SPORTS LAW INSTITUTE

BEYOND CONSENT:

REFORMING THE COURT OF ARBITRATION FOR SPORT FOR THE EUROPEAN LEGAL ORDER

Author: GUY SCHLAEFLI

Thesis Supervisor: Enric Ripoll

July 2026

STATEMENT OF ORIGINALITY

The author, student at the O REI Sports Law Institute's Master's degree, Master in Sports Law LLM:

Guy Schlaefli

Declares under his responsibility, that the Master Thesis titled:

"Beyond Consent: Reforming the Court of Arbitration for Sport for the European Legal Order"

Is the exclusive result of his work, and therefore no written, photographed, or recorded source by another person has been used without quoting it adequately in the text and in the final bibliography.

Date and signature of the author:

17.04.2026

DISCLOSURE PERMISSION

The author, student at the O REI Sports Law Institute's Master's degree, Master in Sports Law LLM:

Guy Schlaefli

HEREBY PERMITS

That the Master Thesis titled:

"Beyond Consent: Reforming the Court of Arbitration for Sport for the European Legal Order"

Can be displayed in the channels (radio, television, internet, press, social networks) which the O REI Sports Law Institute considers necessary for the professional promotion of its students, provided that its authorship is cited.

Date and signature of the author:

17.04.2026

ABSTRACT

This thesis, '*Beyond Consent: Reforming the Court of Arbitration for Sport for the European Legal Order*', explains and explores the proposed legitimacy crisis facing the Court of Arbitration for Sport (CAS) in light of the mounting pressure to adapt from the European Union's judicial bodies. It argues that the consent-based model, which has historically underpinned private arbitration, has been fundamentally exhausted at CAS by the structural inequality between athletes and the sports' governing bodies. The European Union jurisprudence exposes the institutional deficiencies that created this predicament, namely: forced arbitration, inadequate review mechanisms, a deficit in procedural safeguards, and a perception of institutional bias within the Court's governance.

Drawing on CAS's own reactive historical reform pattern, comparative analysis of other arbitral tribunals, an innovative reapplication of some German Constitutional Court constitutional pluralism doctrine, and tackling the EU criticisms head-on, this thesis concludes that CAS need not be dismantled in the face of these problems. It must, however, as the title infers, move beyond consent and base its legitimacy on its institutional design. Ultimately, this thesis hopes to provide a post-consensual, constitutionally robust foundation for a revised CAS that simultaneously preserves sporting autonomy and satisfies the demands of the European legal order in which it resides.

CONTENTS

I. INTRODUCTION

The Court of Arbitration for Sport (CAS) was founded with a clear purpose to provide the international sporting community with a specialist, accessible and rapid forum for resolving disputes that state courts, bound by their own jurisdictions and unfamiliar with the particularities of sport, were ill-equipped to handle. For much of its first three decades, CAS largely fulfilled that promise, developing into the world's supreme court of sport. That assessment can no longer be made without serious qualification.

A series of decisions from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) has placed the legitimacy of CAS – and the enforceability of its awards across Europe – under sustained and escalating pressure. This thesis takes that pressure and seeks to answer four interconnected research questions:

1) What does the historical development of CAS and its previous responses to external criticism reveal about the institution's capacity for reform?

2) What specific structural and normative deficiencies in CAS have the European courts identified, and how do those critiques interact with one another?

3) What reform framework can address those deficiencies in a manner compatible with the demands of the European legal order while preserving the integrity and functional autonomy of international sports arbitration? and,

4) What are the principal objections to such a framework, and can they be met?

These questions are addressed across four chapters. Chapter 1 traces the history of CAS from its origins through its early structural reforms, examining the reactive pattern through which the institution has previously responded to external legal challenges and assessing the extent to which that pattern can serve as a model for the present moment. Chapter 2 provides a review of the major European court decisions that together constitute what I am characterising as the current CAS crisis, analysing each case individually before synthesising the structural inadequacies they collectively

expose. Chapter 3 develops my central reform proposals, drawing on comparative arbitration reform literature and a particular doctrinal framework borrowed from European constitutional law to address those inadequacies. Chapter 4 tests the proposals against some of the most significant doctrinal and practical objections advanced in the literature.

The ultimate aim of this thesis is not to argue for the dismantlement of CAS or its absorption into the EU judicial system, but to ask whether a reformed CAS can secure a durable, principled legitimacy adequate to the legal environment it now operates in and, if so, what that reformed institution could look like.

