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ARTICLE

CAS arbitration and the 1958 New York Convention after *ISU* and *RFC seraing*

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Abstract
The paper explores the relationship between the Court of Arbitration for Sport (CAS), the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the recent jurisprudence of the Court of Justice of the EU (CJEU). The CAS' embeddedness within the legal framework of international arbitration has recently been challenged amidst a general backlash against sports arbitration from Europe. CAS arbitration featured prominently in the CJEU's recent judgments in *International Skating Union* and *RFC Seraing*. Following these decisions, the paper examines how the 1958 New York Convention and EU law interact in the sports arbitration context. It argues that compulsory arbitration agreements providing for CAS arbitration fall within the scope of application of the 1958 New York Convention. According to the jurisprudence of the CJEU, EU Member States are required to review arbitration agreements and arbitral awards for violations of EU public policy. The paper concludes that this duty is reconcilable with the obligations of EU Member States as Contracting States of the 1958 New York Convention.

Keywords Court of Arbitration for Sport (CAS) · New York Convention · Arbitration agreement · Public policy · Sports arbitration

1 Introduction

After the implementation of the reforms triggered by the Swiss Federal Tribunal's Gundel-Decision,[1] the Court of Arbitration for Sport (CAS) has ascended to take its place as the supreme arbiter for sports disputes around the world.[2] The Swiss Federal Tribunal has long held that CAS is a 'true' arbitral tribunal whose awards only undergo the limited review according to Articles 190 ff. Swiss Private International Law Act.[3] Accordingly, CAS awards were generally assumed to constitute 'arbitral awards' in terms of Article I (1) of the 1958 New York Convention.[4] As a consequence, they would benefit from the legal framework of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention or NYC), which counts 172 Contracting States, including all Member States of the EU as well as Switzerland.[5] These Contracting States would accordingly be obliged to recognise and enforce the awards rendered by CAS, even though international federations may often be able to implement the awards themselves without the need for assistance by State authorities.

This orthodox view has been challenged recently: In her opinion in the case *RFC Seraing*, Advocate General *Ćapeta* offered two arguments on the status of CAS awards under the 1958 New York Convention: She argues, first, that arbitration agreements in professional sports are compulsory

[1] Swiss Federal Tribunal 15 March 1993, BGE 119 II 271; see McLaren (2010), p. 307.

[2] Lindholm (2019), p. 3, 4; similarly Reilly (2012), p. 80.

[3] Swiss Federal Tribunal 27 May 2003, BGE 129 III 445.

[4] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); see, e.g., U.S. Dist. Ct. SD Florida 13 February 2012, *Chelsea Football Club Ltd vs. Mutu*; Weatherill (2017), p. 19.

[5] United Nations, Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (26 September 2025).

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and should therefore not be understood as free and consensual agreements under Article II (1) NYC.[6] Her second argument is that, even if agreements to arbitrate before CAS fall within the scope of the 1958 New York Convention, their compulsory nature mandates a full review of the award against the backdrop of EU law.[7] These arguments can only be understood in light of the recent European backlash against sports arbitration. The paper will therefore start by briefly providing some background on the recent attempts by European courts to curtail the freedom of the federations in sports arbitration (2.), before turning to the hierarchical relationship between EU and the 1958 New York Convention (3.). The paper then goes on to address the recognition of arbitration agreements (4.) as well as the recognition and enforcement of CAS awards under the 1958 New York Convention (5.). It ends with a brief outlook (6.).

2 European backlash against sports arbitration

Sports arbitration has been subject to significant pushback from different European Courts. The European Court of Human Rights (ECtHR) and the German Constitutional Court mandate the respect of basic procedural requirements (2.1.). The CJEU has held that CAS awards need to be subject to review for violations of EU public policy by courts of EU Member States (2.2.).

2.1 Strasbourg/Karlsruhe: procedural requirements

As explained in detail in Dana Burchardt's contribution to this special issue,[8] the ECtHR has, in its famous *Mutu*/*Pechstein* decision,[9] characterised CAS arbitration clauses imposed on athletes by federations as compulsory arbitration.[10] The submission to CAS arbitration by athletes is thus not considered as an effective waiver of the procedural guarantees of Article 6 ECHR. As a consequence, the procedure of CAS needs to comply with the requirements of Article 6 ECHR.[11] The court understood this to include the right to a public hearing in disciplinary matters.[12] The subsequent amendments to the procedural rules of the CAS introduced the right to request such a public hearing.[13] Building on the ECtHR's decision, the German Federal Constitutional Court reached a similar conclusion in its own *Pechstein* decision, holding that the right of access to justice included a public hearing in disciplinary cases.[14] While the Grand Chamber of the ECtHR recently declined to review CAS awards based on all substantive human rights guarantees, it held that Article 6 ECHR requires the Swiss Federal Tribunal, as the national court reviewing decisions of the CAS pursuant to Articles 190 ff. Swiss Private International Law Act, to conduct a rigorous review of CAS awards, "commensurate with the seriousness of the personal rights at issue".[15]

2.2 Luxemburg: EU public policy?

The arguably even more fundamental challenge, at least in the view of most commentators,[16] has come from Luxemburg. The CJEU's decision in *ISU* was perceived by many as a first blow against CAS arbitration (2.1.1.). In *RFC Seraing*, the Grand Chamber of the CJEU took the opportunity to provide at least some clarifications on the relationship between EU law and sports arbitration in third States (2.2.2.).

2.2.1 *RFC Seraing*: the status quo ante

In its *ISU* decision, the CJUE held that the International Skating Union's (ISU) rules on the prior authorisation of ice skating competitions and on the eligibility to take part in skating competitions constituted violations of Article 101 TFEU.[17] The Court went on to hold that the arbitration clauses in the statutes of the ISU were to be considered a reinforcement of these restrictions of competition.[18] This was understood by many authors as a threat to the viability of CAS arbitration with its seat in Switzerland.[19] The issue

[6] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24, para. 118.

[7] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24, para. 118.

[8] Burchardt (2025).

[9] ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10.

[10] ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10, paras. 109, 115.

[11] ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10, para. 115.

[12] ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10, paras. 75 ff.

[13] See Article R57 (2) CAS Code of Sports-related Arbitration 2023.

