Arbitration CAS 2012/A/2852 S.C.S Fotbal Club CFR 1907 Cluj S.A. & Manuel Ferreira de Sousa Ricardo & Mario Jorge Quintas Felgueiras v. Romanian Football Federation (FRF), award of 28 June 2013

Panel: Mr Chris Georghiades (Cyprus), President; Mr Bernard Hanotiau (Belgium); Mr Fabio Iudica (Italy)

Football
Eligibility of players trained at national level ("home-grown" players)
Interpretation of an arbitration clause
Application of the principle of free movement of workers to professional players
Nationality clauses
Compatibility of a rule with EU law

1. **Arbitration clause must be interpreted according to the general rules of interpretation of contract. The statements of the parties are to be interpreted as they could and should be understood on the basis of their wording and the context as well as under the overall circumstances. In particular, the arbitration clause must be interpreted on the basis of the principle of good faith. The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration.**

2. **Professional football players are workers who have a personal right not to be subject to discriminatory or restrictive rules which prevents them from leaving their country to pursue gainful employment in other Member States. Although sporting federations still hold regulatory authority to determine regulations' substantive principles concerning player movement rights, they too are subject to and must respect EU law and principles.**

3. **Rules ("nationality clauses") laid down by sporting associations, under which football clubs may field only a limited number of professional players who are nationals of other Member States, constitute an obstacle to freedom of movement for workers, prohibited by EU law. However, 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. It is therefore left to the self-regulatory autonomy of the sporting associations to elaborate rules or practices at club level that are compatible with the requirements of EU law.**

4. **The assessment whether a certain sporting rule is compatible with EU law requires a case-by-case analysis of the circumstances of each individual situation. The burden of demonstrating that its rule is acceptable falls obviously on the sporting associations which elaborated it, which has to establish that its rule is either expressly provided for in EU law or meets objective justifications. But even if that were so, application of this**

rule 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. There must be no other measures available which can be less discriminating.

I. PARTIES

1. S.C.S. Fotbal Club CFR 1907 Cluj S.A. is a football club with its registered office in Cluj, Romania. It currently plays in Liga 1, *i.e.* the top division of the Romanian football league system. It is a member of the Romanian Football Federation.

2. Mr Manuel Ferreira De Sousa Ricardo was born on 21 December 1981 and is of Portuguese nationality. He is registered as a professional football player with the Club since 19 July 2006 and his employment contract will expire on 30 June 2015.

3. Mr Mario Jorge Quintas Felgueiras is born on 12 December 1988 and is of Portuguese nationality. On 25 May 2012, he signed with the Club an employment contract, effective from 1 July 2012 until 30 June 2016.

4. The Romanian Football Federation (hereinafter "FRF") was founded in 1909 and is the governing body of football in Romania. It is affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA").

II. INTRODUCTION

5. The appeal is brought by Mr Manuel Ferreira De Sousa Ricardo, Mr Mario Jorge Quintas Felgueiras (hereinafter "the Players") and S.C.S. Fotbal Club CFR 1907 Cluj S.A. (hereinafter also referred to as "the Club" or, together with the Players, the "Appellants") against the decision of the Executive Committee of the Romanian Football Federation to increase the minimum number of *"players trained at national level"* who must be registered on the referee's report of each official match.

6. According to the applicable regulations (as translated into English by the Appellants), *"Players that are trained nationally means players that, irrespective of their citizenship, have been registered to and have participated in competitions for a club in Romania for a minimum of 3 years (consecutive or not) between the ages of 15 and 21. The 3 year stage is adequately reduced for players under 18".*

7. The Appellants claim that the said decision is in breach of the principle of the freedom of movement for workers as laid down in European Union (hereinafter "EU") and Romanian laws and regulations.

III. BACKGROUND FACTS

8. During the last two football seasons, the Club signed employment contracts with thirteen players, who are not of Romanian nationality but have the European citizenship (hereinafter "Community players"). At the present time, twenty-one non-Romanian players are registered with the Club. Among them, sixteen are Community players.

9. The FRF Regulations on the organisation of the football activity ("Regulament de organizare a activitatii fotbalistice" – hereinafter "ROAF") implements the essential prerequisites, which must be met for an official match to take place in Romania.

10. The 2011 edition of the ROAF provides, so far as material, as follows (as translated into English by the Appellants):

> *"Article 46.5*
>
> *The teams have the right to register a maximum of 18 on the match sheet, out of which seven are substitutes.*
>
> *Article 46.7.1*
>
> (…)
>
> *a) Liga 1 and women's football teams have the right to use a maximum of 5 non-EU players at the same time on the pitch and have the obligation to register on the match sheet a minimum of 5 players that are trained nationally for each official match.*
>
> (…)
>
> *Players that are trained nationally means players that, irrespective of their citizenship, have been registered to and have participated in competitions for a club in Romania for a minimum of 3 years (consecutive or not) between the ages of 15 and 21. The 3 year stage is adequately reduced for players under 18.*
>
> *Article 46.7.2*
>
> *The teams that do not observe the rules regarding using non-EU players, respectively the rules regarding the registration of the minimum number of players that are trained nationally in the match sheet shall be sanctioned with losing the match by forfeit* (…)*".*

11. On 18 June 2012, the FRF Executive Committee decided to amend several provisions of the ROAF, including its article 46.7.1, which reads as follows in its present form (as translated into English by the Appellants):

Clause 46.7.1.1 1st League teams:

a) for the 2012/2013 and 2013/2014 competition years, have the right to use a 5 extra-community players concurrently on the field and have the obligation to register in the referee's report of each official match, a minimum of 5 players trained at national level.

b) for the 2014/2015 competition year, have the right to use a 3 extra-community players concurrently on the field and have the obligation to register in the referee's report of each official match a minimum of 6 players trained at national level.

c) starting with the 2015/2016 competition year, have the right to use a 2 extra-community players concurrently on the field and have the obligation to register in the referee's report of each official match, a minimum of 8 players trained at national level".

12. The FRF published the decision of its Executive Committee on its website on 18 June 2012 (hereinafter the "Challenged Decision").

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 9 July 2012, the Appellants filed a joint statement of appeal with the Court of Arbitration for Sport (hereinafter "CAS").

14. On 12 July 2012, the CAS Court Office acknowledged receipt of the Appellants' statement of appeal as well as of their payment of the CAS Court Office fee. It took note of the Appellants' nomination of Mr Bernard Hanotiau as arbitrator and invited the FRF to nominate an arbitrator within ten days, failing which the President of the CAS Appeals Arbitration Division or his Deputy would appoint an arbitrator *in lieu* of the FRF.

15. The FRF did not nominate an arbitrator within the stipulated time limit and, therefore, the Deputy President of the CAS Appeals Arbitration Division proceeded with the appointment *in lieu* of the Respondent.

