European Court of Justice, 15 December 1995, Bosman

FREE MOVEMENT

Article 48 precludes transfer, training or development fees

- **Article 48 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 his 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 or development fee.**

Article 48 precludes restriction on number of players from another Member State

- **Article 48 of the EEC Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of pro-fessional players who are nationals of other Member States.**

Source: **eur-lex.europa.eu**

European Court of Justice, 15 December 1995
(G.C. Rodríguez Iglesias, C.N. Kakouris, D.A.O. Edward and G. Hirsch, G.F. Mancini, J.C. Moitinho de Almeida, P.J.G. Kapteyn, C. Gulmann, J.L. Murray, P. Jann and H. Ragnemalm)
In Case C-415/93,
REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Liège, Belgium, for a preliminary ruling in the proceedings pending before that court between
Union Royale Belge des Sociétés de Football Association ASBL
and
Jean-Marc Bosman,
between
Royal Club Liégois SA
and
Jean-Marc Bosman,
SA d'Économie Mixte Sportive de l'Union Sportive du Littoral de Dunkerque,
Union Royale Belge des Sociétés de Football Association ASBL,
Union des Associations Européennes de Football (UEFA),
and between
Union des Associations Européennes de Football (UEFA)
and
Jean-Marc Bosman,
on the interpretation of Articles 48, 85 and 86 of the EEC Treaty,
THE COURT,
composed of: G.C. Rodríguez Iglesias, President, C.N. Kakouris, D.A.O. Edward and G. Hirsch (Presidents of Chambers), G.F. Mancini (Rapporteur), J.C. Moitinho de Almeida, P.J.G. Kapteyn, C. Gulmann, J.L. Murray, P. Jann and H. Ragnemalm, Judges,
Advocate General: C.O. Lenz,
Registrars: R. Grass, Registrar, and D. Louterman-Hubeau, Principal Administrator,
after considering the written observations submitted on behalf of:
° Union Royale Belge des Sociétés de Football Association ASBL, by G. Vandersanden and J.-P. Hordies, of the Brussels Bar, and by R. Rasir and F. Moïses, of the Liège Bar,
° Union des Associations Européennes de Football (UEFA), by I.S. Forrester QC,
° Mr Bosman, by L. Misson, J.-L. Dupont, M.-A. Lucas and M. Franchimont, of the Liège Bar,
° the French Government, by H. Duchène, Foreign Affairs Secretary in the Legal Directorate of the Ministry of Foreign Affairs, and C. de Salins, Assistant Director in the same directorate,
° the Italian Government, by Professor L. Ferrari Bravo, Head of the Legal Service in the Ministry of Foreign Affairs, assisted by D. Del Gaizo, Avvocato dello Stato,
° the Commission of the European Communities, by F.E. González Díaz, of its Legal Service, G. de Bergues, a national official placed at the disposal of its Legal Service, and Th. Margellos, of the Athens Bar,
having regard to the Report for the Hearing,
after hearing the oral observations of Union Royale Belge des Sociétés de Football Association ASBL, represented by F. Moïses, J.-P. Hordies and G. Vandersanden; of Union des Associations Européennes de Football ° UEFA, represented by I.S. Forrester and E. Jakhian, of the Brussels Bar; of Mr Bosman, represented by L. Misson and J.-L. Dupont; of the Danish Government, represented by P. Biering, Kontorchef in the Ministry of Foreign Affairs, acting as Agent; of the German Government, represented by E. Roeder, Ministerialrat in the Federal Ministry of the Economy; of the French Government, represented by C. de Salins and P. Martinet, Foreign Affairs Secretary in the Legal Directorate of the Ministry of Foreign Affairs, acting as Agents; of the Italian Government, represented by D. Del Gaizo; and of the Commission, represented by F.E. González Díaz, G. de Bergues and M. Wolfcarius, of its Legal Service, at the hearing on 20 June 1995,