[14] German Federal Constitutional Court 3 June 2022–1 BvR 2103/16, NJW 2022, 2677, paras. 42 ff.

[15] ECtHR 10 July 2025 – *Semenya v. Switzerland*, no. 10,934/21, paras. 211 ff.; see Burchardt (2025); Tremml (2025), p. 196.

[16] See, e.g., Bien (2024), p. 400; Köhler (2025b), p. 336; Wagner and Samanci (2024), p. 571.

[17] CJUE 21 December 2023 – C-124/21 P, ECLI:EU:C:2023:1012 – International Skating Union.

[18] CJUE 21 December 2023 – C-124/21 P, ECLI:EU:C:2023:1012 – International Skating Union.

[19] Bien (2024), p. 400; Duval (2023), p. 472; Hülskötter (2024), p. 78; Wagner and Samanci (2024), p. 571.

of arbitration was scheduled to come up again, as a central issue of law in the case *RFC Seraing*. In this case, the Belgian Football Club *RFC Seraing* had been sanctioned by FIFA for violating the rules on third party ownership of players' economic rights.[20] The sanction was confirmed by a CAS tribunal which engaged in an analysis of EU law but found the FIFA rules to be in line with fundamental freedoms as well as EU competition law.[21] The Swiss Federal Tribunal upheld the award, reaffirming its longstanding stance that neither EU nor Swiss competition law forms part of Swiss public policy.[22] In the ensuing proceedings in Belgium, the Belgian courts saw their hands tied by the arbitral award and its *res judicata* effect under Belgian law. The Belgian *Cour de cassation* requested a preliminary ruling of the CJEU on the question of whether Belgian rules on *res judicata* and probative value of arbitral awards were compatible with EU law. Interestingly, the request seems to suggest that there is no mechanism in Belgian law which would allow state courts to review an arbitral award for violations of Belgian or EU public policy. Some doubts were expressed as to this seeming inability of Belgian courts to review arbitral awards,[23] but the CJEU saw itself bound by this interpretation of Belgian law by the referring national court.[24]

2.2.2 *RFC Seraing*: the judgment

It is in this factual and procedural context that Advocate General *Ćapeta* questions the status of CAS arbitration under the New York Convention in her opinion in *RFC Seraing*. In the much-awaited *Seraing* decision, the CJEU does not address her arguments on the relationship between CAS arbitration and the 1958 New York Convention in great detail.[25] The Court first lays out the requirements of effective judicial protection against arbitral awards under EU law.[26] Drawing on its decisions in *EcoSwiss* and *ISU*, the Court reiterates the need for an effective judicial review of arbitral awards for violations of EU public policy.[27] With respect to the 1958 New York Convention, it simply recalls that the Convention provides for a public policy review.[28] This public policy review under the Convention, as the Court explains with reference to its *EcoSwiss* decision,[29] enables the EU Member States to fulfil their obligation to review arbitral awards for violations of EU public policy.[30] While the judgment in *RFC Seraing* thus seems to have averted a full clash between EU law and the 1958 New York Convention,[31] it seems worthwhile to explore the status of CAS arbitration under the Convention in light of the recent decisions of the CJUE in *ISU* and *Seraing*. Before the specifics of the relationship are explored, it is necessary to briefly set out the hierarchy between and the potential interactions of EU law and the 1958 New York Convention.

3 The relationship between EU law and the 1958 New York Convention

The potential clash between the requirements of EU law and the 1958 New York Convention raises the question of their relationship and potential interactions between the two spheres, both from the perspective of the EU (3.1.) and from the perspective of Member States (3.2.).

3.1 Perspective of the EU

It follows from general principles of international law, as well as the jurisprudence of the Court of Justice that the organs of the EU are not bound by international treaties ratified by Member States, even if all EU Member States are State parties to the treaty.[32] This was confirmed by the CJEU in *RFC Seraing*, in which the Court expressly stated that it is not bound by the 1958 New York Convention.[33] While the Convention therefore does not bind the Court *strictu sensu*, it was argued by some authors that the Court of Justice needs to interpret EU law in accordance with the Member States' commitments under the 1958 New York Convention.[34] It is, however, doubtful whether there is such an obligation to interpret EU primary law in accordance with international law. Even for EU secondary law, the Court of Justice merely

[20] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 paras. 22 ff. – RFC Seraing.

[21] CAS 9 March 2017, 2016/A/4490 – RFC Seraing/FIFA.

[22] Swiss Federal Tribunal 20 February 2018, 4A_260/2017, BGE 144 III 120.

[23] See, e.g., Haas and Kahlert (2025a), p. 227; Haas and Kahlert (2025b), p. 159; Pfeiffer (2025), p. 481.

[24] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 paras. 66 ff. – RFC Seraing.

[25] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 paras. 116 ff. – RFC Seraing.

[26] For a for a detailed analysis of the judgment, see Haas and Kahlert (2025b); Hülskötter (2025); Kahlert (2025); Kubo (2025); Pfeiffer (2025); Schley and Seßler (2025).

[27] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 95 – RFC Seraing.

[28] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 paras. 116 ff. – RFC Seraing.

[29] CJEU 1 June 1999 – C-126/97, ECLI:EU:C:1999:269 – EcoSwiss.

[30] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 117 – RFC Seraing.

[31] Haas and Kahlert (2025b), p. 160; Kubo (2025).

[32] CJEU 3 June 2008, C-308/06, ECLI:EU:C:2008:312 para. 49 – Intertanko.

[33] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 116 – RFC Seraing.

[34] Haas and Kahlert (2025a), p. 225; contra Köhler (2025b), p. 344.

takes treaties ratified by all Member States into account.[35] The Court is thus neither bound by the New York Convention as such nor is it obliged to interpret EU law in accordance with the Convention. Rather, the Court can look to the Convention for guidance but does not need to ensure consistency between EU law and the Convention.