16. On 27 July 2012, within the granted time extension, the Appellants lodged their appeal brief, which contained a statement of the facts and legal arguments accompanied by supporting documents.

17. On 27 August 2012 and within the granted time extension, the FRF filed its answer.

18. On 20 September 2012, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Mr Chris Georghiades, President of the Panel, Mr Bernard Hanotiau, arbitrator designated by the Appellants and Mr Fabio Iudica, arbitrator appointed by the Deputy President of the CAS Appeals Arbitration Division *in lieu* of the FRF.

19. On 19 November 2012, the CAS Court Office informed the parties that a hearing would be

held on 8 January 2012 at the CAS Headquarter. The hearing date was fixed with the agreement of all the parties to the present proceedings. As a matter of fact, on 30 October 2012, the Appellants confirmed their availability for the said date, as did the FRF on 19 November 2012. The FRF even reserved its right to submit, at a later stage, the names of the persons to attend the hearing.

20. On 5 December 2012 and on behalf of the Panel, the CAS Court Office invited the Appellants to file a submission, solely addressing the issue of CAS jurisdiction in the present case. It also announced that upon receipt of the Appellants' submission, the FRF would be granted the same deadline to file its observations on the matter.

21. On 17 December 2012, the FRF requested the hearing to be rescheduled at a later date. It stated that it would *"not perform any operations or activities between 22 December 2012 and 9 January 2013"*, with the consequence that it would be unable to *"take note of any requests or documents sent with respect to the* [present proceedings during the said period of time]*"*, to prepare its defence and to exercise its right to be heard.

22. On 18 December 2012, the CAS Court Office acknowledged receipt of the Appellants' arguments on CAS jurisdiction sent on 17 December 2012 and invited the FRF to file its submissions on the said issue. It also requested the parties to sign and return a copy of the Order of Procedure on or before 24 December 2012. On this document, the hearing date was set for 8 January 2013, without any reservation.

23. The same day, the Appellants declared that they did not agree with the postponement of the hearing and returned to the CAS Court Office a signed copy of the Order of Procedure.

24. On 20 December 2012, the CAS Court Office informed the parties that, after having reviewed their respective submissions, the Panel decided to maintain the hearing date of 8 January 2013. The FRF was requested to confirm to the CAS Court Office, no later than 21 December 2012, that it would attend the hearing, specifying the names of its representatives as well as the names of all the witnesses and experts who would also be in attendance or who would give oral evidence by conference-call.

25. Via fax sent on 7 January 2013, the FRF acknowledged receipt of the CAS Court Office letter of 20 December 2012, *"sent on 20 December, 18:44 – time in Romania –, after the working hours at Romanian Football Federation"* and confirmed that it would not attend the scheduled hearing, because its representative had booked a trip to Israel, in the meantime. It did not touch upon the fact that according to its own statement, the FRF offices were still opened on 21 December 2012 nor did it make any reference to the Appellants' position on CAS Jurisdiction. However, it lodged new substantive submissions intended to supplement its answer. They were rejected by the Panel in accordance with article R56 of the CAS Code of Sport-related Arbitration (hereinafter "the CAS Code"). Finally, the FRF required to be given the opportunity to comment on the oral arguments made during the hearing by the Appellants. It did not return to the CAS Court Office a signed copy of the Order of Procedure.

26. A hearing was held on 8 January 2013 at the CAS premises in Lausanne, Switzerland. The Panel, assisted by Mr Patrick Grandjean, ad hoc clerk, and Mrs Pauline Pellaux, Counsel to the CAS, sat in the following composition:

President:	Mr Chris Georghiades
Arbitrators:	Mr Bernard Hanotiau
	Mr Fabio Iudica

27. The Appellants were represented by their attorneys, Mr Jorge Ibarrola and Mr Jean-Marie Kiener.

28. The FRF was not present or represented.

29. The Panel held that there was no reason for the FRF to assume that the hearing would be rescheduled as its date was set with the agreement of all the parties and its confirmation was communicated on 20 December 2012, i.e. more than 24 hours before the FRF offices were allegedly closed for the winter holidays. In addition, before booking his trip, the FRF representative had enough time to enquire about the actual hearing date and, in case of doubt, could have contacted the CAS Court Office or, certainly, paid a visit to the FRF offices in order to check whether it received some communication with reference to the hearing. Under such circumstances and pursuant to article R57 par. 3 of the CAS Code, the Panel decided to proceed with the hearing.

30. Likewise and for the same reasons, the Panel found that there were no exceptional circumstances (as provided under article R56 of the CAS Code) to entitle the FRF to supplement its arguments and to comment on the oral statements made during the hearing by the Appellants. The FRF had ample opportunity to exercise its right to be heard and cannot derive any benefit from the fact that it deliberately chose not to be represented at the hearing. Pursuant to article R44.2 of the CAS Code, the Panel decided not to authorize the FRF to produce further written pleadings.

31. In the course of the proceedings the parties did not raise any objection as to the constitution and composition of the Panel, as well as the Appellants during the hearing. No witness was called to testify. After the attending parties' final oral submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties even if they have not been summarized in the present award.

32. Following the hearing, the CAS Court Office informed the parties on behalf of the Panel that the Respondent was not invited to file any written comments, since the Appellant did not raise any new arguments at the hearing and the legal expert did not attend the hearing. Furthermore, in application of Article R56 of the Code, in the absence of any exceptional circumstances, neither a request from the Panel nor an agreement between the parties, the Panel has decided not to admit in the case file the documents produced by the Respondent on 6 January 2013 and also the website extract produced by the Appellants at the hearing.

V. THE PARTIES' WRITTEN SUBMISSIONS

A. The Appeal

33. The Appellants submitted the following requests for relief:

> *"S.C.S Fotbal Club CFR 1907 Cluj S.A, Manuel Ferreira De Sousa Ricardo and Mario Jorge Quintas Felgueiras respectfully request that the CAS rules as follows:*
>
> *I. The Challenged Decision is set aside.*
>
> *II. Article 46.7.1 of the Regulament de organizare a activitatii fotbalistice as amended by the Executive committee of the Romanian Football Federation on 18 June 2012 is annulled.*
>
> *III. The Romanian Football Federation shall bear all the costs of the proceedings.*
>
> *IV. The Romanian Football Federation shall be ordered to compensate S.C.S Fotbal Club CFR 1907 Cluj S.A, Manuel Ferreira De Sousa Ricardo and Mario Jorge Quintas Felgueiras for their legal fees and other expenses incurred in connection with the proceedings in on amount to be determined at the discretion of the Panel".*

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

(i) Romania is a Member State of the EU and as such is bound to abide by the various EU regulations and treaties, namely the Treaty on the Functioning of the European Union (hereinafter the "TFEU").