after hearing the Opinion of the Advocate General at the sitting on 20 September 1995,
gives the following
Judgment
1 By judgment of 1 October 1993, received at the Court on 6 October 1993, the Cour d'Appel (Appeal Court), Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a set of questions on the interpretation of Articles 48, 85 and 86 of that Treaty.
2 Those questions were raised in various proceedings between (i) Union Royale Belge des Sociétés de Football Association ASBL ("URBSFA") and Mr Bosman, (ii) Royal Club Liégois SA ("RC Liège") and Mr Bosman, SA d'Économie Mixte Sportive de l'Union Sportive du Littoral de Dunkerque ("US Dunkerque"), URBSFA and Union des Associations Européennes de Football (UEFA) ("UEFA") and, (iii) UEFA and Mr Bosman.
The rules governing the organization of football
3 Association football, commonly known as "football", professional or amateur, is practised as an organized sport in clubs which belong to national associations or federations in each of the Member States. Only in the United Kingdom are there more than one (in fact, four) national associations, for England, Wales, Scotland and Northern Ireland respectively. URBSFA is the Belgian national association. Also dependent on the national associations are other secondary or subsidiary associations responsible for organizing football in certain sectors or regions. The associations hold national championships, organized in divisions depending on the sporting status of the participating clubs.
4 The national associations are members of the Fédération Internationale de Football Association ("FIFA"), an association governed by Swiss law, which organizes football at world level. FIFA is divided into confederations for each continent, whose regulations require its approval. The confederation for Europe is UEFA, also an association governed by Swiss law. Its members are the national associations of some 50 countries, including in particular those of the Member States which, under the UEFA Statutes, have undertaken to comply with those Statutes and with the regulations and decisions of UEFA.
5 Each football match organized under the auspices of a national association must be played between two clubs which are members of that association or of secondary or subsidiary associations affiliated to it. The team fielded by each club consists of players who are registered by the 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.
Transfer rules
6 The 1983 URBSFA federal rules, applicable at the time of the events giving rise to the different actions in the main proceedings, distinguish between three types of relationship: affiliation of a player to the federation, affiliation to a club, and registration of entitlement to play for a club, which is necessary for a player to be able to participate in official competitions. A transfer is defined as the transaction by which a player affiliated to an association obtains a change of club affiliation. If the transfer is temporary, the player continues to be affiliated to his club but is registered as entitled to play for another club.
7 Under the same rules, all professional players'contracts, which have a term of between one and five years, run to 30 June. Before the expiry of the contract, and by 26 April at the latest, the club must offer the player a new contract, failing which he is considered to be an amateur for transfer purposes and thereby falls under a different section of the rules. The player is free to accept or refuse that offer.
8 If he refuses, he is placed on a list of players available, between 1 and 31 May, for "compulsory" transfer, without the agreement of the club of affiliation but subject to payment to that club by the new club of a compensation fee for "training", calculated by multiplying the player's gross annual income by a factor varying from 14 to 2 depending on the player's age.
9 1 June marks the opening of the period for "free" transfers, with the agreement of both clubs and the player, in particular as to the amount of the transfer fee which the new club must pay to the old club, subject to penalties which may include striking off the new club for debt.
10 If no transfer takes place, the player's club of affiliation must offer him a new contract for one season on the same terms as that offered prior to 26 April. If the player refuses, the club has a period until 1 August in which it may suspend him, failing which he is reclassified as an amateur. A player who persistently refuses to sign the contracts offered by his club may obtain a transfer as an amateur, without his club's agreement, after not playing for two seasons.
11 The UEFA and FIFA regulations are not directly applicable to players but are included in the rules of the national associations, which alone have the power to enforce them and to regulate relations between clubs and players.
12 UEFA, URBSFA and RC Liège stated before the national court that the provisions applicable at the material time to transfers between clubs in different Member States or clubs belonging to different national associations within the same Member State were contained in a document entitled Principles of Cooperation between Member Associations of UEFA and their Clubs , approved by the UEFA Executive Committee on 24 May 1990 and in force from 1 July 1990.
13 That document provides that at the expiry of the contract the player is free to enter into a new contract with the club of his choice. That club must immediately notify the old club which in turn is to notify the national association, which must issue an international clearance certificate. However, the former club is entitled to receive from the new club compensation for training and development, to be fixed, failing agreement, by a board of experts set up within UEFA using a scale of multiplying factors, from 12 to 1 depending on

the player's age, to be applied to the player's gross income, up to a maximum of SFR 5 000 000.
14 The document stipulates that the business relationships between the two clubs in respect of the compensation fee for training and development are to exert no influence on the activity of the player, who is to be free to play for his new club. However, if the new club does not immediately pay the fee to the old club, the UEFA Control and Disciplinary Committee is to deal with the matter and notify its decision to the national association concerned, which may also impose penalties on the debtor club.
15 The national court considers that in the case with which the main proceedings are concerned URBSFA and RC Liège applied not the UEFA but the FIFA regulations.
16 At the material time, the FIFA regulations provided in particular that a professional player could not leave the national association to which he was affiliated so long as he was bound by his contract and by the rules of his club and his national association, no matter how harsh their terms might be. An international transfer could not take place unless the former national association issued a transfer certificate acknowledging that all financial commitments, including any transfer fee, had been settled.
17 After the events which gave rise to the main proceedings, UEFA opened negotiations with the Commission of the European Communities. In April 1991, it undertook in particular to incorporate in every professional player's contract a clause permitting him, at the expiry of the contract, to enter into a new contract with the club of his choice and to play for that club immediately. Provisions to that effect were incorporated in the Principles of Cooperation between Member Associations of UEFA and their Clubs adopted in December 1991 and in force from 1 July 1992.
18 In April 1991, FIFA adopted new Regulations governing the Status and Transfer of Football Players. That document, as amended in December 1991 and December 1993, provides that a player may enter into a contract with a new club where the contract between him and his club has expired, has been rescinded or is to expire within six months.
19 Special rules are laid down for "non-amateur" players, defined as players who have received, in respect of participation in or an activity connected with football, remuneration in excess of the actual expenses incurred in the course of such participation, unless they have reacquired amateur status.
20 Where a non-amateur player, or a player who assumes non-amateur status within three years of his transfer, is transferred, his former club is entitled to a compensation fee for development or training, the amount of which is to be agreed upon between the two clubs. In the event of disagreement, the dispute is to be submitted to FIFA or the relevant confederation.
21 Those rules have been supplemented by UEFA regulations "governing the fixing of a transfer fee", adopted in June 1993 and in force since 1 August 1993, which replace the 1991 "Principles of Cooperation between Member Associations of UEFA and their Clubs". The new rules retain the principle that the business relationship between the two clubs are to exert no influence on the sporting activity of the player, who is to be free to play for the club with which he has signed the new contract. In the event of disagreement between the clubs concerned, it is for the appropriate UEFA board of experts to determine the amount of the compensation fee for training or development. For non-amateur players, the calculation of the fee is based on the player's gross income in the last 12 months or on the fixed annual income guaranteed in the new contract, increased by 20% for players who have played at least twice in the senior national representative team for their country and multiplied by a factor of between 12 and 0 depending on age.
22 It appears from documents produced to the Court by UEFA that rules in force in other Member States also contain provisions requiring the new club, when a player is transferred between two clubs within the same national association, to pay the former club, on terms laid down in the rules in question, a compensation fee for transfer, training or development.
23 In Spain and France, payment of compensation may only be required if the player transferred is under 25 years of age or if his former club is the one with which he signed his first professional contract, as the case may be. In Greece, although no compensation is explicitly payable by the new club, the contract between the club and the player may make the player's departure dependent on the payment of an amount which, according to UEFA, is in fact most commonly paid by the new club.
24 The rules applicable in that regard may derive from the national legislation, from the regulations of the national football associations or from the terms of collective agreements.