3.2 Perspective of member states

As State Parties to the 1958 New York Convention, all EU Member States are in principle obliged under public international law to adhere to the Convention, most notably by recognising and enforcing foreign arbitral awards unless they can rely on a ground for refusal in Article V NYC.[36] If this commitment under public international law conflicts with EU law, the relevant provision is to be found in Article 351 TFEU. Pursuant to this provision, the EU Treaties do not affect rights or obligations of Member States arising from agreements concluded with third States before 1 January 1958 or the accession to the EU. Article 351 (1) TFEU thus contains an exception to the general rule that EU law trumps international treaties to which Member States may be State Parties.[37] This exception also extends to EU primary law.[38] In case of a conflict between EU law and the 1958 New York Convention, EU Member States can rely on Article 351 (1) TFEU to disregard EU law as far as it contradicts the Convention, if they were a State Party to the 1958 New York Convention before acceding to the EU.[39] This is the case for some EU Member States.[40] Other Member States, like Germany and France,[41] only acceded to the New York Convention after the relevant dates under Article 351 (1) TFEU.[42] For those Member States, Article 351 (1) TFEU is not applicable with respect to the 1958 New York Convention. Many authors favoured an analogous application of the provision to treaties to which States acceded after their accession to the European Community but before the relevant subject matters were transferred to the EU.[43] In a recent decision, the Court of Justice clearly rejected such an extension of Article 351 (1) TFEU, holding that the provision contains an exception to the primacy of EU law and thus needs to be interpreted strictly.[44] Member States that have acceded to the New York Convention after the relevant date under Article 351 (1) TFEU can therefore not rely on Article 351 (1) TFEU. These Member States will have to follow EU law, as interpreted by the CJEU, in cases of conflicts.[45]

4 Recognition of arbitration agreements to CAS under the NYC

Advocate General *Ćapeta*'s first argument concerns the notion of arbitration agreements. She challenges the orthodox view that arbitration agreements which are imposed on athletes by sports federations could be considered arbitration agreements under Article II NYC.[46] In order to properly address this argument under the NYC, a distinction must be drawn between the notion of arbitration agreements under Article II NYC (4.1.) and their substantive validity (4.2.).

4.1 Notion of arbitration agreements in article II NYC

Article II (1) contains a description of arbitration agreements (4.1.1.). Agreements to arbitrate before CAS only fall within this description if CAS is an arbitral tribunal in terms of the Convention (4.1.2.) and if the parties have, in terms of the Convention, agreed to arbitrate before CAS (4.1.3.).

4.1.1 The elements of arbitration agreements in article II(1) NYC

Pursuant to Article II NYC, each "Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration". Although the Convention's express focus is on the recognition and enforcement

[35] CJEU 3 June 2008, C-308/06, ECLI:EU:C:2008:312 para. 52 – Intertanko.

[36] See 1958 New York Convention, Article III.

[37] CJEU 14 March 2024, C-516/22, ECLI:EU:C:2024:231 para. 59 – United Kingdom of Great Britain and Northern Ireland.

[38] CJEU 14 March 2024, C-516/22, ECLI:EU:C:2024:231 para. 59 – United Kingdom of Great Britain and Northern Ireland.

[39] CJEU 14 March 2024, C-516/22, ECLI:EU:C:2024:231 para. 78 – United Kingdom of Great Britain and Northern Ireland; CJEU 28 October 2022, C-435/22, ECLI:EU:C:2022:852 para. 119 – PPU.

[40] This is the case for Austria, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Sweden, Slovakia, Slovenia, Spain.

[41] Apart from Germany and France, this is the case for Belgium, Ireland, Italy, Luxemburg, the Netherlands and Portugal.

[42] For the relevant dates of ratification or accession, see United Nations, Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (26 November 2025).

[43] Kokott (2018), Article 351 para. 6; Schmalenbach (2022), Article 351 para. 6.

[44] CJEU 28 October 2022, C-435/22, ECLI:EU:C:2022:852 para. 126 – PPU.

[45] For a similar case regarding the relationship between the ICSID Convention and the CJEU's jurisprudence in *Achmea* and *Komstroy*, see German Federal Court of Justice 27 July 2023, I ZB 43/22, NJW 2023, 3501 paras. 67 ff.; Köhler (2025b), p. 345; for a nuanced discussion of the decision, see Hess (2024), p. 193.

[46] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24, para. 118.

of arbitral awards, it also obliges Contracting States to recognize arbitration agreements.[47] It is hence indispensable to define the notion of the arbitration agreement as well.[48] While the common starting point can be found in Article II (1) NYC, it is generally acknowledged that the provision does not deal with potential issues regarding the validity of the agreement.[49] Article II(1) NYC rather contains a basic description of the necessary content of the agreement in order to be considered an arbitration agreement: It must identify a particular legal relationship and the parties must *agree* on the submission of claims arising from this relationship to arbitration. The first requirement is usually fulfilled in sports arbitration as the particular legal relationships covered by the clauses are, depending on the clause, those of the athlete with the federations and other participants or stakeholders. The second requirement can be further broken down into two separate questions: it includes the question of whether the parties have reached an agreement at all on the one hand and the question whether they have designated an arbitral tribunal in terms of the Convention on the other.[50]

4.1.2 CAS as arbitral tribunal

The second point concerns an intricate question which was not expressly raised by Advocate General *Ćapeta*, i.e. whether the CAS is an arbitral tribunal in terms of the 1958 New York Convention. The Convention does not contain a definition of arbitral tribunals. It merely clarifies that awards by permanent arbitral tribunals also fall within the scope of the Convention.[51] Although the Convention does not state criteria for the distinction between arbitral tribunals and other adjudicatory bodies such as internal dispute resolution boards, it is clear that a uniform interpretation of the Convention requires an internationally uniform definition.[52] Many authors therefore suggest resorting to the criteria of independence of the adjudicators and exclusion of recourse to state courts as markers of arbitral tribunals in terms of the Convention.[53] While arbitration clauses to CAS are clearly meant to exclude recourse to state courts, the issue of independence is more nuanced. At the outset, it is generally acknowledged that some form of independence is a necessary feature of an arbitral tribunal. There seems to be a clear international consensus that the arbitral tribunal needs to have some independence from the parties.[54] For instance, the arbitral tribunal cannot be formed by representatives of one of the parties.[55]