II. CAS HISTORICAL REACTIVE PATTERN

It is important for the appropriate presentation of our later proposals for CAS to understand its beginnings, underlying ethos, and previous responses to criticism. This will allow us to build our final chapters around continuous principles rooted in CAS's past and to support them with precedents set by that past. This chapter will explain each of these in turn and build a timeline of some comparable criticisms levelled at CAS since its operational beginning in 1984.

Before this, in the late seventies and early eighties, there was a concomitant increase in the uptake of professional sport with the globalisation of all sectors. This inevitably led to an increase in professional sport-related disputes. Parties' only routes were internal federation resolution or recourse to national court systems, which invariably led to inconsistent application of the sporting rules across jurisdictions and left no suitable, uniform appeals mechanism.[1] There was an appetite to fill this gap. Upon the election of H.E. Juan Antonio Samaranch to President of the International Olympic Committee (IOC) in 1981, discussions began 'to reflect the question of sports dispute resolution.'[2] The working group set up in 1982 was chaired by an IOC member and judge at the International Court of Justice, and by 1983 had chosen arbitration as

[1] *CAS History*, https://www.tas-cas.org/en/general-information/history, accessed 11/02/2026.

[2] Reeb, M, '*The Court of Arbitration for Sport: History and Operation,*' in '*Digest of CAS Awards II 1998-2000,*' (2002, Kluwer Law International), p 2.

the most suitable means of delivering this and drafted the first set of statutes for the Court of Arbitration for Sport, which came into effect on 30th June 1984.[3]

Right from its inception, 'it was established that the jurisdiction of the CAS should in no way be imposed [⋯] but remain freely available to the parties.'[4] This was not the only tenet of the young CAS, however, it was designed specifically to provide a forum with 'specialist knowledge, low cost and rapid action [⋯] [for] the specific needs of the international sporting community.'[5] The sporting world has changed since 1984, but it should be imperative, in any proposals we bring forward later in this thesis, to bear in mind and maintain the fundamental purpose of CAS as established upon its creation. While it would not be reasonable to suggest things like free proceedings again, as there were in the beginning, the principles that underlie these goals of specific, accessible, and fast justice are worth aiming for.

The International Equestrian Federation (FEI) was the first to adopt the CAS arbitration clause in 1991, when CAS published the first Guide to Arbitration. Others were quick to follow suit, with CAS having had 76 procedures filed with it by 1994.[6] The reason I single out the FEI is not their eagerness to apply a CAS arbitration clause, but rather the first criticism levelled at the young court.

Elmar Gundel submitted an appeal to CAS under the FEI arbitration clause in February 1992, challenging a doping charge for which he had been disqualified, suspended, and fined.[7] CAS partially upheld the appeal in October of the same year and reduced the suspension by two-thirds. Gundel, dissatisfied, subsequently filed an appeal to the Swiss Federal Tribunal (SFT) in which he disputed the validity of the award, claiming that CAS 'did not meet the conditions of impartiality and independence required to be a legitimate court of arbitration.'[8]

---

[3] n. 1.

[4] n. 2, *Reeb*, p 3.

[5] ibid, p 1.

[6] n. 1.

[7] *Elmar Gundel v. Fédération Equestre Internationale (FEI),* CAS 92/A/63, 01/02/1992.

[8] n. 1.

These claims were not baseless; the initial composition of CAS was '60 members, appointed by the IOC, International Federations (IFs), the National Olympic Committees (NOCs) and the IOC President,' each receiving 15 picks. On top of this, 'all the operating costs [⋯] were borne by the IOC.'[9] What is more, the CAS President had the power to approve the annual budget himself, and the statutes could only be amended by the IOC Session and on the proposal of the IOC Executive Board.[10] Mr Gundel had a fairly strong position in arguing that CAS does not meet the IOC's required standards of independence.

Unfortunately for Mr Gundel, he was not sanctioned directly by the IOC, but by the FEI, which did not exert sufficient control over CAS to be called into question. In the SFT's decision, however, the links between CAS and the IOC were mentioned, going as far as to say that if the IOC were a party to an appealed decision, the previously mentioned links would have been sufficiently serious to call into question the impartiality of the decision.[11] They ultimately dismissed the appeal and recognised CAS as a court of arbitration that could render enforceable decisions comparable to those of state courts.