(ii) Free movement of workers within the EU is guaranteed by the TFEU, the Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union as well by the Romanian Constitution and labour law. *"Therefore, the principle of freedom of movement for workers enshrined in the EU law is directly applicable inside Romania and it is an integral part of the Romanian legal system".*

(iii) With its decision of 18 June 2012, the FRF Executive Committee increased the minimum number of *"players trained at national level"* who must be registered on the referee's report of each official match. The Challenged Decision is incompatible with the principle of freedom of movement as provided by the abovementioned legislations as it leads to a direct discrimination based on nationality:

- Community players will have a limited access to Romanian 1st league teams. The *"new home-grown players rule will have the concrete consequence that the number of community players able to be registered on the referee's report of each official match will be reduced from 72% down to 67% for the season 2014/2015 and to 55.5% for the season 2015/2016. These numbers may be further reduced if extra-community players are fielded. (…) In addition, as the locally trained players can be injured during the season, it is more than likely that the Club will have to employ more locally trained players than the number needed to comply with the referee's report".*

- Romanian players will be discouraged to leave their country of origin, considering that they could face difficulties to be hired by Romanian teams if they want to come back in their own country a few years later.

(iv) The Challenged Decision also leads to indirect discrimination based on nationality:

- Minors under the age of 18 can only be transferred internationally under very restrictive conditions. Hence the 3-year requirement to be qualified as a *"player trained at national level"* can hardly be met by players who are not born in Romania.
- Regarding Community players providing work in Romania, their *"clubs could be obliged to renounce to the renewal of their registration at the end of their current employment contracts and face difficulties to be hired by other Romanian Clubs"*.

(v) The Challenged Decision does not pursue a legitimate aim compatible with the TFEU and is *"grossly disproportionate, notably in comparison with the limitation imposed by the UEFA Regulations"*. In this regard, the *"home-grown players' rule"* and its resulting quotas as adopted by the UEFA must be considered as the ceiling value, which cannot be exceeded without breaching the principle of free movement of persons.

(vi) The only purpose of the new rule adopted by the FRF Executive Committee is to keep talented players with the Romanian Federation and gain values on such players.

35. The Appellants also raised additional arguments relating to the prohibition of competition law but withdrew them at the hearing.

B. The Answer

36. On 27 July 2012, the FRF filed an answer, with the following requests for relief:

"On the grounds set out above, FRF respectfully requests CAS:

- *to dismiss the appeal,*

  and, in any case

- *to order payment by the Appellants of all costs of the arbitration as well as legal costs suffered by FRF".*

37. The submissions of the FRF may, in essence, be summarized as follows:

(i) The CAS does not have jurisdiction to hear the present appeal.

(ii) With its decision adopted on 18 June 2012, the FRF Executive Committee only intended to achieve its various purposes and objectives, as provided under article 8 of the FRF Statutes. Furthermore, it did nothing more than implement at national level the concept of *"home-grown players"* developed by UEFA Regulations and accepted by the EU Commission.

(iii) The Challenged Decision complies with all legal provisions in force. It aims *"to broaden the opportunities for talented young players to play in their clubs' first team, and better protect the young players of training clubs. It should also enhance the pool of new talent across Europe and thus stimulate competition: squad sizes being limited, the best players can no longer be confined to the substitutes' bench of the 'richest' clubs. The overall quality of competition may improve over time. (…) this rule would increase the pool of players to possibly be selected to play for the national Romanian teams, and from the clubs' perspective, the activity of recruitment and development of new talent represents one of the core activities of a club, while the over - dependence on transfers can undermine sporting values"*.

(iv) Under Romanian law, an association is a corporately organized group of persons, which has legal personality. Two or more associations can constitute a federation, which is a distinct legal subject and which is vested with its own rights and obligations. Such a federation is principally governed by its statutes. *"Therefore, the Club, by participating in the General Assembly of the national Professional Football League (LPF) and by freely casting its vote, has appointed the representatives of the clubs in Liga 1 (…). These representatives, elected freely and democratically, have approved the regulations that are currently challenged. Moreover, no other club participating in any competition organized by FRF and/or LPF, or, in other words, no affiliate member of FRF, except for [the Club], has deemed the rules adopted on 18 June 2012 as being illegal"*. In other words, the FRF suggests that it enjoys autonomy to self regulate football and, consequently, the extent of the applicability of the principle of free movement for workers to its players.

(v) The Challenged Decision is compatible with the constant jurisprudence of the EU Court of Justice (hereinafter "ECJ") in relation with the principle of free movement of workers.

VI. APPLICABLE LAW

38. Article R58 of the CAS Code provides the following:

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

39. The Panel finds that the Statutes and Regulations of the FRF are applicable, as provided under article R58 of the CAS Code. The parties having not agreed on the application of any other rules of law, the Panel finds that Romanian law shall be applied in addition to the FRF Statutes and Regulations, if needed.

VII. ADMISSIBILITY

40. The appeal is admissible as the Appellants submitted it within the deadline provided by article R49 of the CAS Code as well as by article 58 par. 4 of the FRF Statutes. It complies with all the other requirements set forth by article R48 of the CAS Code.

VIII. JURISDICTION

A) The parties' submissions

41. In their statement of appeal and in their appeal brief, the Appellants submit that the present dispute is subject to the jurisdiction of the CAS, based on the terms of article 34.9 of the FRF Statutes. This provision is part of Chapter 3 (Organisation), sub-chapter B (Executive Committee) of the FRF Statutes.

42. Article 34.9 of the applicable FRF Statutes reads as follows (as translated into English by the Appellants):

> *"Article 34 – Passing of Decisions*
>
> (…)
>
> *9 Decisions of the Executive Committee that are contrary to the law or to the provisions comprised in the statutes and regulations of [FRF] may be challenged before courts of law by any members who did not participate in the meeting of the Executive Committee or who voted against and asked that this is recorded on the records of proceedings of the meeting in accordance to legal provisions in force.*
>
> *Any dispute regarding the Decisions of the Executive Committee will be submitted first of all, mandatorily, to an arbitration procedure before the Court of Arbitration for Sport".*

43. In its answer, the FRF alleges that only the *"members of the Executive Committee"* and not any *"members"* of the FRF are able to avail themselves of this provision.

44. According to the Appellants, article 34.9 of the FRF Statutes can only be understood as follows:

- the first paragraph of this provision provides that ordinary courts have jurisdiction whenever a decision is challenged by members of the Executive Committee who did not participate to its adoption or voted against it;

- the second paragraph of this provision provides that CAS has jurisdiction whenever an appeal is filed by any member or affiliate to the FRF against a decision adopted by the Executive Committee.

45. The Appellants claim that the *"Respondent's interpretation of this provision is moreover an absolute nonsense as it would mean that decisions of the Executive Committee may be appealed to the CAS solely by*

members of the Executive Committee who participated to the meeting and adopted said decisions". Furthermore and in any event, the Appellants assert that CAS jurisdiction is supported by article 58 par. 2 of the FRF Statutes.

