under Art. 1, par. 2, such UEFA Regulations clearly stipulate that they “*shall exclusively govern the procedure and means of **calculating** the amount of compensation for training and/or development to be paid, in accordance with article 14 of the FIFA Regulations. They shall not be applicable unless the player's former club and the new club are unable to reach agreement **on the amount of compensation** for training and/or development*” (emphasised by the Panel).

The wording used by UEFA in this definition of the “area of validity” (as that expression is used in the heading of Article 1) of the UEFA Regulations show without any doubt that the procedure and principles provided for in these UEFA Regulations are only aimed at applying to a dispute where the new club to which the concerned player is transferred does not contest its obligation to pay a

compensation for training and/or development, but only the amount of such compensation as calculated by the former club.

In particular, the action of “calculating” implies that there exists certainty as to the former club's entitlement to a transfer fee.

In the light of this unambiguous language, it is not possible to attribute to the words “must be well-founded” as they appear in Art. 3, par.1 of the UEFA Regulations the meaning sought by the Claimant, i.e. that UEFA thereby assumed authority to rule on the principle of entitlement to any compensation, independently of any dispute as to quantum. This would contradict Art. 1, par.2 of the UEFA Regulations. The Panel is satisfied, on the contrary, that the words in Art.3, par.1 mean no more than that the request must be motivated.

- c) The Panel therefore holds that UEFA has not used its option provided for under Art. 16, par. 2 of the FIFA Regulations to draw up its own rules to settle “any” differences in connection with a transfer fee between clubs within its jurisdiction, but only used the option to draw up its own rules to settle differences between clubs which agree on the principle of a compensation, but not on its precise amount.
 - d) Accordingly, in the case of a dispute between European clubs concerning not only the amount of the compensation to be paid, but primarily the question of entitlement to such compensation, it is to be considered that no “regulations of a confederation are in force” in Europe within the meaning of Art. 16, par. 4 of the FIFA Regulations.
 - e) Any such dispute between European clubs is thus to be submitted to FIFA, since it is not “*to be dealt with by the confederation under the terms of par. 4 below*” (Art. 16, par. 1 *in fine* of the FIFA Regulations). The Competence to settle such dispute within FIFA is defined in Art. 17 of the FIFA Regulations.
16. In the present case, ASM clearly expressed from the very beginning to the Claimant that it considered that a compensation for training and/or development of C. was not to be paid at all.
17. In view of the foregoing, the Panel holds that the Defendant UEFA was right in 1996 in considering that it was not competent to decide whether Celtic FC was entitled to a compensation following the transfer of C. to ASM and was equally right in transmitting the case to FIFA on the preliminary question of such entitlement.
18. The validity of the FIFA bodies' decisions – whereby CELTC FC was denied any right to compensation for training and/or development of C. in connection with the latter's move to ASM – rendered on 8 November 1996, 11 September 1997 and 27 May 1998 is, therefore, not susceptible to challenge on the regulatory grounds invoked in these proceedings.

Accordingly, such decisions are definitely final and binding upon the parties. For that first reason, the Panel has to draw the conclusion that Celtic FC's petitions must be dismissed.

19. Despite the Panel's conclusion on the Regulatory Issue, which results in itself in the dismissal of Celtic FC's claims in the present proceedings, the Substantive Issue will also be addressed, as explicitly requested by the Claimant.
20. The Claimant submits that it is entitled to receive payment of compensation for training and/or development of C. following this player's move to ASM on the basis of Art. 14, par. 1 of the FIFA Regulations.

The Claimant considers that one of the conditions provided for under section (b) of the Circular N° 592 issued by FIFA on 12 June 1996 (the "Circular") is not fulfilled in this case, with the consequence that Art. 14, par. 1 of the FIFA Regulations must apply. The Claimant further submits that the principles contained in the EC Treaty, amplified in the European Court of Justice case law (in particular the Bosman ruling), do not contradict Celtic FC's entitlement to receive payment of a transfer fee in this case, since C. moved in 1996 to a club of the Principality of Monaco, which is not a member State of the EU.