CAS evaded direct scrutiny, but the door had been left open, and the SFT's message to CAS was clear, it 'had to be made more independent from the IOC both organisationally and financially.'[12] In response to this apparent need for reform, CAS reacted. It directly led to the signing of the 'Agreement Related to the Constitution of the International Council of Arbitration for Sport' (ICAS), which became known as the 'Paris Agreement.'[13] This agreement marked the creation of ICAS and the new structure of CAS. The ICAS was an independent governing body that took over control of CAS from the IOC, and CAS was separated into two divisions: those of sole instance and those for appeals against a sports governing body (SGB).[14] These adjustments were all

[9] n. 2, *Reeb*, p 3.

[10] ibid.

[11] *Gundel v. FEI*, SFT 119 II 271, 15/03/1993; n. 2, *Reeb*, p 6.

[12] n. 2, *Reeb*, p 6.

[13] Agreement Related to the Constitution of the International Council of Arbitration for Sport, 22/06/1994, https://arbitrationlaw.com/sites/default/files/free_pdfs/ICAS%20Agreement.pdf, accessed 23/02/2026.

[14] n. 1.

made in direct response to the SFT decision in Gundel, but there needed to be another appeal to the SFT regarding the legitimacy of CAS for it to be confirmed whether the good intentions had materialised into sufficient IOC independence.[15]

This test came in May of 2003 when the SFT assessed CAS's independence 'In a remarkably detailed and exhaustive judgement' after two Russian cross-country skiers (Larissa Lazutina and Olga Danilova) appealed a disqualification from the Winter Olympic Games in Salt Lake City.[16] CAS passed the test and was deemed not to be 'the vassal of the IOC' as had been brought into question ten years before.[17] The SFT had affirmed that the Paris Agreement had taken the correct measures and properly ensured that CAS could now produce decisions involving the IOC which would be considered 'true awards, comparable to the judgements of a State tribunal.'[18]

This is one framework of response that can be identified here: a template around which we could model some of our proposals; criticism from the SFT that leads to real change by CAS, which the SFT then confirms. This is the route from pre-1994 IOC control to the critique of this in Gundel to the Paris Agreement to its validation in the SFT by Lazutina. This is certainly a possible model of reform and one which CAS has shown to be viable. However, the crisis we will be analysing is deeper now; it pertains to oversight by the European Courts, which are challenging the core architecture. Governance tweaks like the ones described here may not be sufficient to fully legitimise CAS in the eyes of the European Union (EU). This is the limitation of the identified pattern: it preserves the core structural features of CAS, as these have not themselves been brought into question before, as they are today. What we can take from this is the idea, the general structure of critique, response and affirmation, but it will require some scaling up from what has been discussed thus far.

This is because, 'Up to now, [EU] law and the law of international arbitration have largely occupied separate worlds,' 'mutual indifference' can appropriately describe

[15] n. 11, *Gundel v FEI.*

[16] n. 2, *Reeb*, p 7.

[17] *Lazutina and Danilova v. IOC, FIS & CAS*, AFT 129 III 445, 27/05/2003.

[18] n. 2, *Reeb,* p 7.

the relationship between the two.[19] Commentators have reasonably asserted that if you were to analyse CAS in 2010, you could argue that it '[had] grown up and [was] flourishing after its first quarter century of development. It [had] lived up to its founders' expectations and [was recognised] as the world's supreme court of sport.'[20] It is hard not to draw a connection between CAS, specifically, and international arbitration more generally in the context of increasing tensions with the EU. There is 'a general decline in support among states and civil society for arbitration as a dispute resolution mechanism.'[21]

This has been spearheaded by the European Court of Justice (ECJ), which has 'lately advanced a particularly far-reaching notion of EU public policy [⋯] which challenges a central premise of international arbitration law,' that public policy necessarily needs to be construed narrowly when invoked as a ground for annulling or refusing to recognise or enforce arbitral awards.[22] Another interesting perspective on this can be found involving a case called *Achmea*, which entailed arbitration under a bilateral investment treaty between EU Member States.[23] In this case, 'the arbitration agreement was [invalid]' as it operated outside the EU judicial system and failed to offer any preliminary reference mechanism under Article 267 of the Treaty on the Functioning of the European Union (TFEU).[24] Now, what is interesting, the court here went to great effort to distinguish treaty-based arbitration from the commercial arbitration 'on the basis that the former derives from an agreement between Member States, which are subject to the obligations of the EU treaties.' In contrast, those in commercial arbitration (and CAS) can be legal persons who are unbound by such commitments.[25] However, 'the distinction [⋯] is unconvincing' and 'gives reason to

[19] Bermann G A, '*Navigating EU Law and the Law of International Arbitration,*' (2012, *Arbitration International*), p 398.