Nationality clauses

25 From the 1960s onwards, many national football associations introduced rules ("nationality clauses") restricting the extent to which foreign players could be recruited or fielded in a match. For the purposes of those clauses, nationality is defined in relation to whether the player can be qualified to play in a country's national or representative team.
26 In 1978, UEFA gave an undertaking to Mr Davignon, a Member of the Commission of the European Communities, that it would remove the limitations on the number of contracts entered into by each club with players from other Member States and would set the number of such players who may participate in any one match at two, that limit not being applicable to players established for over five years in the Member State in question.
27 In 1991, following further discussions with Mr Bangemann, a Vice-President of the Commission, UEFA adopted the "3 + 2" rule permitting each national association to limit to three the number of foreign players whom a club may field in any first division match in their national championships, plus two

players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior. The same limitation also applies to UEFA matches in competitions for club teams.

Facts of the cases before the national court

28 Mr Bosman, a professional footballer of Belgian nationality, was employed from 1988 by RC Liège, a Belgian first division club, under a contract expiring on 30 June 1990, which assured him an average monthly salary of BFR 120 000, including bonuses.

29 On 21 April 1990, RC Liège offered Mr Bosman a new contract for one season, reducing his pay to BFR 30 000, the minimum permitted by the URBSFA federal rules. Mr Bosman refused to sign and was put on the transfer list. The compensation fee for training was set, in accordance with the said rules, at BFR 11 743 000.

30 Since no club showed an interest in a compulsory transfer, Mr Bosman made contact with US Dunkerque, a club in the French second division, which led to his being engaged for a monthly salary in the region of BFR 100 000 plus a signing-on bonus of some BFR 900 000.

31 On 27 July 1990, a contract was also concluded between RC Liège and US Dunkerque for the temporary transfer of Mr Bosman for one year, against payment by US Dunkerque to RC Liège of a compensation fee of BFR 1 200 000 payable on receipt by the Fédération Française de Football ("FFF") of the transfer certificate issued by URBSFA. The contract also gave US Dunkerque an irrevocable option for full transfer of the player for BFR 4 800 000.

32 Both contracts, between US Dunkerque and RC Liège and between US Dunkerque and Mr Bosman, were however subject to the suspensive condition that the transfer certificate must be sent by URBSFA to FFF in time for the first match of the season, which was to be held on 2 August 1990.

33 RC Liège, which had doubts as to US Dunkerque's solvency, did not ask URBSFA to send the said certificate to FFF. As a result, neither contract took effect. On 31 July 1990, RC Liège also suspended Mr Bosman, thereby preventing him from playing for the entire season.

34 On 8 August 1990, Mr Bosman brought an action against RC Liège before the Tribunal de Première Instance (Court of First Instance), Liège. Concurrently with that action, he applied for an interlocutory decision ordering RC Liège and URBSFA to pay him an advance of BFR 100 000 per month until he found a new employer, restraining the defendants from impeding his engagement, in particular by requiring payment of a sum of money, and referring a question to the Court of Justice for a preliminary ruling.

35 By order of 9 November 1990, the judge hearing the interlocutory application ordered RC Liège and URBSFA to pay Mr Bosman an advance of BFR 30 000 per month and to refrain from impeding Mr Bosman's engagement. He also referred to the Court for a preliminary ruling a question (in Case C-340/90) on the interpretation of Article 48 in relation to the rules governing transfers of professional players ("transfer rules").

36 In the meantime, Mr Bosman had been signed up by the French second-division club Saint-Quentin in October 1990, on condition that his interlocutory application succeeded. His contract was terminated, however, at the end of the first season. In February 1992, Mr Bosman signed a new contract with the French club Saint-Denis de la Réunion, which was also terminated. After looking for further offers in Belgium and France, Mr Bosman was finally signed up by Olympic de Charleroi, a Belgian third-division club.

37 According to the national court, there is strong circumstantial evidence to support the view that, notwithstanding the "free" status conferred on him by the interlocutory order, Mr Bosman has been boycotted by all the European clubs which might have engaged him.

38 On 28 May 1991, the Cour d'Appel, Liège, revoked the interlocutory decision of the Tribunal de Première Instance in so far as it referred a question to the Court of Justice for a preliminary ruling. But it upheld the order against RC Liège to pay monthly advances to Mr Bosman and enjoined RC Liège and URBSFA to make Mr Bosman available to any club which wished to use his services, without it being possible to require payment of any compensation fee. By order of 19 June 1991, Case C-340/90 was removed from the register of the Court of Justice.

39 On 3 June 1991, URBSFA, which, contrary to the situation in the interlocutory proceedings, had not been cited as a party in the main action before the Tribunal de Première Instance, intervened voluntarily in that action. On 20 August 1991, Mr Bosman issued a writ with a view to joining UEFA to the proceedings which he had brought against RC Liège and URBSFA and bringing proceedings directly against it on the basis of its responsibility in drafting the rules as a result of which he had suffered damage. On 5 December 1991, US Dunkerque was joined as a third party by RC Liège, in order to be indemnified against any order which might be made against it. On 15 October and 27 December 1991 respectively, Union Nationale des Footballeurs Professionnels ("UNFP"), a French professional footballers'union, and Vereniging van Contractspelers ("VVCS"), an association governed by Netherlands law, intervened voluntarily in the proceedings.

40 In new pleadings lodged on 9 April 1992, Mr Bosman amended his initial claim against RC Liège, brought a new preventive action against URBSFA and elaborated his claim against UEFA. In those proceedings, he sought a declaration that the transfer rules and nationality clauses were not applicable to him and an order, on the basis of their wrongful conduct at the time of the failure of his transfer to US Dunkerque, against RC Liège, URBSFA and UEFA to pay him BFR 11 368 350 in respect of the damage suffered by him from 1 August 1990 until the end of his career and BFR 11 743 000 in respect of loss of earnings since the begin-

ning of his career as a result of the application of the transfer rules. He also applied for a question to be referred to the Court of Justice for a preliminary ruling.