B) Competence of the CAS to rule on its own jurisdiction

46. It is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act (hereinafter "PILA") is the relevant arbitration law (DUTOIT B., Droit international privé suisse, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on article 176 PILA; TSCHANZ P-Y., in Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad art. 186 LDIP). Article 176 par. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

47. The CAS is recognized as a true court of arbitration (ATF 119 II 271). It has its seat in Switzerland. Chapter 12 of the PILA shall therefore apply, the parties in the present dispute having neither their domicile nor their usual residence in Switzerland.

48. Pursuant to article 176 par. 2 PILA, the provisions of Chapter 12 do not apply where the parties have excluded its application in writing and agreed to the exclusive application of the procedural provisions of cantonal law regarding arbitration. There is no such agreement in this case. Therefore, articles 176 ff. PILA are applicable.

49. In accordance with Swiss Private International Law, the CAS has the power to decide upon its own jurisdiction. In this regard, article 186 PILA states:

> *"1. The arbitral tribunal shall rule on its own jurisdiction.*
>
> *1bis. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless noteworthy grounds require a suspension of the proceedings.*
>
> *2. The objection of lack of jurisdiction must be raised prior to any defence on the merits.*
>
> *3. In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision".*

50. According to Swiss legal scholars, this provision *"is the embodiment of the widely recognized principle in international arbitration of 'Kompetenz-Kompetenz'. This principle is also regarded as corollary to the principle of the autonomy of the arbitration agreement"* (ABDULLA Z., The Arbitration Agreement, in: KAUFMANN-KOHLER/STUCKI (eds.), International Arbitration in Switzerland – A Handbook for Practitioners, The Hague 2004, p. 29). *"Swiss law gives priority to the arbitral tribunal to decide on its own competence if its competence is contested before it (…). It is without doubt up to the arbitral tribunal to examine whether the submitted dispute is in its own jurisdiction or in the jurisdiction of the ordinary courts, to decide whether a person called before it is bound or not by the arbitration agreement"* (MÜLLER C.,

International Arbitration – A Guide to the Complete Swiss Case Law, Zurich et al. 2004, pp. 115-116). *"It is the arbitral tribunal itself, and not the state court, which decides on its jurisdiction in the first place* (...). *The arbitral tribunal thus has priority, the so-called own competence"* (WENGER W., n. 2 ad Article 186, in: BERTI S. V., (ed.), International Arbitration in Switzerland – An Introduction to and a Commentary on Articles 176-194 of the Swiss Private International Law Statute, Basel et al. 2000). The provisions of Article 186 are applicable to CAS arbitration (RIGOZZI A, L'arbitrage international en matière de sport, thesis Geneva, Basel 2005, p. 524; CAS 2005/A/952; CAS 2006/A/1187).

51. Furthermore, the parties have expressly accepted the competence of the CAS to rule on its own jurisdiction in the present case. The Appellants have repeatedly recognised, in correspondence and submissions, the competence of the CAS to decide both the preliminary issue of jurisdiction as well as the substantive issues in question. In its answer and various submissions, the FRF recognised the jurisdiction of the CAS, at least for the purpose of resolving the jurisdictional issue. The FRF further responded to the merits of the appeal.

52. According to article R27 par. 1 of the CAS Code, the CAS has jurisdiction whenever the parties agreed to refer a dispute to the CAS by means of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings).

C) The interpretation of an arbitral clause

53. In the present case, it is undisputed that upon the existence of certain circumstances and conditions, CAS may have jurisdiction to deal with the dispute. This jurisdiction arises out of articles 34.9 and/or 58 of the FRF Statutes. However, there is no consensus of the parties as to the interpretation of these provisions and their scope.

54. Recently, the Swiss Supreme Court had the opportunity to confirm that arbitration clause must be interpreted according to the general rules of interpretation of contract (Judgement of the Swiss Federal Court 4A_240/2012 at 4.1 of 20 August 2012). The statements of the parties are to be interpreted as they could and should be understood on the basis of their wording and the context as well as under the overall circumstances (ATF 133 III 61 at 2.2.1 p. 67; ATF 132 III 268 at 2.3.2 p 275; ATF 130 III 417 at 3.2 p. 424 ff, 686 at 4.3.1 p. 689; with references). In particular, the arbitration clause must be interpreted on the basis of the principle of good faith (ATF 132 III 268 at 2.3.2 p. 274 ff; ATF 130 III 66 at 3.2 p. 71 ff; with references). The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood his declaration (ATF 129 III 118 at 2.5 p. 122; 128 III 419 at 2.2 p. 422).

55. Article 34 of the FRF Statutes governs the decision-making process of the FRF Executive Committee. As translated into English by the FRF: *"The decisions shall be passed by simple majority of the valid votes cast by the members of the Executive Committee that are present at the respective meeting"*

(article 34.1). *"Each member of the Executive Committee shall be entitled to a single vote"* (article 34.4). *"The voting through correspondence, proxy or any other means is not allowed"* (article 34.6). *"Any decision of the Executive Committee shall be signed by all the attending members"* (article 34.8).

56. It is undisputed that the Appellants are not members of the FRF Executive Committee. As a result, the Panel has to resolve whether article 34.9 of the FRF Statutes gives the right to *any* member to challenge before the CAS a decision adopted by the Executive Committee.

57. Article 34.9 of the FRF Statutes contains two separate paragraphs:

(i) For the first paragraph to come into play there must be (a) a decision of the Executive Committee, (b) which is contrary to the law or to the provisions comprised in the Statutes and regulations of the FRF. Under such circumstances and according to this paragraph, *"members who did not participate in the meeting of the Executive Committee or who voted against and asked that this is recorded on the records of proceedings of the meeting"* may challenge the litigious decision *"before the courts of law"*. Taking into account the voting process of the FRF Executive Committee (as exposed here-above under par. 55), the Panel has no difficulties to come to the conclusion that only members of the Executive Committee can make use of article 34.9 par. 1 of the FRF Statutes. Furthermore, this interpretation is not disputed by the parties.

(ii) The main characteristics of the second paragraph can be summarised as follows:

- Its wording is very broad: *"any dispute"* is concerned in so far as it is associated with *"Decisions of the Executive Committee"*. There is no indication of the nature/scope of the said dispute, of the said decision or of the capacity of the person who is challenging it.

- It heavily insists on the jurisdiction of the CAS: *"any dispute"* (regarding decisions of the Executive Committee) (a) must be the object of *"an arbitration procedure"* (b) which *"will be submitted first of all"* to the CAS, (c) *"mandatorily"*.

58. The structure as well as the content of article 34.9, which is divided into two paragraphs, indicates that the rule maker's intention was to differentiate between the regime applicable to the situation referred to in paragraph 1 and the one applicable to the situation referred to in paragraph 2. In other words, the two paragraphs do not have the same object and are not mutually interdependent as, otherwise, the broad terms of article 34.9 par. 2 would make article 34.9 par. 1 meaningless. Hence, the two paragraphs should be read alone.