[20] Dillon T, '*The Court of Arbitration for Sport and the EU – a crisis in the making?*,' https://www.4-5.co.uk/assets/future-of-the-cas.pdf, accessed 23/02/2026, p 1.

[21] ibid.

[22] n 19, *Bermann*, p398.

[23] *Slovak Republic v Achmea B.V.,* C-284/16, 06/03/2018.

[24] n 20, *Dillion*, p 6.

[25] ibid.

fear [it] may be abandoned.[26] This 'intra-EU invalidity of investor-state arbitration under Achmea' would appear logically to be easily broadened in scope to at least theoretically apply to member state adherence with the New York Convention.[27] Expanding this principle, given that the SFT is not subject to the jurisdiction of the CJEU, a member state court could not enforce a CAS award which gave rise to a question of EU law.[28] This is, in fact, demonstrated in the ISU case discussed later, where the courts found that effective judicial review requires the ability to make a reference under Article 267 TFEU, almost parallel reasoning as *Achmea*.[29] 'There is a substantial risk that future CAS awards will be ruled unenforceable not merely in relation to issues of EU public policy, but wherever an issue of EU law arises.[30]

These are ways wider changes in arbitration, completely outside the CAS ecosystem, are playing into the crisis at hand and go to proving the previous point that we will need to take the Gundel, Paris Agreement, Lazutina structure and expand it so it can fit these new EU dimensions. These developments, among others 'have heightened EU law's stakes in international arbitration' they are now 'more conflictual than ever' and as such, any proposals we render in later chapters will have to navigate 'between the demands of competing legal orders' in a way incomparable to the previous CAS reforms.[31]

The EU has come to the conclusion that there are 'certain legal norms' which are so essential they must be treated as mandatory, 'private parties may not waive them, the choice of law clauses must not oust them, and national courts are required to invoke

---

[26] Cordero-Moss G, *'Chapter 12: Court Control on Arbitral Awards: Public Policy, Uniform Application of EU Law and Arbitrability'*, in Calissendorff A and Schöldström P (eds), *Stockholm Arbitration Yearbook 2020, Stockholm Arbitration Yearbook Series, Volume 2* (Kluwer Law International 2020), 199 – 216, at 208.

[27] n. 20, *Dillon*, p 7; *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10/06/1958, https://www.newyorkconvention.org/english, accessed 23/02/2026.

[28] ibid.

[29] ibid.

[30] ibid.

[31] n. 19, *Bermann*, p 398.

and apply them.' This thesis now discusses the impact these conclusions have had on CAS.[32]

III. THE CURRENT CAS CRISIS EXPLAINED THROUGH JURISPRUDENCE REVIEW

There are several critiques made of CAS by the European Courts. I will explain these through the cases in which they manifested. This chapter will include discussion of the cases: Mutu and Pechstein v Switzerland ECtHR; Semenya v Switzerland ECtHR, ISU v European Commission, CJEU; Royal Football Club Seraing SA v FIFA, UEFA and URBSFA, CJEU; European Super League Company SL v FIFA and UEFA, CJEU; and SA Royal Antwerp Football Club v URBSFA (intervening party UEFA), CJEU.

This chapter examines all the major EU Court decisions that have affected CAS and the validity of its awards. It will discuss them individually, then synthesise the main points in conflict with the EU to allow a clear plan for moving forward to be illustrated in the subsequent chapter.

III.1 Mutu and Pechstein

Adrian Mutu was a Romanian football player playing for Chelsea when he tested positive for cocaine in 2004 leading to the termination of his contract. Chelsea filed a damages claim with the FIFA Dispute Resolution Chamber (DRC) which ordered Mutu to pay over 17 million Euros in damages, Mutu then appealed to CAS who upheld the decision of the FIFA DRC.[33] Mutu's appeal was then dismissed at the SFT also, he subsequently brought a joint claim to the ECtHR alongside Pechstein.[34]

---

[32] ibid, p 410.