41 By judgment of 11 June 1992, the Tribunal de Première Instance held that it had jurisdiction to entertain the main actions. It also held admissible Mr Bosman's claims against RC Liège, URBSFA and UEFA seeking, in particular, a declaration that the transfer rules and nationality clauses were not applicable to him and orders penalizing the conduct of those three organizations. But it dismissed RC Liège's application to join US Dunkerque as a third party and indemnifier, since no evidence of fault in the latter's performance of its obligations had been adduced. Finally, finding that the examination of Mr Bosman's claims against UEFA and URBSFA involved considering the compatibility of the transfer rules with the Treaty, it made a reference to the Court of Justice for a preliminary ruling on the interpretation of Articles 48, 85 and 86 of the Treaty (Case C-269/92).

42 URBSFA, RC Liège and UEFA appealed against that decision. Since those appeals had suspensive effect, the procedure before the Court of Justice was suspended. By order of 8 December 1993, Case C-269/92 was finally removed from the register following the new judgment of the Cour d'Appel, Liège, out of which the present proceedings arise.

43 No appeal was brought against UNFP or VVCS, who did not seek to intervene again on appeal.

44 In its judgment ordering the reference, the Cour d'Appel upheld the judgment under appeal in so far as it held that the Tribunal de Première Instance had jurisdiction, that the actions were admissible and that an assessment of Mr Bosman's claims against UEFA and the URBSFA involved a review of the lawfulness of the transfer rules. It also considered that a review of the lawfulness of the nationality clauses was necessary, since Mr Bosman's claim in their regard was based on Article 18 of the Belgian Judicial Code, which permits actions "with a view to preventing the infringement of a seriously threatened right", and Mr Bosman had adduced factual evidence suggesting that the damage which he fears ° that the application of those clauses may impede his career ° will in fact occur.

45 The national court considered in particular that Article 48 of the Treaty could, like Article 30, prohibit not only discrimination but also non-discriminatory barriers to freedom of movement for workers if they could not be justified by imperative requirements.

46 With regard to Article 85 of the Treaty, it considered that the FIFA, UEFA and URBSFA regulations might constitute decisions of associations of undertakings by which the clubs restrict competition between themselves for players. Transfer fees were dissuasive and tended to depress the level of professional sportsmen's pay. In addition, the nationality clauses prohibited foreign players'services from being obtained over a certain quota. Finally, trade between Member States was affected, in particular by the restriction of players'mobility.

47 Furthermore, the Cour d'Appel thought that URBSFA, or the football clubs collectively, might be in a dominant position, within the meaning of Article 86 of the Treaty and that the restrictions on competition mentioned in connection with Article 85 might constitute abuses prohibited by Article 86.

48 The Cour d'Appel dismissed UEFA's request that it ask the Court of Justice whether the reply to the question submitted on transfers would be different if the system permitted a player to play freely for his new club even where that club had not paid the transfer fee to the old club. It noted in particular that, because of the threat of severe penalties for clubs not paying the transfer fee, a player's ability to play for his new club remained dependent on the business relationships between the clubs.

49 In view of the foregoing, the Cour d'Appel decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

"Are Articles 48, 85 and 86 of the Treaty of Rome of 25 March 1957 to be interpreted as:

(i) prohibiting a football club from requiring and receiving payment of a sum of money upon the engagement of one of its players who has come to the end of his contract by a new employing club;

(ii) prohibiting the national and international sporting associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organize?"

50 On 3 June 1994, URBSFA applied to the Belgian Cour de Cassation (Court of Cassation) for review of the Cour d'Appel's judgment, requesting that the judgment be extended to apply jointly to RC Liège, UEFA and US Dunkerque. By letter of 6 October 1994, the Procureur Général (Principal Crown Counsel) to the Cour de Cassation informed the Court of Justice that the appeal did not have suspensive effect in this case.

51 By judgment of 30 March 1995, the Cour de Cassation dismissed the appeal and held that as a result the request for a declaration that the judgment be extended was otiose. The Cour de Cassation has forwarded a copy of that judgment to the Court of Justice.

The request for measures of inquiry

52 By letter lodged at the Court Registry on 16 November 1995, UEFA requested the Court to order a measure of inquiry under Article 60 of the Rules of Procedure, with a view to obtaining fuller information on the role played by transfer fees in the financing of small or medium-sized football clubs, the machinery governing the distribution of income within the existing football structures and the presence or absence of alternative machinery if the system of transfer fees were to disappear.

53 After hearing again the views of the Advocate General, the Court considers that that application must be dismissed. It was made at a time when, in accordance with Article 59(2) of the Rules of Procedure, the oral procedure was closed. The Court has held (see Case 77/70 Prelle v Commission [1971] ECR 561, paragraph 7) that such an application can be admitted only if it

relates to facts which may have a decisive influence and which the party concerned could not put forward before the close of the oral procedure.

54 In this case, it is sufficient to hold that UEFA could have submitted its request before the close of the oral procedure. Moreover, the question whether the aim of maintaining a balance in financial and competitive terms, and in particular that of ensuring the financing of smaller clubs, can be achieved by other means such as a redistribution of a portion of football takings was raised, in particular by Mr Bosman in his written observations.

Jurisdiction of the Court to give a preliminary ruling on the questions submitted

55 The Court's jurisdiction to give a ruling on all or part of the questions submitted by the national court has been challenged, on various grounds, by URBSFA, by UEFA, by some of the governments which have submitted observations and, during the written procedure, by the Commission.

56 First, UEFA and URBSFA have claimed that the main actions are procedural devices designed to obtain a preliminary ruling from the Court on questions which meet no objective need for the purpose of settling the cases. The UEFA regulations were not applied when Mr Bosman's transfer to US Dunkerque fell through; if they had been applied, that transfer would not have been dependent on the payment of a transfer fee and could thus have taken place. The interpretation of Community law requested by the national court thus bears no relation to the actual facts of the cases in the main proceedings or their purpose and, in accordance with consistent case-law, the Court has no jurisdiction to rule on the questions submitted.

57 Secondly, URBSFA, UEFA, the Danish, French and Italian Governments and, in its written observations, the Commission have claimed that the questions relating to nationality clauses has no connection with the disputes, which concern only the application of the transfer rules. The impediments to his career which Mr Bosman claims arise out of those clauses are purely hypothetical and do not justify a preliminary ruling by the Court on the interpretation of the Treaty in that regard.