59. Under such circumstances, the fact that only members of the Executive Committee can make use of article 34.9 par. 1 of the FRF Statutes is of no relevance with regard to the actual standing to bring a dispute before the CAS based on the terms of article 34.9 par. 2 of the FRF Statutes. The FRF did not provide any reasoned explanation to support its allegation that only the *"members of the Executive Committee"* are able to avail themselves of article 34.9 par. 2 of the FRF Statutes. In addition and in spite of the fact that it was invited to comment on the jurisdictional

arguments put forward by the Appellants, the FRF did not attempt to rebut their various statements, in particular the one according to which the FRF interpretation *"of this provision is moreover an absolute nonsense as it would mean that decisions of the Executive Committee may be appealed to the CAS solely by members of the Executive Committee who participated to the meeting and adopted said decisions"*.

60. The text of article 34.9 par. 2 of the FRF Statutes is unequivocal and, in the absence of any argument to the contrary, the Panel sees no reason why it should not be given its plain and ordinary meaning. The terms used in this provision (*"first of all"* + *"mandatorily"*) suggest strongly that the FRF Statutes are setting up the CAS as the first instance for ruling on *"any"* dispute brought against a decision of the Executive Committee. The fact that *"any"* dispute must (*"mandatorily"*) be resolved through arbitration *"first of all"* implies that CAS has jurisdiction to rule on disputes raised by any interested party, whether it is a member of the Executive Committee or not.

61. In brief, the members of the Panel unanimously agree that article 34.9 par. 2 of the FRF Statutes must be seen as a *lex specialis* which takes precedence over the general and possibly conflicting provisions laid down elsewhere, in particular in article 58 of the FRF Statutes. Although it is quite strange that article 34.9 provides that the decisions of the Executive Committee shall be appealed before the ordinary courts by the EC Members and before the CAS by any member of the FRF, the Panel finds that, with the exception of the situation expressly provided for under article 34.9 par. 1, the CAS has the exclusive jurisdiction to hear disputes (regarding decisions of the Executive Committee) submitted before it by any member of the FRF. There is no room for any other interpretation.

62. Based on the above, the Appellants' considerations related to article 58 of the FRF Statutes (which is the general provision of the FRF Statutes governing disputes) can be disregarded without further consideration.

D) Conclusion

63. It follows that the CAS has jurisdiction to decide on the present dispute.

64. Under article R57 of the CAS Code, the Panel's scope of review is fundamentally unrestricted. It has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

IX. MERITS

65. The main issue to be resolved by the Panel in deciding the present dispute is whether the Challenged Decision is compatible with the principle of freedom of movement as provided by Community and Romanian laws.

66. With this in mind, the Panel will address the following questions:

- How is freedom of movement for workers covered in Community law?
- How is freedom of movement for workers covered in Romanian labour law?
- How does Community law apply to sport and how does the principle of freedom of movement apply to professional athletes?
- How are football's home-grown players' rules and nationality discrimination dealt with under Community law?

A) How is freedom of movement for workers covered in Community law?

67. Romania joined the EU on 1 January 2007.

68. One of the essential features of EU treaties is that they enjoy supremacy over the laws of the Members States, direct applicability and vertical direct effect (KELLERHALS/BAUMGARTNER/ TRÜTEN, Europarecht in a nutshell, Zurich/St. Gallen 2011, p. 41 ff.).

69. Likewise and in accordance with article 288 TFEU, an EU regulation is binding in its entirety and directly applicable in all Member States. Similarly, a decision is binding in its entirety upon those to whom it is addressed. Neither regulations nor decisions require transposition into national law. They immediately become part of national legal regime and are directly applicable. It follows that those provisions of regulations or decisions which create rights and obligations, may be directly relied upon by individuals in their national courts which will be under the obligation to interpret the provisions enshrined in those measures and to enforce them (Judgement of the ECJ of 5 February 1963, case 26/62, van Gend & Loos v. Nederlandse Administratie der Belastingen, ECR p. 3; Judgment of the ECJ of 4 December 1974, case 41/74, van Duyn v. Home Office, ECR p. 1337).

70. The Community law provides so far as material as follows:

> *"**TFEU***
>
> *Article 18 par. 1 TFEU*
>
> *Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*
>
> *Article 45 TFEU*
>
> 1. *Freedom of movement for workers shall be secured within the Union.*
> 2. *Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*

3. *It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
   (a) *to accept offers of employment actually made;*
   (b) *to move freely within the territory of Member States for this purpose;*
   (c) *to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*
   (d) *to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.*
4. *The provisions of this Article shall not apply to employment in the public service.*

REGULATION (EU) No 492/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on freedom of movement for workers within the Union (hereinafter "Regulation (EU) No 492/2011")

Par. 2 of the introduction

Freedom of movement for workers should be secured within the Union. The attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.

Par. 7 of the introduction

The principle of non-discrimination between workers in the Union means that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.

Article 1 par. 2

[Any national of a Member State] shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

Article 3 par. 1, first sentence

Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

(a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

(b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

Article 4 par. 1

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, shall not apply to nationals of the other Member States.

Article 7 par. 1 and 4

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

(...)

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States".

B) How is freedom of movement for workers covered in Romanian labour law?

71. Article 5 of the Romanian Labour Code, Law No. 53 of 24 January 2003, in the version published on 18 May 2011 in the Official Gazette of Romania No 345 (and as made available in the database of national labour, social security and related human rights legislation maintained by the International Labour Standards Department of the International Labour Organization) reads as follows:

"ART. 5

(1) Within the work relationships, the principle of the equal treatment for all employees and employers shall apply.

(2) Any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

(3) A direct discrimination shall be represented by actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria stipulated under paragraph (2), the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation.

(4) An indirect discrimination shall be represented by actions and facts apparently based on criteria other than those stipulated under paragraph (2), but which cause the effects of a direct discrimination to take place".

C) How does Community law apply to sport and how does the principle of freedom of movement apply to professional athletes?

72. The FRF suggests that it enjoys autonomy to self regulate football and, consequently, the extent of the applicability to its players of the principle of free movement for workers.

a) In general

73. In its judgement of 12 December 1974 (case 36/74, Walrave and Koch v. Association Union Cycliste Internationale, ECR p. 1405), the ECJ held that the practice of sport was subject to Community law insofar as it constituted an economic activity. The prohibition of discrimination based on nationality did not affect the composition of sports teams, in particular national teams, the formation of which was a question of purely sporting interest and as such had nothing to do with economic activity. The ECJ also confirmed that Community law and in particular the prohibition of discrimination based on nationality, applied not only to public authorities, but extended likewise to the rules of private sports associations, designed to regulate in a collective manner gainful employment and the provision of services.