[33] *Chelsea v Mutu*, CAS 2006/A/1192.

[34] *Chelsea v Mutu*, 4A_458/2009.

Claudia Pechstein was a German speed skater whose blood samples showed abnormal reticulocyte levels at the 2009 Speed Skating World Championships which is indicative of doping. The ISU imposed a 2 year ban, Pechstein explained the values through claims of a hereditary condition and requested a public hearing which was denied under the CAS rules at the time.[35] The SFT dismissed her appeal twice, she was allowed to try the case again after undergoing a specialised diagnostic procedure which proved her hereditary blood anomaly and was in turn deemed to be the cause of the blood values but the case was still dismissed.[36] As mentioned before after this she teamed up with Mutu and brought a claim to the ECtHR.

The main issue which was raised in the joint claim at the ECtHR was in relation to Article 6 of the European Convention on Human Rights (ECHR), Right to a Fair Trial.[37] The court ruled that if they could show the 'arbitration [was] compulsory' the tribunal (CAS) would have to 'afford the safeguards secured' by Article 6 ECHR.[38] For Mutu it was ruled that it could not be properly said to be compulsory arbitration as the choice of dispute resolution chamber was left up to the players and the clubs.[39] For Pechstein however, the court rules she either had to 'accept the arbitration clause [⋯] or give up on her income entirely by practising at this level' and as such could not assert 'that she had accepted the clause freely and unequivocally.'[40] As such, Pechstein was able to apply for the domestic courts in Germany to disapply and not give effect to the CAS award.

The third section of the ECtHR judgement rejects the additional claim brought forward that challenged the impartiality of CAS, this was appealed to the Grand Chamber who also rejected it. It is interesting to read some of the dissenting opinion however. It was said by dissenting judges that 'CAS does not meet the requirements of independence and impartiality' and that there is 'a certain link between ICAS and organisations that might be involved in disputes with athletes before CAS' which they

[35] *ISU v Pechstien*, CAS 2009/A/1912.

[36] SFT 4A_612/2009, 4A_144/2010.

[37] ECtHR, Application Nos. 40575/10 and 67474/10, 02/10/2018.

[38] ibid, at 95.

[39] ibid, at 116.

[40] ibid, at 114.

regarded as 'worrying.'[41] This is interesting, as although dissenting, it does show some appetite for distrust of CAS independence from the EU, we have to remember, although independence was confirmed by the SFT in Lazutina, that does not necessarily align itself with the EU on the matter.

The German Constitutional Court also did not comment on this imbalance. They instead ruled it would be a non-point in the case given the invalidity of the arbitration agreement itself. They did mention an imbalance in favour of sports associations at CAS however even if they did not rule on it.[42] They put particular regard to appointing a 'neutral' third arbitrator, in fact, in the line of German cases, at a lower level, the Higher Regional Court, they did indeed find these imbalances and ruled the sports associations held too much power.[43]

It was until this case that 'CAS arbitrators systematically refused to engage in a serious assessment of the compatibility of the WADC with the ECHR. Instead, they merely invoked the [···] authority of expert opinions obtained by WADA.'[44] An award like this is 'hence liable to be refused recognition and enforcement under the grounds set out in Article V(1)(a) or V(2)(b) of the New York Convention, whether or not in the particular instance the athlete had grounds for complaint'.[45] Fundamentally, this case was not really about whether Pechstein deserved a public trial for the purposes of this work, what is at play 'is that the statues of the CAS [···] did not provide for a right to a public hearing, even in cases in which a public hearing is mandatory' under Article 6 ECHR.[46] The fact that it was argued at the ECtHR that the decision did not go far enough, with the court not putting enough 'emphasis on strengthening fair trial guarantees' by failing to 'asses the judicial independence concerns [···] in a convincing manner' further demonstrates the ties between this decision and a perception of a lack

[41] ibid, at 5 and 11.

[42] German Constitutional Court (Bundesverfassungsgericht), *Pechstein v. International Skating Union*, BVerfG, 1 BvR 2103/16, Judgment of 03/06/2022.

[43] ibid, at 53 and 12.

[44] Duval A, '*Lost in translation? The European Convention on Human Rights at the Court of Arbitration for Sport*' (2022) Int'l Sports LJ

[45] n. 20, *Dillion*, p. 9.