58 Thirdly, URBSFA and UEFA pointed out at the hearing that, according to the judgment of the Cour de Cassation of 30 March 1995, the Cour d'Appel did not accept as admissible Mr Bosman's claims for a declaration that the nationality clauses in the URBSFA regulations were not applicable to him. Consequently, the issues in the main proceedings do not relate to the application of nationality clauses and the Court should not rule on the questions submitted on that point. The French Government concurred in that conclusion, subject however to verification of the scope of the judgment of the Cour de Cassation.

59 As to those submissions, it is to be remembered that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, inter alia, Case C-125/94 Aprile v Amministrazione delle Finanze dello Stato [1995] ECR I-0000, paragraphs 16 and 17).

60 Nevertheless, the Court has taken the view that, in order to determine whether it has jurisdiction, it should examine the conditions in which the case was referred to it by the national court. The spirit of cooperation which must prevail in the preliminary-ruling procedure requires the national court, for its part, to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, inter alia, Case C-83/91 Meilicke v ADV/ORGA [1992] ECR I-4871, paragraph 25).

61 That is why the Court has held that it has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual facts of the main action or its purpose (see, inter alia, Case C-143/94 Furlanis v ANAS [1995] ECR I-0000, paragraph 12) or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Meilicke, cited above, paragraph 32).

62 In the present case, the issues in the main proceedings, taken as a whole, are not hypothetical and the national court has provided this Court with a clear statement of the surrounding facts, the rules in question and the grounds on which it believes that a decision on the questions submitted is necessary to enable it to give judgment.

63 Furthermore, even if, as URBSFA and UEFA contend, the UEFA regulations were not applied when Mr Bosman's transfer to US Dunkerque fell through, they are still in issue in the preventive actions brought by Mr Bosman against URBSFA and UEFA (see paragraph 40 above) and the Court's interpretation as to the compatibility with Community law of the transfer system set up by the UEFA regulations may be useful to the national court.

64 With regard more particularly to the questions concerning nationality clauses, it appears that the relevant heads of claim have been held admissible in the main proceedings on the basis of a national procedural provision permitting an action to be brought, albeit for declaratory purposes only, to prevent the infringement of a right which is seriously threatened. As is clear from its judgment, the national court considered that application of the nationality clauses could indeed impede Mr Bosman's career by reducing his chances of

being employed or fielded in a match by a club from another Member State. It concluded that Mr Bosman's claims for a declaration that those nationality clauses were not applicable to him met the conditions laid down by the said provision.

65 It is not for this Court, in the context of these proceedings, to call that assessment in question. Although the main actions seek a declaratory remedy and, having the aim of preventing infringement of a right under threat, must necessarily be based on hypotheses which are, by their nature, uncertain, such actions are none the less permitted under national law, as interpreted by the referring court. Consequently, the questions submitted by that court meet an objective need for the purpose of settling disputes properly brought before it.

66 Finally, the judgment of the Cour de Cassation of 30 March 1995 does not suggest that the nationality clauses are extraneous to the issues in the main proceedings. That court held only that URBSFA's appeal against the judgment of the Cour d'Appel rested on a misinterpretation of that judgment. In its appeal, URBSFA had claimed that that court had held inadmissible a claim by Mr Bosman for a declaration that the nationality clauses contained in its regulations were not applicable to him. However, it would appear from the judgment of the Cour de Cassation that, according to the Cour d'Appel, Mr Bosman's claim sought to prevent impediments to his career likely to arise from the application not of the nationality clauses in the URBSFA regulations, which concerned players with a nationality other than Belgian, but of the similar clauses in the regulations of UEFA and the other national associations which are members of it, which could concern him as a player with Belgian nationality. Consequently, it does not appear from the judgment of the Cour de Cassation that those latter nationality clauses are extraneous to the main proceedings.

67 It follows from the foregoing that the Court has jurisdiction to rule on the questions submitted by the Cour d'Appel, Liège.

Interpretation of Article 48 of the Treaty with regard to the transfer rules

68 By its first question, the national court seeks in substance to ascertain whether Article 48 of the 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 his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former a transfer, training or development fee.

Application of Article 48 to rules laid down by sporting associations

69 It is first necessary to consider certain arguments which have been put forward on the question of the application of Article 48 to rules laid down by sporting associations.

70 URBSFA argued that only the major European clubs may be regarded as undertakings, whereas clubs such as RC Liège carry on an economic activity only to a negligible extent. Furthermore, the question submitted by the national court on the transfer rules does not concern the employment relationships between players and clubs but the business relationships between clubs and the consequences of freedom to affiliate to a sporting federation. Article 48 of the Treaty is accordingly not applicable to a case such as that in issue in the main proceedings.

71 UEFA argued, inter alia, that the Community authorities have always respected the autonomy of sport, that it is extremely difficult to distinguish between the economic and the sporting aspects of football and that a decision of the Court concerning the situation of professional players might call in question the organization of football as a whole. For that reason, even if Article 48 of the Treaty were to apply to professional players, a degree of flexibility would be essential because of the particular nature of the sport.

72 The German Government stressed, first, that in most cases a sport such as football is not an economic activity. It further submitted that sport in general has points of similarity with culture and pointed out that, under Article 128(1) of the EC Treaty, the Community must respect the national and regional diversity of the cultures of the Member States. Finally, referring to the freedom of association and autonomy enjoyed by sporting federations under national law, it concluded that, by virtue of the principle of subsidiarity, taken as a general principle, intervention by public, and particularly Community, authorities in this area must be confined to what is strictly necessary.

73 In response to those arguments, it is to be remembered that, having regard to the objectives of the Community, sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty (see Case 36/74 Walrave v Union Cycliste Internationale [1974] ECR 1405, paragraph 4). This applies to the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service (see Case 13/76 Donà v Mantero [1976] ECR 1333, paragraph 12).

74 It is not necessary, for the purposes of the application of the Community provisions on freedom of movement for workers, for the employer to be an undertaking; all that is required is the existence of, or the intention to create, an employment relationship.