The problem with CAS is, strictly speaking, not that the arbitrators themselves are not independent of the parties[56] or that the parties have unequal influence on the composition of the tribunal in a particular case.[57] Rather, it is often discussed whether the institutional set-up of CAS and ICAS is sufficiently independent from international sport federations, most notably in relation to the unequal influence of federations and athletes in the establishment of the arbitrator lists.[58] The issue of independence of CAS is addressed in detail in *Antoine Duval*'s contribution to this issue. For the present purposes, it suffices to note that it seems rather unclear which degree of institutional independence is required by the 1958 New York Convention. At least for the moment, courts in different jurisdictions seem to consider CAS tribunals as independent enough to constitute arbitral tribunals in terms of the Convention. The German Federal Court of Justice affirmed that the CAS is an "independent and neutral" tribunal.[59] The European Court of Human Rights has held in *Mutu*/*Pechstein* that the CAS is indeed an independent adjudicatory body.[60] The German Federal Constitutional Court has expressed doubts but has ultimately left the issue open.[61] This does, of course, not mean that national arbitration laws cannot impose stricter thresholds for independence. However, from the perspective of the 1958 New York Convention as the international framework for the recognition and enforcement of arbitral awards, there is good reason to avoid charging the notion of arbitral tribunal with specific considerations of institutional independence which may differ from one jurisdiction to another. It seems preferable to operate with a basic notion of independence of the arbitral tribunal as such.[62] If Contracting States

[47] Adolphsen (2022), Article II para. 2; Solomon (2021), para. 79.

[48] Adolphsen (2022), Article II para. 7; Born (2021), p. 267; Kronke (2024), Article II para. 2.

[49] Kronke (2024), Article II, para. 2; Wolff (2019), Article II, para. 42.

[50] Kronke (2024), Article II, para. 2.

[51] See Article I (2) 1958 New York Convention.

[52] Opfermann (2021), p. 159.

[53] Adolphsen (2022), Article I para. 5; Ehle (2019), Article I para. 28.

[54] Adolphsen (2022), Article I para. 5; Ehle (2019), Article I para. 28; Solomon (2021), para. 52.

[55] For a recent clear expression of this principle under the US Federal Arbitration Act, see *Flores v. N.Y. Football Giants*, No. 23–1185 (2d Cir. 2025); for the debate on whether internal bodies of dispute resolution qualify as arbitral tribunals under the Convention, see Ehle (2019), Article I para. 44 ff.

[56] See Article R33 CAS Code of Sports-related Arbitration 2023, requiring arbitrators to be impartial and independent of the parties.

[57] German Federal Court of Justice 7 June 2016 – KZR 6/15, NJW 2016, p. 2266 paras. 30 ff.

[58] See, e.g., Hülskötter (2020), p. 42 ff.

[59] German Federal Court of Justice 7 June 2016 – KZR 6/15, NJW 2016, p. 2266 paras. 30 ff.

[60] ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10, paras. 145 ff.

[61] German Federal Constitutional Court 3 June 2022–1 BvR 2103/16, NJW 2022, 2677, para. 53.

[62] Solomon (2021), para. 52.

have more demanding standards for independence, they can still resort to the public policy clause under Article V (2) (b) NYC if, by their standards, the minimum degree of institutional independence was lacking.[63]

4.1.3 Submission to arbitration by "agreement"

Advocate General *Ćapeta*'s argument relates to the question of whether there is agreement in terms of the Convention. In her view, "it is possible to conclude that mandatory arbitration does not meet the requirement of Article II(1) of the New York Convention".[64] She points to the word "undertake" which she understands to mean "freely and consensually".[65]

This raises the issue of the correct interpretation of the Convention. It is generally acknowledged that the arbitral tribunal needs to derive its authority from the exercise of party autonomy.[66] Accordingly, the notion of arbitration agreement implies some form of apparent consensus between the parties.[67] This requirement is separate from the form requirement in Article II (2) NYC. At the same time, most authorities agree that the bar for the requisite consensus in terms of Article II (1) NYC is rather low.[68] Particularly, the question of apparent consensus under Article II (1) NYC needs to be distinguished from the valid conclusion of the arbitration agreement and other validity issues such as mistake, coercion, or fraud.[69] The latter concepts are characterized as matters of substantive validity of the agreement which are governed by the law applicable to the arbitration agreement, not by the Convention itself.[70] If even matters such as duress, coercion, and fraud are left to the law applicable to the arbitration agreement, it would seem surprising if the Convention were to impose uniform standards on more subtle forms of pressure, like those faced by athletes who wish to compete in sports competitions, which per se do not lead to the invalidity of the arbitration agreement under most national laws.

Advocate General *Ćapeta*'s argument is thus at odds with the traditional interpretation of Article II (1) NYC and, more broadly, the repartition of the respective spheres of the Convention and the domestic law applicable to the arbitration agreement. Such a reinterpretation of international treaties is, however, not entirely impossible. The rules for the interpretation of international treaties are laid down in Articles 31 ff. of the Vienna Convention on the Law of Treaties 1969 (VCLT).[71] These provisions allow for a dynamic interpretation of treaties under certain circumstances, particularly if a subsequent practice between Contracting States emerges that amounts to an agreement.[72] In the context of sports arbitration, it is true that arbitration clauses in the statutes of federations have received much more scrutiny recently. Courts have, however, not held that compulsory arbitration agreements are not to be considered arbitration agreements at all or, absent additional circumstances, that they are void under national or supranational law. Both the ECtHR and the German Federal Constitutional Court do not invalidate arbitration clauses merely because they are deemed compulsory.[73] Rather, they review the procedural setting in light of procedural human or fundamental rights guarantees.[74] While the extent to which EU law permits compulsory arbitration between federations and athletes is still somewhat in dispute,[75] the CJEU's decision in *RFC Seraing* seems to suggest that the Court does not consider the clauses providing for CAS arbitration as such to violate EU public policy.[76] It therefore seems quite far-fetched to argue that compulsory clauses in the statutes of international sports federations do not constitute arbitration agreements in terms of Article II (1) NYC. The more relevant question under the 1958 New York Convention is whether these arbitration agreements are valid under the applicable law, as designated by the Convention.