[46] Burchardt, D. '*Transnational procedural requirements: What do regional and domestic courts expect from the Court of Arbitration for Sport?.*' *Int Sports Law J* (2025), p 7.

of impartiality at CAS.[47] This thesis takes the position that the previously discussed seeming isolation in development between these two legal systems has created a number of contradictory lacunas which will need addressing.

III.2 Moakgadi Caster Semenya

This case concerns a South African female athlete which again concerned a breach of ECHR and started at CAS. The dispute was over World Athletics' DSD Regulations which required certain female athletes to augment their testosterone levels to compete in specific women's events where their levels were considered too high for the event to be considered fair. CAS actually accepted that the rules were discriminatory, but they also found that discrimination 'necessary, reasonable and proportionate' for achieving the integrity of female athletes in certain events.[48]

The SFT confirmed the decision, refusing to even rule on whether there were any human rights violations as this was outside the scope of Swiss public policy.[49] The human rights which were engaged by Semenya in the case were Article 8 and 14 ECHR, the right to respect for privacy and family life and a prohibition of discrimination. The takeaway from this case, distinguished somewhat from the Pechstein decision, is not necessarily the structural imbalances of ICAS and CAS but instead the pure inadequacy of the SFT as the only appeals body for CAS decisions of this nature. 'The ECtHR agreed with [Semenya] that the review by this court was too superficial' and going forward will oblige the SFT to 'reduce its transnational judicial self-restraint [···] and to take its review function more seriously' if it is going to try and be the federal appeal body for an arbitral tribunal which seeks to have its awards enforced within the EU.[50] 'The ECtHR did not say that the Federal Tribunal was wrong in its interpretation of Swiss public policy; rather, the limitation of its reviewing function to the question of public policy in this context was in itself a violation of the ECHR. In so holding, the

[47] ibid, p 13.

[48] CAS 2018/O/5794 & 5798, at 626.

[49] SFT 4A_248/2019 and 4A_398/2019, 25/08/2020.

[50] n. 45, *Burchardt*, p 9.

ECtHR referred to itself as exercising its limited role as guardian of European public order.'[51]

III.3 International Skating Union

This case is new, firstly, it went to the CJEU not to the ECtHR, secondly it was not one which was started at CAS but instead was put straight on the European stage. As such its impact on CAS is not a direct result of an incompatible arbitral award but it does still have an incidental impact on CAS, discussing both mandatory arbitration and SFT inadequacy as an appeal body.

The case centres on antitrust laws violations which penalised skaters for participating in unauthorised competitions. Two Dutch skaters, Mark Tuitert and Niels Kerstholt, brought a case directly to the European Commission, the ISU then appealed to the General Court of the EU, who largely upheld the decision, leading to the final appeal to the CJEU. The claim was surrounding Article 101 TFEU which effectively restricts deals within the internal market which aim to prevent, restrict or distort competition within the market. The ISU engaged this by creating an environment where other competitions could not operate as all the athletes would receive heavy sanctions if they were to compete in them. As such, this case is also novel so far in this thesis as it deals with the idea of specificity of sport and how that has evaded EU oversight previously.

The Commission at first instance clarified in this respect that 'sporting rules are subject to the application of Union law.'[52] Under the 2014 ISU rules skaters who took part in any unauthorised speed skating event could be declared ineligible for up to a lifetime ban, which automatically excluded then from ISU competitions which included Olympic-qualifying events. The 2016 rules, which were also challenged, formalised a range of sanctions for such violations, still topping out at a lifetime ban; but used criteria the Commission found non-objective, non-transparent and discriminatory. On top of these antitrust rules, the challenge also went for articles 25 and 26 of the ISU

[51] n. 20, *Dillion*, p 9.

[52] *Decision C (2017) 8230 final on International Skating Union's Eligibility Rules* (Case AT/40208), adopted 8 December 2017, at 24.

Constitution which granted exclusive jurisdiction to CAS and made awards final and binding with the only recourse to the SFT on narrow grounds which did not include violations of EU competition law.