75 Application of Article 48 of the Treaty is not precluded by the fact that the transfer rules govern the business relationships between clubs rather than the employment relationships between clubs and players. The fact that the employing clubs must pay fees on recruiting a player from another club affects the players'opportunities for finding employment and the terms under which such employment is offered.

76 As regards the difficulty of severing the economic aspects from the sporting aspects of football, the Court has held (in Donà, cited above, paragraphs 14 and 15) that the provisions of Community law concerning freedom of movement of persons and of provision of services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain matches. It stressed, how-

ever, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.

77 With regard to the possible consequences of this judgment on the organization of football as a whole, it has consistently been held that, although the practical consequences of any judicial decision must be weighed carefully, this cannot go so far as to diminish the objective character of the law and compromise its application on the ground of the possible repercussions of a judicial decision. At the very most, such repercussions might be taken into consideration when determining whether exceptionally to limit the temporal effect of a judgment (see, inter alia, Case C-163/90 Administration des Douanes v Legros and Others [1992] ECR I-4625, paragraph 30).

78 The argument based on points of alleged similarity between sport and culture cannot be accepted, since the question submitted by the national court does not relate to the conditions under which Community powers of limited extent, such as those based on Article 128(1), may be exercised but on the scope of the freedom of movement of workers guaranteed by Article 48, which is a fundamental freedom in the Community system (see, inter alia, Case C-19/92 Kraus v Land Baden-Wuerttemberg [1993] ECR I-1663, paragraph 16).

79 As regards the arguments based on the principle of freedom of association, it must be recognized that this principle, enshrined in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulting from the constitutional traditions common to the Member States, is one of the fundamental rights which, as the Court has consistently held and as is reaffirmed in the preamble to the Single European Act and in Article F(2) of the Treaty on European Union, are protected in the Community legal order.

80 However, the rules laid down by sporting associations to which the national court refers cannot be seen as necessary to ensure enjoyment of that freedom by those associations, by the clubs or by their players, nor can they be seen as an inevitable result thereof.

81 Finally, the principle of subsidiarity, as interpreted by the German Government to the effect that intervention by public authorities, and particularly Community authorities, in the area in question must be confined to what is strictly necessary, cannot lead to a situation in which the freedom of private associations to adopt sporting rules restricts the exercise of rights conferred on individuals by the Treaty.

82 Once the objections concerning the application of Article 48 of the Treaty to sporting activities such as those of professional footballers are out of the way, it is to be remembered that, as the Court held in paragraph 17 of its judgment in Walrave, cited above, Article 48 not only applies to the action of public authorities but extends also to rules of any other nature aimed at regulating gainful employment in a collective manner.

83 The Court has held that the abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services would be compromised if the abolition of State barriers could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations not governed by public law (see Walrave, cited above, paragraph 18).

84 It has further observed that working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons. Accordingly, if the scope of Article 48 of the Treaty were confined to acts of a public authority there would be a risk of creating inequality in its application (see Walrave, cited above, paragraph 19). That risk is all the more obvious in a case such as that in the main proceedings in this case in that, as has been stressed in paragraph 24 above, the transfer rules have been laid down by different bodies or in different ways in each Member State.

85 UEFA objects that such an interpretation makes Article 48 of the Treaty more restrictive in relation to individuals than in relation to Member States, which are alone in being able to rely on limitations justified on grounds of public policy, public security or public health.

86 That argument is based on an false premiss. There is nothing to preclude individuals from relying on justifications on grounds of public policy, public security or public health. Neither the scope nor the content of those grounds of justification is in any way affected by the public or private nature of the rules in question.

87 Article 48 of the Treaty therefore applies to rules laid down by sporting associations such as URBSFA, FIFA or UEFA, which determine the terms on which professional sportsmen can engage in gainful employment.

Whether the situation envisaged by the national court is of a purely internal nature

88 UEFA considers that the disputes pending before the national court concern a purely internal Belgian situation which falls outside the ambit of Article 48 of the Treaty. They concern a Belgian player whose transfer fell through because of the conduct of a Belgian club and a Belgian association.

89 It is true that, according to consistent case-law (see, inter alia, Case 175/78 Regina v Saunders [1979] ECR 1129, paragraph 11; Case 180/83 Moser v Land Baden-Wuerttemberg [1984] ECR 2539, paragraph 15; Case C-332/90 Steen v Deutsche Bundespost [1992] ECR I-341, paragraph 9; and Case C-19/92 Kraus, cited above, paragraph 15), the provisions of the Treaty concerning the free movement of workers, and particularly Article 48, cannot be applied to situations which are wholly internal to a Member State, in other words where there is no factor connecting them to any of the situations envisaged by Community law.

90 However, it is clear from the findings of fact made by the national court that Mr Bosman had entered into a contract of employment with a club in another Member

State with a view to exercising gainful employment in that State. By so doing, as he has rightly pointed out, he accepted an offer of employment actually made, within the meaning of Article 48(3)(a).

91 Since the situation in issue in the main proceedings cannot be classified as purely internal, the argument put forward by UEFA must be dismissed.

Existence of an obstacle to freedom of movement for workers

92 It is thus necessary to consider whether the transfer rules form an obstacle to freedom of movement for workers prohibited by Article 48 of the Treaty.

93 As the Court has repeatedly held, freedom of movement for workers is one of the fundamental principles of the Community and the Treaty provisions guaranteeing that freedom have had direct effect since the end of the transitional period.

94 The Court has also held that the provisions of the Treaty relating to freedom of movement for persons are intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude measures which might place Community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (see Case 143/87 Stanton v INASTI [1988] ECR 3877, paragraph 13, and Case C-370/90 The Queen v Immigration Appeal Tribunal and Surinder Singh [1992] ECR I-4265, paragraph 16).

95 In that context, nationals of Member States have in particular the right, which they derive directly from the Treaty, to leave their country of origin to enter the territory of another Member State and reside there in order there to pursue an economic activity (see, inter alia, Case C-363/89 Roux v Belgium [1991] ECR I-273, paragraph 9, and Singh, cited above, paragraph 17).