21. The Defendant submits that the position adopted by FIFA in its above mentioned final decisions is fully consistent with its Circular and, besides, is fully consistent with the principles contained in the EC Treaty as exposed and applied by the European Court of Justice in the Bosman ruling.
22. The Circular issued by FIFA on 12 June 1996 provides in particular that:
 - "a) *The FIFA Regulations governing the Status and Transfer of Football Players, and Art. 14 in particular, remain in force for all national associations whose country is not a member of the European Union ("EU") or of the European Economic Area ("EEA").*
 - b) *As a consequence of the Bosman decision, compensation must no longer be paid if **all three** of the following conditions are fulfilled:*
 - i) *the player's contract has expired;*
 - ii) *the player is a citizen of one of the EU (or EEA) countries;*
 - iii) *the player changes from one EU (or EEA) country to another EU (or EEA) country.**(...)"*

23. In the Bosman ruling dated 15 December 1995, the European Court of Justice decided that Art. 14 of the FIFA Regulations violated, under certain circumstances, Art. 39 (*ex* 48) of the EC Treaty of Rome. The Circular was issued by FIFA following such ruling, in order to adjust its international transfer rules.
24. There is no doubt that the first two conditions provided for under sub-paragraph b) of the Circular are fulfilled in the case of C. (whose contract with Celtic FC expired on 30 June 1996 and who is a UK national). The only question at issue in connection with the Circular is whether the third condition provided for under its sub-paragraph b) ("the player changes from one EU (or EEA) country to another EU (or EEA) country") is fulfilled in this case.

25. The answer to that question requires that the Panel determines the meaning and scope to be given to the word “country” in the context of the above Circular.
26. Since the Circular was issued to clarify and/or amend the scope of applicability of Art. 14 of the FIFA Regulations, it must be construed according to the same principle(s) as those which should be used to interpret the statutes and related regulations of a corporate body (such as an association).
27. Nature and Construction of statutes of associations under Swiss law are controversial. Some authors take the view that statutes and related regulations are of an institutional as well as a contractual nature (cf. Jean-François PERRIN, *Droit de l'association*, Fribourg 1992, p. 38-39; Pascal MONTAVON, *Droit suisse de la SA*, tome II, Lausanne 1997, p. 13). According to this view, the statutes and regulations of a corporate body of private law, such as an association, should be construed in line with the so-called principle of confidence (“principe de la confiance”) which derives from Art. 18 of the Swiss Code of Obligations (ATF 87 II 89 = JdT 1961 I 529; ATF 114 II in SJ 1988, p. 452-453, consid. 5a; SCYBOZ/GILLIÉRON, *CC & CO* annotés, Lausanne 1999, p. 67, ad art. 61 CC).
28. In recent times, more and more authors argue that the statutes of associations have to be construed in the same way as statutory law (ZGB – HEINI/SCHERRER, no 19 *Vorbemerkungen zu Art. 69 – 70 ZGB*). They argue that, in constructing statutes of associations, the object of the association and interests of its members should outweigh the principle of confidence.
29. The Panel shall therefore seek to ascertain the meaning of the word “country” mentioned under sub-paragraph b) of the Circular according to the latest above tendency.
30. At this stage, the Panel feels it appropriate to outline the following circumstances:
 - in the organisation of professional football, the criterion used to determine whether the transfer of a player from one club to another is of an international nature rests in the fact that the transfer implies the move from a club affiliated to one national association to a club affiliated to another national association (Art. 7 of the FIFA Regulations; see also the heading of section V of the FIFA Regulations: “Transfer of players from one football association to another”);
 - it is therefore a fact that within the framework of the rules of football, particularly concerning transfers, the concepts of “nation” or “country” have different meanings than in the usual language, it being understood that those concepts – within the context of football – do not correspond systematically and/or strictly to the existing political borders of the concerned territories;
 - as examples thereof, it may be pointed out that the transfer of a player from Glasgow Rangers FC, a club affiliated to the SFA, to Liverpool FC, a club affiliated to the English FA, would constitute an international transfer within the meaning of the FIFA Regulations, although both Glasgow and Liverpool are cities which are politically part of the same State (the UK);