First the Commission clarified that the ISU is indeed an association of undertakings within the purview of Article 101 TFEU due to the binding nature of the eligibility rules and how they, in practice, 'coordinate the behaviour of ISU members.[53] This is a key point, as previously it could have been argued that due to the non-profit and formally regulatory nature of SGBs they should escape scrutiny under this provision. The finding was underpinned by the severe sanctions without pre-established, objective criteria which the Commission deemed to be depriving potential rivals of top athletes, making market entry unfeasible, rather than protecting the integrity of the sport as they should have been.

This was worded by the Commission that the 'ISU should only provide for sanctions and authorisation criteria that are inherent in the pursuit of legitimate objectives. The ISU's financial and economic interests are not considered legitimate objectives' [54] They also required objective, transparent and non-discriminatory sanctions and authorisation criteria that do not go beyond what is necessary to achieve those legitimate objectives and the same requirements for the adoptions of effective judicial review of decisions regarding ineligibility of skaters and authorisation of speed skating events.[55]

The General Court of the EU upheld these findings on appeal.[56] Advocate General (AG) Rantos did deliver an opinion on the *ISU v Commission* appeal to the General Court which is of interest however. The AG defended CAS and warned of fragmentation if each participant in sport was able to challenge some aspect of the event on any legal basis before national courts or other judicial bodies.[57] He goes on to describe this as a legitimate interest linked to the specificity of sport and describe a 'non-State mechanism for dispute resolution [...] such as CAS, with a possibility of

[53] ibid, at 146 and 152.

[54] ibid, at 340.

[55] ibid, at 341-342.

[56] EU General Court (T-93/18), 20/10/2021.

[57] AG Rantos Opinion, C-124/21 P *ISU v Commission,* 15/12/2021, at 158.

appeal [⋯] before a national court in the last instance' is a strong model for sports arbitration.[58] It is interesting the disconnect here, for some commentators national review is enough – or at least for competition law, but for some it is the nature of this national review, being outside of the EU which is the fundamental issue. Rantos also goes on to discuss the distinction with *Achmea* and bilateral investment treaty arbitration agreements, although I still find the distinction between international federations and members weak and think it falls apart when they try to seek enforceability within member state, but the perspective is an interesting one.[59]

After this the case reached the CJEU, where they fundamentally reiterated the first and second court opinions.[60] A distinction which was made though is the increased focus on specificity of sport rulings. In substance the Commission decision is upheld but the CJEU crystallises the object-restriction doctrine giving it more general precedential weight. 'Only certain specific rules which were adopted on solely non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity.'[61]

Effectively, the Commission ruled that arbitration rules reinforce the restriction of competition as it limits judicial protection under EU law, which the AG disagreed with; and then subsequently the CJEU sided with the Commission. Now, for disputes which involve exercise of sport as an economic activity, an arbitration system can only be compatible with EU law if it effectively ensures judicial review. CAS, being seated in Switzerland, does not provide this. The arbitration rules reinforced 'the powers, which are not subject to obligations, restrictions or appropriate judicial review and which therefore have an anticompetitive nature by object.'[62]

The real issue at point for this thesis here is the forced arbitration. 'Athletes are forced to agree to submit their disputes to the jurisdiction of the CAS if they want to

[58] ibid, at 159.

[59] ibid, at 165.

[60] CJEU, *ISU v European Commission*, C-124/21, 21/12/2023.

[61] ibid, at 95.

[62] ibid, at 221.

be able to participate in professional competitions and earn their living.'[63] This consent is considered foundational to international arbitration, and the increasing evidence that this is not so in sport only makes a requirement for judicial review 'particularly necessary when such an arbitration mechanism must be regarded as being, in practice, imposed by a person governed by private law, such as an international sports association, on another, such as an athlete.'[64]

One further thing that is of note for me here is the attempted categorisation of economic and non-economic objectives. It can be argued quite strongly that these are fundamentally intertwined, the distinction comes across as somewhat 'artificial.'[65] Even in the case in front of the CJEU, the eligibility rules definitely seek to protect the economic interests of the organisation, but 'the measure is also intimately linked to non-economic aims.'[66] How will this work in practice it is not clear to me, you could imagine a good argument being put forward to say anything an association of undertakings does is at least tangentially tied to an economic goal. There is scope for non-economic goals to be entirely engulfed in the judiciary as economic.