96 Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned (see also Case C-10/90 Masgio v Bundesknappschaft [1991] ECR I-1119, paragraphs 18 and 19).

97 The Court has also stated, in Case 81/87 The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust plc [1988] ECR 5483, paragraph 16, that even though the Treaty provisions relating to freedom of establishment are directed mainly to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation which comes within the definition contained in Article 58. The rights guaranteed by Article 52 et seq. of the Treaty would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. The same considerations apply, in relation to Article 48 of the Treaty, with regard to rules which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State.

98 It is true that the transfer rules in issue in the main proceedings apply also to transfers of players between clubs belonging to different national associations within the same Member State and that similar rules govern transfers between clubs belonging to the same national association.

99 However, as has been pointed out by Mr Bosman, by the Danish Government and by the Advocate General in points 209 and 210 of his Opinion, those rules are likely to restrict the freedom of movement of players who wish to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belong even after the expiry of their contracts of employment with those clubs.

100 Since they provide that a professional footballer may not pursue his activity with a new club established in another Member State unless it has paid his former club a transfer fee agreed upon between the two clubs or determined in accordance with the regulations of the sporting associations, the said rules constitute an obstacle to freedom of movement for workers.

101 As the national court has rightly pointed out, that finding is not affected by the fact that the transfer rules adopted by UEFA in 1990 stipulate that the business relationship between the two clubs is to exert no influence on the activity of the player, who is to be free to play for his new club. The new club must still pay the fee in issue, under pain of penalties which may include its being struck off for debt, which prevents it just as effectively from signing up a player from a club in another Member State without paying that fee.

102 Nor is that conclusion negated by the case-law of the Court cited by URBSFA and UEFA, to the effect that Article 30 of the Treaty does not apply to measures which restrict or prohibit certain selling arrangements so long as they apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States (see Joined Cases C-267/91 and C-268/91 Keck and Mithouard [1993] ECR I-6097, paragraph 16).

103 It is sufficient to note that, although the rules in issue in the main proceedings apply also to transfers between clubs belonging to different national associations within the same Member State and are similar to those governing transfers between clubs belonging to the same national association, they still directly affect players'access to the employment market in other Member States and are thus capable of impeding freedom of movement for workers. They cannot, thus, be deemed comparable to the rules on selling arrangements for goods which in Keck and Mithouard were held to fall outside the ambit of Article 30 of the Treaty (see also, with regard to freedom to provide services, Case C-384/93 Alpine Investments v Minister van Financiën [1995] ECR I-1141, paragraphs 36 to 38).

104 Consequently, the transfer rules constitute an obstacle to freedom of movement for workers prohibited in principle by Article 48 of the Treaty. It could only be otherwise if those rules pursued a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest. But even if that were so, application of those rules would still have to be such as to ensure achievement of the aim in question and not go beyond what is necessary for that purpose (see, inter alia, the judgment in Kraus, cited above, paragraph 32, and Case C-55/94 Gebhard [1995] ECR I-0000, paragraph 37).

Existence of justifications

105 First, URBSFA, UEFA and the French and Italian Governments have submitted that the transfer rules are justified by the need to maintain a financial and competitive balance between clubs and to support the search for talent and the training of young players.

106 In view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate.

107 As regards the first of those aims, Mr Bosman has rightly pointed out that the application of the transfer rules is not an adequate means of maintaining financial and competitive balance in the world of football. Those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs.

108 As regards the second aim, it must be accepted that the prospect of receiving transfer, development or training fees is indeed likely to encourage football clubs to seek new talent and train young players.

109 However, because it is impossible to predict the sporting future of young players with any certainty and because only a limited number of such players go on to play professionally, those fees are by nature contingent and uncertain and are in any event unrelated to the actual cost borne by clubs of training both future professional players and those who will never play professionally. The prospect of receiving such fees cannot, therefore, be either a decisive factor in encouraging recruitment and training of young players or an adequate means of financing such activities, particularly in the case of smaller clubs.

110 Furthermore, as the Advocate General has pointed out in point 226 et seq. of his Opinion, the same aims can be achieved at least as efficiently by other means which do not impede freedom of movement for workers.

111 It has also been argued that the transfer rules are necessary to safeguard the worldwide organization of football.

112 However, the present proceedings concern application of those rules within the Community and not the relations between the national associations of the Member States and those of non-member countries. In any event, application of different rules to transfers between clubs belonging to national associations within the Community and to transfers between such clubs and those affiliated to the national associations of non-member countries is unlikely to pose any particular difficulties. As is clear from paragraphs 22 and 23 above, the rules which have so far governed transfers within the national associations of certain Member States are different from those which apply at the international level.

113 Finally, the argument that the rules in question are necessary to compensate clubs for the expenses which they have had to incur in paying fees on recruiting their players cannot be accepted, since it seeks to justify the maintenance of obstacles to freedom of movement for workers simply on the ground that such obstacles were able to exist in the past.

114 The answer to the first question must therefore be that Article 48 of the 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 his 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 or development fee.

Interpretation of Article 48 of the Treaty with regard to the nationality clauses

115 By its second question, the national court seeks in substance to ascertain whether Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

Existence of an obstacle to freedom of movement for workers

116 As the Court has held in paragraph 87 above, Article 48 of the Treaty applies to rules laid down by sporting associations which determine the conditions under which professional sports players may engage in gainful employment. It must therefore be considered whether the nationality clauses constitute an obstacle to freedom of movement for workers, prohibited by Article 48.

117 Article 48(2) expressly provides that freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and conditions of work and employment.

118 That provision has been implemented, in particular, by Article 4 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475), under which provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, are not to apply to nationals of the other Member States.