74. In its judgement of 14 July 1976 (case 13/76, Doña v. Montero, ECR p. 1333), the ECJ repeated the findings of the above precedent and spelled out that the activities of professional or semi-professional football players, which were in the nature of gainful employment or remunerated service, constituted an economic activity (within the meaning of Article 2 of the EEC Treaty), subject to Community law. However, the ECJ accepted as admissible the adoption of rules or of a practice excluding foreign players from participation in certain matches for reasons which were not of an economic nature, which related to the particular nature and context of such matches and were thus of sporting interest only, such as, for example, matches between national teams from different countries. As reflected in subsequent case law, such restriction must remain limited to its proper objective and must be proportionate to it (Judgement of 15 December 1995, case C-415/93, Bosman v. Royal Club Liégeois SA and UEFA, ECR p. I-4921; judgement of 11 April 2000, joined cases C-51/96 and C-191/97, Deliège v. Ligue Francophone de Judo et Disciplines Associées, Ligue Belge de Judo, Union Européenne de Judo, ECR p. I-2549; judgement of 16 March 2010; case C-325/08, Olympique Lyonnais v. Olivier Bernard, ECR p. I-2177).

75. In the judgement of 11 April 2000 (joined cases C-51/96 and C-191/97, Deliège v. Ligue Francophone de Judo et Disciplines Associées, Ligue Belge de Judo, Union Européenne de Judo, ECR p. I-2549) a new form of exclusion for sporting rules was expressed. A selection rule, which was not itself discriminatory but had the effect of limiting the number of competitors able to compete in a tournament, was found by the ECJ to be a limitation that was *"inherent in the conduct of an international high-level sports event, which necessarily involves certain selection*

rules or criteria being adopted. Such rules may not therefore in themselves be regarded as constituting a restriction on the freedom to provide services prohibited by Article 59 of the Treaty". It concluded that *"a rule requiring professional or semi-professional athletes or persons aspiring to take part in a professional or semi-professional activity to have been authorised or selected by their federation in order to be able to participate in a high-level international sports competition, which does not involve national teams competing against each other, does not in itself, as long as it derives from a need inherent in the organisation of such a competition, constitute a restriction on the freedom to provide services prohibited by Article 59 of the Treaty"*.

76. In the judgement of 18 July 2006 (case C-519/04, David Meca-Medina and Igor Majcen v. Commission of the European Communities, ECR p. I-6991), the ECJ determined that *"With regard to the difficulty of severing the economic aspects from the sporting aspects of a sport, the Court has held (in Donà, paragraphs 14 and 15) that the provisions of Community law concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices justified on noneconomic grounds which relate to the particular nature and context of certain sporting events. It has stressed, however, 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 (Bosman, paragraph 76, and Deliège, paragraph 43). In light of all of these considerations, it is apparent that the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down"*. The ECJ further stated that *"Next, the compatibility of rules with the Community rules on competition cannot be assessed in the abstract (see, to this effect, Case C-250/92 DLG [1994] ECR I-5641, paragraph 31). Not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 81(1) EC. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives (Wouters and Others, paragraph 97) and are proportionate to them"*. In such a context, the ECJ ruled that the challenged sports anti-doping rules did not infringe the economic competition provisions of Articles 81 or 82 of the Treaty, as the rules were inherent in the organization and proper conduct of sport and not disproportionate.

b) Conclusion

77. The ECJ made it clear that the practice of sport could be treated as an economic activity like any other and that organised sporting activities were subject to the same guarantees under Community law as were other economic activities. In that connection, the ECJ established that professional football players are workers who have a personal right not to be subject to discriminatory or restrictive rules which prevents them from leaving their country to pursue gainful employment in other Member States. Although sporting federations still hold regulatory authority to determine regulations' substantive principles concerning player movement rights, they too are subject to and must respect Community law and principles.

78. In view of the above findings, the submissions of the FRF regarding its autonomy as a governing body cannot be opposed to the Appellants, which are entitled to rely on the

provisions and principles stemming from Community law and to bring their case before the CAS for non-compliance with obligations referred to therein.

D) How are Football's home-grown players' rules and nationality discrimination dealt with under Community law?

79. The Bosman case is of particular relevance for the present dispute as it addresses the issue of sports regulations providing for national quotas and selection procedures for participation in sporting competitions.

80. The Bosman case arose out of a dispute in 1990 between Mr Jean-Marc Bosman and his club. Mr Bosman claimed that the Belgian Football Federation and UEFA-FIFA transfer rules had prevented his transfer to a French club. In its decision, the ECJ held that the then-applicable transfer rules directly affected players' access to the employment market in other Member States and were thus capable of impeding freedom of movement of workers. Besides the transfer fee, Mr Bosman claimed that his free movement rights were furthermore violated because of the nationality clause, also known as the 3+2 rule, under which, in European competitions, UEFA regulations decreed that clubs could field only three foreign players plus two "assimilated" players. Assimilated players were foreign players who continuously played with a national association for five years. The assimilated players had to complete three of those five years on a junior team.

81. On this occasion, the ECJ held that rules ("nationality clauses") laid down by sporting associations, under which football clubs may field only a limited number of professional players who are nationals of other Member States, constitute an obstacle to freedom of movement for workers, prohibited by Community law. In particular, the ECJ pointed out that *"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"*.

82. However, by the same token, the ECJ also acknowledged that 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. The ECJ has thus not completely shut the door to all nationality clauses but has left it to the self-regulatory autonomy of the sporting associations to elaborate rules or practices at club level that are compatible with the requirements of EU law (Study on the equal treatment of non-nationals in individual sports competitions, Tender no. eac/19/2009 commissioned by the European Commission, Directorate-General for education and culture, December 2010, p. 12).

83. The FIFA and the UEFA made use of this opportunity to amend their respective regulations.

a) FIFA

84. At its meeting held in May 2008, FIFA Congress decided to fully support the so-called 6 + 5 rule, according to which each club must, at the beginning of the match, field at least six players, who are eligible to play for the national team of the country, where the club is located. Other players can be nationals of any country. There is no restriction on the team composition after match start. Clubs are free to substitute up to three players, so that the combination of eligible and non-eligible players becomes 3 + 8. The rule does not limit the number of non-eligible players under contract with the club.

85. The objective of the so-called 6 + 5 rule was to preserve some kind of harmony between the clubs and their national team, to secure the national identity of the clubs, to maintain a competitive balance between them and to safeguard *"(i) the education and training of young players, (ii) training clubs, and (iii) the values of effort and motivation in football, particularly for young players, [as it] is a fundamental element of protecting national teams and restoring sporting and financial balance to club football"* (See FIFA Congress supports objectives of 6+5, http://www.fifa.com/aboutfifa/organisation/bodies/congress/news/newsid=783657/index.html).

86. The rule was to be gradually implemented: 4 + 7 for the season 2010/11, 5+6 for the season 2011/12 and 6+5 for the season 2012/13.