4.2 Validity of arbitration agreements under the NYC

The broad definition of arbitration agreement in terms of Article II (1) NYC will thus be fulfilled in many cases, regardless of whether or not the clauses are contained in statutes of sports federations. The more intricate question is whether these clauses are valid under the applicable law. The New York Convention contains a conflict rule for the law which applies to the substantive validity of the arbitration

[63] See Opfermann (2021), p. 159 ff.; Solomon (2021), para. 52.

[64] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24, para. 118.

[65] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24, para. 118.

[66] Ehle (2019), Article I para. 29; Solomon (2021), para. 48.

[67] Ehle (2019), Article I para. 29; Solomon (2021), para. 48.

[68] Adolphsen (2022), Article II para. 7; Ehle (2019), Article I para. 29; Solomon (2021), para. 48.

[69] Adolphsen (2022), Article II para. 22; Wolff (2019), Article II, para. 43.

[70] Adolphsen (2022), Article II para. 29; Schlosser (2014), para. 72; Wolff (2019), Article II, paras. 42, 43, 290.

[71] UNTS 1155, 331; for the application of the VCLT to the 1958 New York Convention, see Liebscher (2019), para. 73 ff.

[72] See Article 31 (3) (b) VCLT; see also Liebscher (2019), para. 86.

[73] German Federal Constitutional Court 3 June 2022–1 BvR 2103/16, NJW 2022, 2677, paras. 41 ff.; ECtHR 2 October 2018 - *Mutu/Pechstein v. Switzerland*, no. 40,575/10, 67,474/10, paras. 95 ff.

[74] See in detail Burchardt (2025).

[75] See below; see also Hülskötter (2025).

[76] See also Hülskötter (2025).

agreement (4.2.1.). However, the public policy of the forum also has its role to play (4.2.2.).

4.2.1 Substantive validity of the arbitration agreement

State courts can be confronted with arbitration clauses in two different procedural situations: First, they may be asked to assess the validity of the clause before an award has been rendered, for instance if a party invokes the arbitration clause and demands the referral of the dispute to arbitration after being sued in state courts.[77] Second, the invalidity of the arbitration agreement may be invoked after the award has been rendered, for instance as a ground for refusal of recognition and enforcement of a foreign award. For the latter situation, Article V (1) (a) of the Convention stipulates a two-tiered conflict rule:[78] the validity of the arbitration agreement is subject to the law chosen by the parties. Absent such a choice, the law of the seat of arbitration will apply. This conflict rule relates to the law governing the arbitration agreement which is to be distinguished from the substantive law applicable to the merits, the *lex causae*. This is a consequence of the universally acknowledged doctrine of separability, under which the validity of the arbitration agreement is to be assessed independently of the validity of the main contract.[79] If the main contract contains a choice of law clause which does not specify whether it extends to the arbitration agreement, the question must be resolved through contract interpretation.[80] Absent indications to the contrary, however, courts may infer from the choice of the *lex causae* a choice of law regarding arbitration agreement.[81] Many statutes of international sports federations contain express choice of law provisions.[82] In most cases, these provisions do not specify whether the choice of law clause extends to the arbitration agreement or only deals with the substantive law for the relationship between the parties. Courts may still, with good reason, assume that the chosen law is also meant to govern the arbitration agreement.[83] For the purposes of Article V (1) (a) NYC in relation to CAS awards, this question will, however, not need to be answered in most cases. Given that most statutes designate Swiss law, both the chosen law and the law of the seat of CAS will often lead to the application of Swiss law.

While the Convention clearly designates the law governing the validity for the purposes of recognition and enforcement of the award, there is no such express provision for the procedural setting before the award has been rendered. Article II (3) NYC allows state courts to disregard arbitration agreements which are null and void, without expressly specifying which law the court should apply to answer this question.[84] There has been much debate about whether Article II (3) NYC is to be read in conjunction with Article V (1) (a) NYC to designate the law chosen by the parties or, absent a choice of law, the law of the seat.[85] It would indeed be curious if the Convention provided a conflict rule for the stage of recognition and enforcement of the award but left the applicable law before the award is rendered entirely up to Contracting States. Courts could then, under certain circumstances, disregard agreements before the award is rendered but would be obliged to enforce awards.[86] Despite the need for a coherent approach to choice of law irrespective of the procedural setting, the German Federal Court of Justice has, for a long time, applied the domestic rules on choice of law to determine the law applicable to the arbitration agreement.[87] After these domestic rules were replaced by the Rome I regulation,[88] which expressly excludes arbitration agreements from its scope of application, the Federal Court of Justice has resorted to applying Article V (1) (a) NYC by analogy in state court proceedings before the award has been rendered.[89] In my view, this solution is correct as it ensures a coherent and uniform approach to the determination of the validity of arbitration agreements.

As a consequence, the conflict rule laid down in Article V (1) (a) NYC should be applied by courts in Contracting States before and after the issuance of the award. In most cases, this will lead to the application of Swiss law to the substantive validity of the arbitration agreements, either as the law chosen by the parties or as the law of seat. The agreement will therefore in many cases need to fulfil the requirements of Swiss law. Notably, this means that EU law

[77] Wolff (2019), Article II para. 23 ff.

[78] Nacimiento (2024), Article V (1) (a) para. 10: "proper choice-of-law provision"; Wilske and Fox (2019), Article V (1) (a) para. 85.

[79] Kronke (2024), Article II, para. 32, with further references.

[80] Nacimiento (2024), Article V (1) (a) para. 24.

[81] German Federal Court of Justice 8 November 2018 – I ZB 24/18, NJOZ 2019, 1540; Nacimiento (2024), Article V (1) (a) para. 22; Solomon (2021), para. 211.

[82] See, e.g., International Biathlon Union Constitution, 2024, Article 33.1.2 (choice of Austrian law); FIFA Statutes, 2024, Article 49 (2); International Bobsleigh and Skeleton Federation, 2024, Article 18.4 (Swiss Law); International Canoe Federation, Statutes 2024, Article 4 (2) (Hungarian Law).

[83] Solomon (2021), para. 211.

[84] Kronke (2024), Article II, para. 37; Solomon 2020, para. 123.

[85] See, e.g., Born (2021), p. 531; Kronke (2024), Article II, para. 37; Solomon (2021), para. 123, with further references.

[86] Born (2021), p. 532; Solomon (2021), para. 123.