119 The same principle applies to clauses contained in the regulations of sporting associations which restrict the right of nationals of other Member States to take part, as professional players, in football matches (see the judgment in Donà, cited above, paragraph 19).
120 The fact that those clauses concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches is irrelevant. In so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned.
Existence of justifications
121 The existence of an obstacle having thus been established, it must be considered whether that obstacle may be justified in the light of Article 48 of the Treaty.
122 URBSFA, UEFA and the German, French and Italian Governments argued that the nationality clauses are justified on non-economic grounds, concerning only the sport as such.
123 First, they argued, those clauses serve to maintain the traditional link between each club and its country, a factor of great importance in enabling the public to identify with its favourite team and ensuring that clubs taking part in international competitions effectively represent their countries.
124 Secondly, those clauses are necessary to create a sufficient pool of national players to provide the national teams with top players to field in all team positions.
125 Thirdly, they help to maintain a competitive balance between clubs by preventing the richest clubs from appropriating the services of the best players.
126 Finally, UEFA points out that the "3 + 2" rule was drawn up in collaboration with the Commission and must be revised regularly to remain in line with the development of Community policy.
127 It must be recalled that in paragraphs 14 and 15 of its judgment in Donà, cited above, the Court held that the Treaty provisions concerning freedom of movement for persons do not prevent the adoption of rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries. It stressed, however, that that restriction on the scope of the provisions in question must remain limited to its proper objective.
128 Here, the nationality clauses do not concern specific matches between teams representing their countries but apply to all official matches between clubs and thus to the essence of the activity of professional players.
129 In those circumstances, the nationality clauses cannot be deemed to be in accordance with Article 48 of the Treaty, otherwise that article would be deprived of its practical effect and the fundamental right of free access to employment which the Treaty confers individually on each worker in the Community rendered nugatory (on this last point, see Case 222/86 Unectef v Heylens and Others [1987] ECR 4097, paragraph 14).
130 None of the arguments put forward by the sporting associations and by the governments which have submitted observations detracts from that conclusion.
131 First, a football club's links with the Member State in which it is established cannot be regarded as any more inherent in its sporting activity than its links with its locality, town, region or, in the case of the United Kingdom, the territory covered by each of the four associations. Even though national championships are played between clubs from different regions, towns or localities, there is no rule restricting the right of clubs to field players from other regions, towns or localities in such matches.
132 In international competitions, moreover, participation is limited to clubs which have achieved certain results in competition in their respective countries, without any particular significance being attached to the nationalities of their players.
133 Secondly, whilst national teams must be made up of players having the nationality of the relevant country, those players need not necessarily be registered to play for clubs in that country. Indeed, under the rules of the sporting associations, foreign players must be allowed by their clubs to play for their country's national team in certain matches.
134 Furthermore, although freedom of movement for workers, by opening up the employment market in one Member State to nationals of the other Member States, has the effect of reducing workers'chances of finding employment within the Member State of which they are nationals, it also, by the same token, offers them new prospects of employment in other Member States. Such considerations obviously apply also to professional footballers.
135 Thirdly, although it has been argued that the nationality clauses prevent the richest clubs from engaging the best foreign players, those clauses are not sufficient to achieve the aim of maintaining a competitive balance, since there are no rules limiting the possibility for such clubs to recruit the best national players, thus undermining that balance to just the same extent.
136 Finally, as regards the argument based on the Commission's participation in the drafting of the "3 + 2" rule, it must be pointed out that, except where such powers are expressly conferred upon it, the Commission may not give guarantees concerning the compatibility of specific practices with the Treaty (see also Joined Cases 142/80 and 143/80 Amministrazione delle Finanze dello Stato v Essevi and Salengo [1981] ECR 1413, paragraph 16). In no circumstances does it have the power to authorize practices which are contrary to the Treaty.
137 It follows from the foregoing that Article 48 of the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field

only a limited number of professional players who are nationals of other Member States.

Interpretation of Articles 85 and 86 of the Treaty

138 Since both types of rule to which the national court's question refer are contrary to Article 48, it is not necessary to rule on the interpretation of Articles 85 and 86 of the Treaty.

The temporal effects of this judgment

139 In their written and oral observations, UEFA and URBSFA have drawn the Court's attention to the serious consequences which might ensue from its judgment for the organization of football as a whole if it were to consider the transfer rules and nationality clauses to be incompatible with the Treaty.

140 Mr Bosman, whilst observing that such a solution is not indispensable, has suggested that the Court could limit the temporal effects of its judgment in so far as it concerns the transfer rules.

141 It has consistently been held that the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, gives to a rule of Community law clarifies and where necessary defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted can, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (see, inter alia, Case 24/86 Blaizot v University of Liège and Others [1988] ECR 379, paragraph 27).

142 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the opportunity for any person concerned to rely upon the provision as thus interpreted with a view to calling in question legal relationships established in good faith. Such a restriction may be allowed only by the Court, in the actual judgment ruling upon the interpretation sought (see, inter alia, the judgments in Blaizot, cited above, paragraph 28, and Legros, cited above, paragraph 30).

143 In the present case, the specific features of the rules laid down by the sporting associations for transfers of players between clubs of different Member States, together with the fact that the same or similar rules applied to transfers both between clubs belonging to the same national association and between clubs belonging to different national associations within the same Member State, may have caused uncertainty as to whether those rules were compatible with Community law.

144 In such circumstances, overriding considerations of legal certainty militate against calling in question legal situations whose effects have already been exhausted. An exception must, however, be made in favour of persons who may have taken timely steps to safeguard their rights. Finally, limitation of the effects of the said interpretation can be allowed only in respect of compensation fees for transfer, training or development which have already been paid on, or are still payable under an obligation which arose before, the date of this judgment.

145 It must therefore be held that the direct effect of Article 48 of the Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.

146 With regard to nationality clauses, however, there are no grounds for a temporal limitation of the effects of this judgment. In the light of the Walrave and Donà judgments, it was not reasonable for those concerned to consider that the discrimination resulting from those clauses was compatible with Article 48 of the Treaty.

Costs

147 The costs incurred by the Danish, French, German and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Cour d'Appel, Liège, by judgment of 1 October 1993, hereby rules:

1. Article 48 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 his 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 or development fee.

2. Article 48 of the EEC Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

3. The direct effect of Article 48 of the EEC Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.