- conversely, the move of a player from Olympique de Marseille, a club affiliated to the FFF, to ASM, a club (as mentioned above) also affiliated to FFF, would not constitute an international transfer within the meaning of the FIFA Regulations, although these clubs are based in cities which are not politically part of the same State (i.e. France in one case, and the Principality of Monaco in the other);
 - bearing in mind the interest of the game of football which is obviously the goal that any FIFA or UEFA statutes, rules or regulations must serve, it is not conceivable in the opinion of the Panel that FIFA could deliberately have drawn up rules which could entail severe disparities between clubs competing against each other in the same football championship;
 - it is most likely, on the contrary, that when issuing the Circular after the ruling of the European Court of Justice in the Bosman case was published, FIFA omitted by mistake to take into account the particular situation of ASM and of the Principality of Monaco by using the word “country” in the third condition of sub-paragraph b) rather than the expression “national association in a country member of the EU”, which would have been consistent with both the contents of the FIFA Regulations, the objective they must serve and with the remaining sub-paragraphs of the Circular;
 - the latter conclusion is, furthermore, reinforced by the fact that under the new edition of the FIFA Regulations of 1997, new Art. 14, par. 8 explicitly provides that Art. 14 *“does not apply to the transfer of a player who is a proven national of a country that is a member of the European Union (EU) or the European Economic Area (EEA) if the transfer involves two national associations in member countries of the EU or the EEA and if the player's employment contract with his former club has validly expired from the point of view of both parties”*.
31. In view of the foregoing, the Panel holds that the word “country” used in sub-paragraph b) of the Circular is not to be understood within its common political meaning, and accordingly declares the inapplicability of Art. 14, par. 1 of the FIFA Regulations in connection with the transfer of C. to ASM in 1996, in accordance with the provisions of the Circular, as construed above.
32. Although Celtic FC's position with regard to the Substantive Issue may be disregarded on the above single ground, the Panel wishes to express that it would have come to the same solution (i.e. the dismissal of Celtic FC's Substantive claims) even if it were considered that one of the conditions provided for under sub-paragraph b) of the Circular was not met.
33. Independently of the Circular, it is acknowledged by both parties that FIFA Regulations concerning the transfer of players in Europe must not infringe upon any prohibition deriving from EU law.
34. Art. 39 (*ex 48*) of the EC Treaty provides in particular that *“freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member States as regard to employment, remuneration and other conditions of work and employment (...)”*

35. As briefly mentioned above, in its judgement of 15 December 1995 in the case C-415/93 “Bosman”, the European Court of Justice ruled that “*Art. 48 (now 39) of the EEC Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of its contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training and/or development fee*”.

36. The European Court of Justice has held on numerous occasions that Art. 39 (*ex* 48) of the EC Treaty also applies to citizens of a EU Member State who pursue partially or temporarily their professional activities outside the territory of the Community provided that they have the status of workers employed in the territory of a Member State, the latter condition being met “*if the legal relationship of employment could be located within the territory of the Community or retained a sufficiently close link with that territory*” (judgement of 27 September 1989 in Case 9/88 Mario Lopes Da Veiga v/ Staatssacrararis van Justutie of the Netherlands, ECR 3009-3010, with reference to judgement of 12 December 1974 in Case 36/74 Walrave v/ Union Cycliste Internationale, ECR 1405 and of 12 July 1984 in Case 237/83 Prodest Sàrl v/ Caisse Primaire d'Assurance Maladie de Paris, ECR 3153).

37. It follows that the issue to address here is whether C. maintained a “sufficiently close link” with the territory of the EU after his transfer from Celtic FC to ASM and, accordingly, whether the effects of the Bosman ruling may extend to this case.

38. It is a fact that while under contract with ASM, C., who is an EU national, played at least half of his matches within the territory of the French Republic, with a club which is fully assimilated to a French football club as per the rules of the French national association, competing against French clubs in the first division national championship of France organised by FFF and the French League. Furthermore, as a professional football player, C. was individually registered with the FFF.

39. The Panel considers that the above circumstances and facts must lead to the conclusion that while under contract with ASM, C. still had the status of a worker employed in the territory of a Member State, since the legal relationship of employment at issue retained a sufficiently close link with that territory, within the meaning of the above mentioned case law of the European Court of Justice.

The Panel accordingly considers that such sufficiently close link may exist even in cases where the EU national worker enters into a relationship of employment with an entity domiciled outside the territory of the EU, as it is the case here.

The Panel shares in this regard the views of the European Commission – it being understood that the latter are of a mere indicative nature – as expressed on 16 May 1997 by Mr. Flynn on behalf of the Commission in answer to written question N° E1290/97:

“The Commission can confirm that it has been approached about the issue concerning the applicability of the Bosman ruling to the transfer of a football player from a member State to Monaco.”

The Commission can only confirm that, as a matter of principle, Monaco is not part of the Community for the purpose of the free movement of workers.

However, given that AS de Monaco plays regularly in the French National Football League and that a number of the club's matches are played on a regular basis on French territory, such a transfer would retain a sufficiently close link with the Community. Therefore, the Commission considers that it is possible to confirm that the Bosman ruling is applicable to such a transfer."

40. The Panel concludes that the effects of the judgement of the European Court of Justice in the Bosman case extend to the transfer of C. from Celtic FC to ASM so that the payment by the latter club to the Claimant of compensation for training and/or development of the player within the meaning of Art. 14, par. 1 of the FIFA Regulations must be excluded.
41. In view of the above, it is unnecessary in this Award to address the issue of the possible application of Art. 81 (*ex* 85) of the EC Treaty concerning free competition to this case.

The Court of Arbitration for Sport hereby rules:

1. The legal petitions of Celtic FC are dismissed.
- (...)