87. Both the EU Commission and the EU Parliament rejected the possibility of accepting the 6+5 rule as they considered it to be based on direct discrimination on the grounds of nationality, and thus to be against one of the fundamental principles of Community law, *i.e.* free movement of workers.

88. The 2012/2013 version of FIFA Laws of the Game (law 3) does not include any nationality restriction as to the players who can be fielded.

b) UEFA

89. The UEFA developed the so-called rule on *"home-grown players"*. In this regard, its latest version can be found in the Regulations of the UEFA Champions League (2012/2013 Season), which provides, so far as material, as follows:

> *"XI Player Eligibility*
>
> *Article 18* (…)
>
> *Conditions for registration: List A*
>
> *18.08 No club may have more than 25 players on List A during the season, two of whom must be goalkeepers. As a minimum, eight places are reserved exclusively for "locally trained players" and no club may have more than four "association-trained players" listed on these eight places on List*

> *A. List A must specify the players who qualify as being "locally trained", as well as whether they are "club-trained" or "association-trained". The possible combinations that enable clubs to comply with the List A requirements are set out in Annex VIII.*
>
> *18.09 A "locally trained player" is either a "club-trained player" or an "association-trained player".*
>
> *18.10 A "club-trained player" is a player who, between the age of 15 (or the start of the season during which he turns 15) and 21 (or the end of the season during which he turns 21), and irrespective of his nationality and age, has been registered with his current club for a period, continuous or not, of three entire seasons (i.e. a period starting with the first official match of the relevant national championship and ending with the last official match of that relevant national championship) or of 36 months.*
>
> *18.11 An "association-trained player" is a player who, between the age of 15 (or the start of the season during which the player turns 15) and 21 (or the end of the season during which the player turns 21), and irrespective of his nationality and age, has been registered with a club or with other clubs affiliated to the same association as that of his current club for a period, continuous or not, of three entire seasons or of 36 months.*
>
> *18.12 If a club has fewer than eight locally trained players in its squad, then the maximum number of players on List A is reduced accordingly".*

90. There is no restriction as far as the starting line-up is concerned.

91. The ECJ has not yet pronounced on this rule, which has already received support from the EU Commission and the EU Parliament (Study on the equal treatment of non-nationals in individual sports competitions, Tender no. eac/19/2009 commissioned by the European Commission, Directorate-General for education and culture, December 2010, p. 12).

92. In 2007, the EU Commission adopted the *"White Paper on Sport"*, the objective of which was to set out policy guidelines in the field of sport. To this end, this document proposed to implement or to support 53 actions. In the *"White paper on Sport"*, the EU Commission reaffirmed that sport activity is subject to the application of EU law insofar it constitutes an economic activity and that nationality discrimination and restrictions on free movement were prohibited.

93. One action foreseen in the *"White paper on Sport"* focuses specifically on quotas in the following terms:

> *"(9) Rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality and if possible indirect discrimination effects resulting from them can be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players".*

94. In relation with the above action, the EU Commission launched an independent study on the home-grown players' rule adopted by the UEFA. The results of the study lead the EU

Commission to issue the following press release on 28 May 2008:

> *"Home-grown players are defined by UEFA as players who, regardless of their nationality or age, have been trained by their club or by another club in the national association for at least three years between the age of 15 and 21. The UEFA rule does not contain any nationality conditions. It also applies in the same way to all players and all clubs participating in competitions organised by UEFA.*
>
> *Although it is difficult at the moment to state with any certainty that the home-grown players' rule will lead to indirect discrimination on the basis of nationality, the potential risk of this cannot be discounted, as young players attending a training centre at a club in a Member State tend to be from that Member State rather than from other EU countries.*
>
> *Nevertheless, the objectives underlying UEFA's home-grown players' rule, namely promoting training for young players and consolidating the balance of competitions, seem to be legitimate objectives of general interest, as they are inherent to sporting activity.*
>
> *Since the rules adopted by UEFA will be implemented gradually in successive stages (list A to include four 'home-grown players' out of 25 for the 2006/07 season and eight out of 25 as from the 2008/09 season), their practical effects will not be totally clear for a number of years.*
>
> *Therefore, in order to be able to assess the implications of the UEFA rule in terms of the principle of free movement of workers, the Commission will closely monitor its implementation and undertake a further analysis of its consequences by 2012".*

95. On 18 January 2011, the EU Commission published a staff working document, the objective of which was to provide an overview of the impact of EU law on the free movement of professional sportspeople and to outline the Commission's position on the impact of the new Treaty provisions in the field of sport on the free movement of amateur sportspeople. In this document, it is reminded that the fact that professional sportspeople fall within the scope of Article 45 TFEU implies that any direct discrimination on grounds of nationality is prohibited, and that any indirect discrimination and obstacles impeding the exercise of the right to free movement which are not justified, necessary and proportionate to the legitimate aim pursued must be abolished.

96. As regards indirect discrimination, the Staff working document of 18 January 2011, underlined that *"Indirect discrimination occurs when rules apply criteria of differentiation other than nationality but lead, in fact, to the same results as direct discrimination. In this case, only rules that are necessary, proportionate to the achievement of legitimate objectives, and do not discriminate directly on the basis of nationality, may be compatible with Article 45 TFEU. For instance, rules such as UEFA's 'home-grown players' which aim to encourage the recruitment and training of young players and ensure the balance of competitions, can be compatible with EU free movement provisions (i) in so far as they are able to achieve efficiently those legitimate objectives, (ii) if there are no other measures available which can be less discriminating and (iii) if the rules in question do not go beyond what is necessary to the attainment of their objectives. The Commission will nevertheless monitor the application of these rules closely on a case by case basis in order to verify that the criteria are met".*

97. In 2012, the EU Commission launched a study on the application of UEFA's home-grown Players' rules to monitor the rules' effects on the free movement of professional footballers in the EU.

c) In the case at hand

98. According to the FRF, the Challenged Decision does nothing more than implement at national level the concept of home-grown players developed by UEFA Regulations.

99. Until the adoption of the Challenged Decision, out of the 18 players registered on the match sheet, *"Liga 1"* teams were entitled to *"use a maximum of 5 non-EU players at the same time on the pitch and have the obligation to register on the match sheet a minimum of 5 players that are trained nationally"*.

100. It is recalled that, according to the ROAF, *"Players that are trained nationally means players that, irrespective of their citizenship, have been registered to and have participated in competitions for a club in Romania for a minimum of 3 years (consecutive or not) between the ages of 15 and 21"*.

101. With its Challenged Decision, the FRF gradually increased the number of players who must be trained at national level and decreased the number of players who can be non-EU citizens and play simultaneously (season 2014/2015: 3 non-EU players and 6 players trained at national level; season 2015/2016: 2 non-EU players and 8 players trained at national level).