[87] German Federal Court of Justice 9 March 2023 – I ZB 33/22, SchiedsVZ 2023, p. 228 para. 56; German Federal Court of Justice 7 June 2016 – KZR 6/15, NJW 2016, p. 2266 para. 44.

[88] See Article I (2) (e) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4 July 2008.

[89] German Federal Court of Justice 9 January 2025 – I ZB 48/24, NJW 2025, p. 896 para. 20; German Federal Court of Justice 26.11.2020 – I ZR 245/19, NJW-RR 2021, p. 376 para. 51.

will typically not be part of the analysis of the substantive validity of the arbitration agreement under Articles II (3), V (1) (a) NYC.

4.2.2 Public policy of the forum

Article II (3) NYC contains the obligation for Contracting States to recognize and enforce arbitration agreements which are valid under the applicable law. The public policy defense in Art. V (2) (b) NYC only concerns the recognition and enforcement of arbitral awards, not arbitral agreements. However, in my view, this does not mean that Contracting States are forced to disregard their own public policy when faced with arbitration agreements which are governed by foreign law.[90] The coherent approach to the validity of arbitration agreements should not be restricted to the application of Article V (1) (a) NYC but should also extend to the application of Article V (2) (b) NYC before the award has been rendered.[91] Pursuant to this provision, recognition and enforcement of the award may be refused if it would be contrary to the public policy of the Contracting State where recognition and enforcement is sought. As is clear from its wording, the provision is only concerned with the stage of recognition and enforcement of arbitral awards.[92] There is however good reason to allow Contracting States to resort to their public policy before an award is rendered.[93] In its *Pechstein* decision, the German Federal Court of Justice, for instance, applied the former domestic conflict rules to consider its own overriding mandatory provisions.[94] In a more recent decision, the court could not resort to the now abolished domestic rules and therefore relied on Article V (2) (b) NYC by analogy.[95] From an international perspective, this approach is much more convincing than the application of mandatory provisions by way of domestic conflict rules since it provides a uniform framework for the public policy analysis before and after the award is rendered. It is of course then for Contracting States to define which rules are so important to their legal system that they can be considered forming part of public policy in terms Article V (2) (b) NYC.

The public policy of Contracting States can therefore already play a role before the award has been rendered. The Convention allows Member States of the EU to disregard arbitration agreements to CAS if the agreements contradict EU public policy.[96] In this context, it is useful to note an important difference in the inquiry as compared to the review of an arbitral award under Article V (2) (b) NYC: The public policy review of the award focuses on the award as it was rendered. It is the recognition and enforcement of the award that is reviewed for violations of public policy of the enforcing State.[97] Before the award is rendered, the public policy review cannot relate to the non-existent award but must relate to the agreement as such. In other words, the submission of the dispute to arbitration per se must be against public policy. In a sense, the bar for a successful public policy challenge is significantly higher.[98]

The Convention thus gives, at least in my view, an entry point for public policy arguments that would allow courts of EU Member States to disregard arbitration clauses if this was mandated by EU public policy. At present, it seems, however, far from certain what the requirements of EU public policy are in this context. The CJUE's *ISU* decision has been subject to widely diverging interpretations: While some have considered it to have no bearing on the validity of arbitration agreements in statues of sports federations,[99] others have concluded that such clauses are generally void if the seat of arbitration is not within a Member State of the EU.[100] Another doctrinal interpretation considers the clauses to be valid in principle, unless they are combined with other violations of EU public policy.[101]

The Grand Chamber's reasoning in *RFC Seraing* has been widely understood to affirm the general validity of compulsory arbitration agreements, at least as far EU public policy is concerned.[102] The Court, however, did not expressly deal with the validity of arbitration agreements.[103] A closer look at the reasoning seems to suggest that the Court at least presupposes that the imposition of CAS arbitration can be valid in principle.[104] As a consequence, the wide-spread interpretation of the *ISU* decision that compulsory arbitration

[90] Contra Born (2021), p. 961.

[91] Adolphsen (2022), Article II para. 32; Opfermann (2021), p. 78; contra Born (2021), p. 962, with further references.

[92] See, e.g., Born (2021), p. 960.

[93] Adolphsen (2022), Article II para. 32; Quinke (2007), p. 248; Solomon (2021), paras. 127, 135; contra Born (2021), p. 961, with further references on both views.

[94] German Federal Court of Justice 7 June 2016 – KZR 6/15, NJW 2016, p. 2266.

[95] German Federal Court of Justice 27 March 2025 – I ZB 64/24, BeckRS 2025, 8794 para. 33.

[96] Solomon (2021), para. 135.

[97] For details on the object of the public policy review, see Schlosser (2014), paras. 321 ff.; Wolff (2019), Article V, para. 515.

[98] Köhler (2025b), p. 342.

[99] Haas and Kahlert (2025a), p 221.

[100] See, e.g., Duval (2023), p. 471; Hülskötter (2024), p. 80, 83; Kintrup (2025a), p. 454; Wagner (2024), p. 392; see also Van den Bogaert and van Rompuy B (2025), p. 620.

[101] Blaschczok (2025), p. 27 ff.; Köhler (2025b), p. 341.

[102] Haas and Kahlert (2025b); Hülskötter (2025).

[103] This is rightly pointed out by Scheuch and Brandenberg (2025).

[104] See, e.g., CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 93 – RFC Seraing.

clauses towards CAS are invalid as a matter of principle will be difficult to maintain after *RFC Seraing*.[105] By contrast, there is not much in the reasoning of the Grand Chamber to clarify the status of arbitration clauses in statutes of sports federations which are combined with violations of EU public policy. Particularly, the Court in no way distanced itself from its reasoning in *ISU*.[106]

Tim Hülskötter discusses the implications of RFC Seraing for the relationship between CAS arbitration and domestic procedural law in detail in his contribution to this special issue.[107] For the purposes of this paper, it is sufficient to note that the Convention would allow courts of Contracting States to rely on public policy to deny recognition of arbitration agreements if their recognition were to contradict EU public policy in exceptional circumstances.

