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Commentary on the Impact of C-600/23, *Royal Football Club Seraing SA* v. *Fédération internationale de football association (FIFA)*, et al., judgment of 1 August 2025

On 1 August 2025 the CJEU handed down its judgment in C-600/23, *Royal Football Club Seraing SA* v. *Fédération internationale de football association (FIFA)*, et al. This judgment accepts (para. 79) the compatibility "in principle" of "individuals" submitting disputes to arbitration. In contradistinction, the judgment confirms the *Achmea* line of cases that arbitration derived from agreement between EU Member States, whether institutional or *ad hoc*, which may interpret or apply EU law, is "strictly prohibited". It confirms the latter without specification of the reason behind the prohibition, despite AG Ćapeta's suggestion in 85 of her Opinion in the case, thus inhibiting any future attempt to narrow the prohibition. So *Seraing* affirms a bright line rule according to which arbitration of non-EU Member State rights on EU law is prohibited but in principle all other arbitration is consonant with EU law.

The exception to the principle is, however, rather significant. If the arbitration agreement "is to be implemented in all or part of the territory of the European Union, in the context of disputes relating to the pursuit of an economic activity in that territory" (para. 82) that arbitration agreement must comply with the EU "jurisdictional structure" and its public policy. (para. 82).

The EU's jurisdictional structure includes notably its "keystone" (para. 77), Art. 267 TFEU preliminary references to the CJEU (restricted to EU Member State courts and in particular denied to arbitral tribunals), but also the right to a fair etc. trial under Art. 47 of the EU Charter of Fundamental Rights, and the Art. 19(1) TEU right to effective jurisdictional protection (from an EU Member State court). None of this entails an EU requirement for direct jurisdiction before an EU Member State court to challenge a Member State measure, or to vindicate EU law rights. (para. 76). That would be to exclude arbitration altogether.

The CJEU accepted that these requirements apply to the arbitral award. Except in relation to "sports" arbitration, there is no suggestion in the judgment that they apply to the arbitration proceedings and pre-award actions. This confirms the CJEU's pro arbitration approach enunciated in the 1999 *Eco Swiss* judgment whereby Member State public policy review of compatibility with fundamental EU law at the enforcement stage suffices.

Going beyond *Eco Swiss*, however, the CJEU supplied direction on the nature of the public policy review that an EU Member State court must apply in enforcing arbitration awards. It must "relate to the interpretation of those principles and provisions, the legal consequences to be attached to them as regards their application in a given case and, where appropriate, the legal classification, in the light of those principles and provisions, of the facts. The CJEU explicitly accepted though, that such review need not disturb the arbitral tribunal's findings of fact. (para. 86).

The CJEU then laid down further requirements "of effective jurisdictional control" where the arbitration

was imposed on a party, in "sports" arbitrations, with the above-mentioned connection to the EU territory, such as on the present facts where FIFA required its stakeholders the Belgian football club and the Maltese investor to accept CAS arbitration in Switzerland.

The category of "sports" arbitrations may be explained by reference to the *ISU* case, where the CJEU found that the brevity of sports careers necessitated more immediate legal relief than enforcement review of arbitration awards.

The public policy review must not be limited to annulling the award for incompatibility with fundamental EU law, but must also afford "all legal consequences that are imposed by the declaration of such incompatibility" such as compensation, and prohibition on future offending conduct. (para. 103).

Such public policy review must be available upon the initiative of any party. These requirements therefore amount to the availability of an appeal (and not just a setting aside action) to an EU Member State court from arbitration awards with the required EU territorial connection whether or not the seat of the arbitration is in the EU.

Interim measures must also be available from EU Member State courts. (para. 105)

The CJEU did mention the New York Convention (at paras. 116 and 117) but in a fairly summary fashion, and not such as to alleviate concerns about contradictory obligations on EU Member States (all 27 of which are signatories). In particular, there is concern that the EU's treatment of its jurisdictional requirements under Art. 19 TEU are incompatible with the New York Convention, itself reposing upon a jurisdictional scheme, and therefore not a possible good faith interpretation of the Convention, and therefore repugnant to customary public international law as expressed in Art. 31 of the Vienna Convention.

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