102. The FRF home-grown players' rule seems not to be directly discriminatory as it does not by its terms impose a restriction on the employment of non-nationals. Instead, employment opportunities for non-nationals - when compared with the employment opportunities for nationals - may be indirectly reduced because the training requirements are more likely to be fulfilled by nationals than non-nationals. The indirect nature of any nationality-based discrimination produced by the FRF home-grown players' rule raises the question as to whether there are sufficient grounds to objectively justify the rule.

103. It results from the various papers published by the EU Commission that home-grown players' rules and quotas on the selection of football players in European club competitions are a very sensitive matter, subject to continuous developments:

- In its press release of 28 May 2008, the EU Commission made it clear that the home-grown players' rule adopted by the UEFA *"seems to comply with the principle of free movement of workers"*. However, its compatibility with Community Law is not yet a certainty and its *"practical effects will not be totally clear for a number of years"*.
- The Staff working document of 18 January 2011 spells out that any sporting exemption from Community law must be very limited, that rules such as UEFA's home-grown players are acceptable insofar they meet restrictive requirements, the application of which will be monitored closely by the EU Commission, on a case by case basis.
- The very cautious approach of the EU Commission is also illustrated by the numerous opinions and studies it commissioned on the issue, the last one being launched in 2012.

104. The Panel further observes that whatever view the EU Commission finally comes to, it cannot be assumed that the latter's opinion on the UEFA home-grown players' rule would be shared by the ECJ.

105. In such a context, given the various findings of the ECJ as well as of the EU Commission, it seems reasonable to the Panel to assess whether the FRF home-grown players' rule has more in common with FIFA "6 + 5 Rule" (deemed incompatible with Community Law) or with the UEFA home-grown players' rule (deemed compatible with Community law).

		FIFA 6 + 5 Rule	**UEFA home-grown players' rule**	**FRF home-grown players' rule**
1	Players registered on the match sheet		25	18
2	Players who can be fielded	11	11	11
3	Players who must be locally trained/eligible	6 (- 3 substitutes)	8	8
4	Players who do not need to be locally trained/eligible	5 (+ 3 substitutes)	17	10
5	Minimum number of locally trained/eligible players in the starting line-up	6	0	1 (1)
6	Minimum number of locally trained/eligible players fielded if the three substitutes are used	3 (2)	0 (2)	4 (1)
7	Percentage between 1 and 3		32%	44%
8	Percentage between 1 and 4		68%	56%
9	Percentage between 2 and 5	55%	0%	9%
10	Percentage between 2 and 6	27%	0%	36%

(1) According to the ROAF, 11 players can be fielded. A maximum of 18 players can be registered on the match sheet, amongst them 8 must be *"locally trained"*. Hence, at least one locally trained player must be fielded in the starting line-up (11 – 10 = 1). If the 10 non-locally trained players are in the starting line-up, any substitute will inexorably be a locally trained player (1 + 3 = 4).

(2) It is here assumed that the substitutes are not eligible players.

106. It appears from the above table, that, like the FIFA 6+5 rule, the FRF home-grown players' rule requires the club to field a requisite number of locally trained/eligible players (see number 5 of the table). Should the substitutes be used, the number of locally trained players under the FRF home-grown players' rule could actually exceed the number of eligible players under the FIFA 6+5 rule (see numbers 6 and 10 of the table).

107. Likewise, the opportunity for Community players to be fielded may be reduced if extra-community players are registered in the match sheet. This is at odds with the Bosman case (Judgement of 15 December 1995, case C-415/93, Bosman v. Royal Club Liégeois SA and UEFA, ECR p. I-4921), where the ECJ established that *"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"*.

108. It can be here noted that the UEFA home-grown players' rule merely requires that these locally trained players be retained in a club's playing squad. However, they do not necessarily need to be fielded (see numbers 5, 6, 9 and 10 of the table).

109. It appears that under likely circumstances, the number of players who a) must be fielded and b) must be locally trained is higher under the FRF home-grown players' rule than under the UEFA's. Moreover, is also striking the large difference of percentages put in evidence under numbers 7 to 10 of the table, and in particular the difference of percentage between the number of players who must be registered on the match sheet and the numbers of players who must be locally trained (see numbers 7 and 8 of the table).

110. It results from the above that the FRF home-grown players' rule goes far beyond the various limits set by the UEFA home-grown players' rule. Under such circumstances, the FRF cannot reasonably contend that the Challenged Decision does nothing more than implement at national level the concept developed by the UEFA.

111. The assessment whether a certain sporting rule is compatible with EU law requires a case-by-case analysis of the circumstances of each individual situation (See Commission White Paper on Sport, par 4.1; Judgement of 18 July 2006, case C-519/04, David Meca-Medina and Igor Majcen v. Commission of the European Communities, ECR p. I-6991). The burden of demonstrating that the FRF home-grown players' rule is acceptable falls obviously on the FRF, which has to establish that its rule is either expressly provided for in Community law (such as the public policy, public security, public health, public service – see article 45 TFEU; par. 2 of the introduction of Regulation (EU) No 492/2011) or meets the objective justifications identified by the ECJ. But even if that were so, application of this rule 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 (for instance, judgement of 15 December 1995, case C-415/93, Bosman v. Royal Club Liégeois SA and UEFA, ECR p. I-4921, par. 104; judgement of 18 July 2006, case C-

519/04, David Meca-Medina and Igor Majcen v. Commission of the European Communities, ECR p. I-6991). There must be no other measures available which can be less discriminating (Staff working document of 18 January 2011).

112. Considering how hesitant and cautious the EU Commission is about the UEFA home-grown players' rule and in view of its reservations, any measure going above and further need a particularly convincing objective justification. In particular, the FRF has the burden to demonstrate that its home-grown players' rule is proportionate, is appropriate to achieve the objective and that there is no other measure less restrictive on freedom of movement. In the present proceedings, the FRF confined itself to extremely general considerations and in particular it failed to give any justification as to why the Challenged Decision must be considered as proportionate and as a suitable means, which does not go beyond what is necessary, even though it exceeds UEFA home-grown players' rule.

113. Under such circumstances and based on the foregoing considerations, the Panel finds that there are no grounds to consider that the discrimination resulting from the Challenged Decision is compatible with articles 18 and 45 TFEU, with the various provisions of the Regulation (EU) No 492/2011 as well as with article 5 of the Romanian labour law.

114. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The joint appeal filed by S.C.S. Fotbal Club CFR 1907 Cluj S.A., Mr Manuel Ferreira De Sousa Ricardo and Mr Mario Jorge Quintas Felgueiras against the decision of the FRF Executive Committee of 18 June 2012 is upheld, so far as it relates to article 46.7.1 of the ROAF.

2. The decision of the FRF Executive Committee of 18 June 2012 is set aside so far as it relates to article 46.7.1 of the ROAF.

3. Article 46.7.1 of the ROAF as adopted by the FRF Executive Committee on 18 June 2012 is annulled.

(…)

6. All other motions or prayers for relief are dismissed All other or further claims are dismissed.