5 Recognition and enforcement of CAS awards under the NYC

As we have seen, Article V (2) (b) NYC allows courts in Contracting States to refuse recognition and enforcement of arbitral awards if they are contrary to their public policy. The public policy analysis under Article V (2) (b) NYC requires two steps: In a first step, the provision needs to be interpreted autonomously to discern the boundaries of public policy in terms of the 1958 New York Convention. In a second step, the court needs to turn to its domestic law to assess whether the award is contrary to principles of its own legal system that fit the definition of public policy in Article V (2) (b) NYC.[108] It is thus useful to explore the notion of public policy in terms of the Convention (5.1.), before analysing whether the current demands of EU law can be reconciled with the Convention (5.2.).

5.1 The notion of public policy under the NYC

Public policy is an illustrious concept that can have a variety of meanings, depending on the regulatory context. Within the framework of the 1958 New York Convention, it is generally acknowledged that the ground of refusal of enforcement for violation of public policy is meant to exclude a *révision au fond* of the award.[109] The provision thus incidentally reaffirms the general obligation of Contracting States to enforce foreign arbitral awards without a review of the merits of the decision.[110] The notion of public policy therefore needs to be interpreted narrowly: It is not sufficient that the award merely violates a mandatory rule of the forum.[111] Rather, the award needs to be contrary to fundamental principles of the enforcing State.[112]

This narrow concept is at odds with the argument of Advocate General *Ćapeta* who favours a review of CAS awards for any violations of mandatory provisions of EU law.[113] She tries to reconcile this broad review by linking it to the principle of effective judicial protection which, in her view, should "serve as a gateway to a full review of the arbitral award in respect of the applicable EU law".[114] This interpretation of public policy is based on the somewhat misleading premise that public policy does not "have an autonomous meaning in the convention".[115] It is true that there is no uniform definition of public policy under the Convention. Contracting States enjoy considerable discretion as to which legal principles form part of their respective public policies.[116] It is however generally acknowledged that Contracting States cannot use the public policy defence to circumvent their general obligation to enforce foreign arbitral awards or to bring public policy in line with their mandatory provisions.[117] The criteria for determining the boundaries of the public policy review thus follow from an autonomous and internationally uniform interpretation of the Convention, precisely to prevent courts from engaging in a *révision au fond*.[118] Conversely, Advocate General *Ćapeta*'s approach would lead to a full review on the merits at least in relation to EU law, thus contradicting both the letter and the spirit of Article V (2) (b) NYC.[119]

The Court of Justice has not expressly addressed this part of Advocate General *Ćapeta*'s argument in its decision in *RFC Seraing*. Its reasoning can, however, quite clearly be

[105] Haas and Kahlert (2025b), p. 159; Schley and Seßler (2025), p. 605.

[106] On this aspect of the reasoning in ISU, see Blaschczok (2025), p. 27 ff.; Köhler (2025b), p. 341.

[107] Hülskötter (2025).

[108] Cordero Moss (2024), Article V (2) (b) para. 12.

[109] Adolphsen (2022), Article V para. 68; Cordero Moss (2024), Article V (2) (b) para. 4; Wolff (2019), Article V, paras. 561, 562.

[110] Cordero Moss (2024), Article V (2) (b) para. 4.

[111] Solomon (2021), para. 307.

[112] Cordero Moss (2024), Article V (2) (b) para. 35 ff.; Solomon (2021), para. 307; but see also Wolff (2019), Article V, para. 500 ff.

[113] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24 paras. 121 ff.

[114] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24 para. 122.

[115] Opinion AG Ćapeta, 16 January 2025 – C-600/23, ECLI:EU:C:2025:24 para. 121.

[116] Wolff (2019), Article V, paras. 500, 501.

[117] Wolff (2019), Article V, para. 504.

[118] Cordero Moss (2024), Article V (2) (b) para. 27; Wolff (2019), Article V, para. 504.

[119] For a criticism of the reasoning, see Haas and Kahlert (2025a), p. 221 ff.; Haas and Kahlert (2025b), p. 160; Kintrup (2025b), p. 164; Köhler (2025b), p. 342 f.

understood as a dismissal of such a far-reaching review.[120] The Court focuses on a review for violations of EU public policy.[121] It expressly notes that the public policy review under the 1958 New York Convention is consistent with the obligation of Member States to ensure that awards do not infringe upon principles and provisions which form part of EU public policy.[122] This raises the more intricate question which are the requirements of EU public policy.

5.2 The requirements of the public policy review under EU law

Which principles of EU law constitute EU public policy does not follow from the 1958 New York Convention but from EU law, as interpreted by the CJEU. The Court of Justice has long held that the competition law provisions in Articles 101, 102 TFEU form an integral part of EU public policy.[123] The review of arbitral awards for violations of Articles 101, 102 TFEU is thus hardly a novelty.[124] Of course, the CJEU has curtailed the freedom of sports federations recently by restricting the Meca-Medina justification to restrictions of competition by effect.[125] If courts in Member States will deny recognition and enforcement of CAS awards for violations of Articles 101, 102 TFEU more frequently in the future, this will most likely be the result of the more demanding substantive standard of review of the federations' statutes under EU competition law, rather than a consequence of the reasoning of the Grand Chamber in *RFC Seraing*. In *RFC Seraing*, the Grand Chamber has now further clarified that the fundamental freedoms also form part of EU public policy, as "they form part of the foundations of the internal market comprising without internal frontiers referred to in Article 26 TFEU".[126]

It is thus clear that both violations of EU competition law and fundamental freedoms may constitute violations of EU public policy. There is less clarity as to the required intensity of review. The CJEU explains that the review undertaken by courts of Member States must include the interpretation of the principles or provisions which form part of EU public policy, the legal consequences of that interpretation as well as "the legal classification which was given, in light of that interpretation, to the facts as established and assessed by the arbitration body".[127] This formulation seems to lead to two conclusions: First, the reviewing court must undertake a full review of the legal issues, that is conduct a comprehensive assessment of interpretation and application of the rules and principles of EU public policy to the facts.[128] It appears that the review is neither limited to a special class of egregious violations of EU public policy[129] or nor dependent upon invocation of EU public policy by one of the parties in the arbitral proceedings.[130] Second, in two instances of its reasoning, the Grand Chamber implies that courts in Member States can restrict their review to the interpretation and application of EU law to the facts, "as established and assessed by the arbitration body".[131] Some authors have understood the last part to allow courts of Member States to restrict their review to legal issues.[132] Courts would thus not be obliged to review the fact-finding of the arbitral tribunal and establish the relevant facts *de novo*. Although the formulation of the CJEU falls short of providing absolute certainty, it seems to suggest that the factual basis need not be reviewed. While the CJEU thus appears to defer to the arbitral tribunal with respect to the establishment of facts, courts in some Member States have set a more demanding standard.[133] The German Federal Court of Justice has, for instance, recently held that review must extend to the facts of the case, as far as they are relevant for the public policy review.[134] In this context, it is important to note that the CJEU only sets a minimum standard without, however, excluding an even stricter standard of review, as practised by the German Federal Court of Justice.[135]

The 1958 New York Convention neither expressly deals with the intensity of public policy review by courts

[120] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 116 ff. – RFC Seraing; see, e.g., Andreotti (2025); Haas and Kahlert (2025b), p. 160 ff.; Hülskötter (2025); Kubo (2025).

[121] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 116 ff. – RFC Seraing.

[122] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 116, 121 – RFC Seraing.

[123] CJEU 1 June 1999 – C-126/97, ECLI:EU:C:1999:269 para. 37 – EcoSwiss; CJUE 21 December 2023 – C-124/21 P, ECLI:EU:C:2023:1012 para. 192 – International Skating Union.

[124] Kahlert (2025), p. 2758; Pauer (2025), p. 438; Pfeiffer (2025), p. 482; Scheuch and Brandenberg (2025).

[125] CJEU 21 December 2023, C-333/21, ECLI:EU:C:2023:1011 paras. 183 ff. – European Super League Company; CJEU 21 December 2023, C-680/21, ECLI:EU:C:2023:1010 paras. 113 ff. – Royal Antwerp; CJEU 4 October 2024, C-650/22, ECLI:EU:C:2024:824 para. 150 – FIFA; see, e.g., Köhler (2025a), p. 456; Van den Bogaert and van Rompuy B (2025).

[126] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 89 – RFC Seraing.

[127] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 101 – RFC Seraing.

[128] Hülskötter (2025), sub. 4.2.1.1; Pfeiffer (2025), p. 483.

[129] For a different view, see Boddin (2025), p. 679.

[130] Pfeiffer (2025), p. 483.

[131] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 101 – RFC Seraing; for a similar formulation, see also para. 86.

[132] Hülskötter (2025), sub. 4.2.1.1.; Schley and Seßler (2025), p. 605.

[133] Hülskötter (2025), sub. 4.2.1.1.; Schley and Seßler (2025), p. 605.

[134] German Federal Court of Justice 27 September 2022, KZB 75/21, NJW 2023, p. 1517 para. 14.

[135] Schley and Seßler (2025), p. 605.

of Contracting States nor specifically addresses the review of the established facts. The silence of the Convention has led to an animated debate about the permissible intensity of review under Article V (2) (b) NYC:[136] While some courts and authors deny state courts the right to assess issues of public policy *de novo*, the internationally prevailing opinion interprets Article V (2) (b) NYC to give state courts right to review the factual and legal issues *de novo*, as far as they pertain to a potential violation of public policy.[137] Both the approach taken by the German Federal Court of Justice and the CJEU are thus reconcilable with Article V (2) (b) of the New York Convention.

6 All is well that ends well?

The Court of Justice's reasoning in *RFC Seraing* appears to have averted a direct clash between the 1958 New York Convention and EU law for the moment. While Advocate General *Ćapeta*'s opinion could clearly not be reconciled with the 1958 New York Convention,[138] the Grand Chamber's decision in *RFC Seraing* seems to be broadly in line with the Convention.[139] While the Court expressly notes that it is not bound by the Convention, it also stresses that the Convention allows for public policy reviews and that it is precisely this public policy review which is required by Member States.[140] It seems therefore safe to assume that the required review of arbitral awards by Member States for violations of EU law remains within the boundaries drawn by Article V (2) (b) NYC. There is less clarity regarding the recognition of arbitration agreements. Most authors understand *RFC Seraing* to incidentally confirm the validity of arbitration agreements towards CAS in principle, irrespective of its seat in Switzerland.[141] And indeed, the Court presupposes that compulsory CAS arbitration need not be contrary to EU public policy as a matter of principle. However, there seems to be good reason to remain cautious not to infer too much from the Court's reasoning.[142] The Grand Chamber, at least in my view, remains vague in its analysis of compulsory arbitration agreements in statutes of sports federations, particularly with respect to the relationship to the reasoning of the Court in *ISU*. Taken together, *ISU* and *RFC Seraing* offer little guidance on the status of arbitration agreements for sports federations, athletes or courts of Member States. This may be deliberate as it may allow the Court to monitor the development of international sports arbitration and refine its jurisprudence in future cases which are certain to reach the Court. In the meantime, however, all stakeholders need to deal with the remaining uncertainty. One can only hope that it does not lead to a continuation of the "wait and see"-approach but to active transformation and improvement of sports arbitration.[143]

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[136] See, with further references, Adolphsen (2022), Article V para. 71; Cordero Moss (2024), Article V(2) (b) para. 67 ff.

[137] See, e.g., German Federal Court of Justice 25 October 1967, KZR 7/65, NJW 1967, p. 1178; Adolphsen (2022), Article V para. 71; Cordero Moss (2024), Article V(2) (b) para. 81; Solomon (2021), para. 316; Wolff (2019), Article V, para. 517.

[138] Haas and Kahlert (2025a), p. 228; Kintrup (2025b), p. 164; Köhler (2025b), p. 343.

[139] Haas and Kahlert (2025b); Kahlert (2025), p. 2759.

[140] CJEU 1 August 2025, C-600/23, ECLI:EU:C:2025:617 para. 116 – RFC Seraing.

[141] Haas and Kahlert (2025b), p. 160; Kahlert (2025), p. 2759; see also Hülskötter (2025).

[142] Scheuch and Brandenberg (2025).

[143] For a discussion of potential reforms, see, e.g., Bareuther (2021), p. 341 ff.; Pauer (2025), p. 440.

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