III.4 FC Seraing

The factual background of this case is Third-Party Ownership (TPO), which could well fill up its own thesis. FIFA imposed a sanction of FC Seraing for violations of TPO provisions within the FIFA Regulations on the Status and Transfer of Players (RSTP). CAS upholds the FIFA DRC fine of 150,000 CHF but does reduce the ban on transfers to 3 windows from 4.[67] In the subsequent SFT appeal the club primarily alleged that CAS is not a true arbitral tribunal.[68] It is a similar case to Lazutina in some ways,

---

[63] Brenninkmeijer, M & P E Trinel. '*The relationship between EU law and sports arbitration in ISU v Commission: the good, the bad, and the ugly,*' Arbitration International, 2025, p771.

[64] n. 60, CJEU, *ISU v Commission*, at 193.

[65] Ibáñez Colomo P, '*Competition Law and Sports Governance: Disentangling a Complex* Relationship' (June 7, 2022), p17.

[66] ibid.

[67] CAS 2016/A/4490.

[68] SFT 4A_260.2017

a primary arguing point was the 'mafia-like' nature of FIFA and the dominance of the federation in terms of volume of business for CAS impacts independence similarly to how the IOC was accused of in 2003.[69] The SFT again confirmed the independence of CAS and dismissed the appeal.

This is not however, where this case ends. The club took the case to a Belgian Court and the interlocutory decision found the arbitration clause in FIFA's statutes to be too broad to be valid. This was partly as the club is only an indirect member through UEFA.[70] The Brussels Court of Appeal then sends a preliminary reference to CJEU on CAS awards enforceability regarding EU public policy. AG Ćapeta responds first with their opinion.[71] The AG goes further than the actual judgment but they do largely concur. The fundamental take away is that the CJEU precluded the authority of res judicata 'from being conferred within the territory of a Member State on an award made by the CAS.'[72]

While this has been interpreted differently it is definitely not a sign of the strengthening of CAS. Mathew Reeb, CAS Director General, noted that the 'CJEU did not follow the opinion of [AG] Ćapeta in full and determined that the potential review of CAS awards by state courts in the EU should be limited.'[73] Others have interpreted it as declaring that where a dispute has any tie to economic activity, which as discussed at the end of the ISU subheading, could well be a very inclusive category, leading to 'no

[69] ibid, at 3.1.1.

[70] Mavromati, D, '*SFT Judgment 4A_260/2017 in the TPO case between FC Seraing v. FIFA & the Brussels Court of Appeal Decision: A parallel Universe?* 〈 https://www.sportlegis.com/2018/09/10/the-swiss-federal-judgment-in-the-third-party-ownership-case-fc-seraing-v-fifa-and-the-decision-of-the-brussels-court-of-appeal-a-parallel-universe/〉

[71] Advocate General Ćapeta. (2025). Opinion in *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA*, Case C-600/23, 16 January 2025

[72] Court of Justice of the European Union. (2025). *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA*, Case C-600/23, Grand Chamber Judgment of 1 August 2025, at 125.

[73] International Council of Arbitration for Sport (ICAS). (2025). '*Statement on Review of CAS Awards by European Courts for Matters of EU Public Policy*,' 1 August 2025. https://www.sportslawandtaxation.com/news/2700-icas-statement-on-review-of-cas-awards-by-european-courts-for-matters-of-eu-public-policy accessed 19/02/2026.

authority of res judicata and no probative value [being] conferred within the territory of a Member State on an award made by the CAS.'[74]

We can compare here the approaches taken by the two European Courts. Both the ECtHR and the CJEU have had impacts on CAS as described in this chapter, but they have not gone about it in the same ways or have the same applications. The approach taken in Luxembourg as described in Seraing can be crystalised as follows, 'when a) EU law applies, b) the dispute is linked to the pursuit of sport as economic activity, and c) matters relating to public policy are at stake' there is a requirement for effective judicial review.[75] While, as we have discussed, the scope of the EU interpretation of public policy and the exact lines between economic and non-economic activity is undefined; the scope here is formal and laying the groundwork for legal certainty when these issues have been properly resolved.

On the other hand, the ECtHR approach taken in Strasburg 'follows a more substantial approach.'[76] By directly reviewing the suitability of the SFT in Semenya the ECtHR took a much more fact dependent approach. Simply, Ms Semenya had not benefitted from the safeguards provided by her fundamental rights under the ECHR. The issues at stake were 'the justification of the requisite intensity of the [SFT's] scrutiny,' whereas the issue was more procedural in Seraing.

The reason I bring this distinction to light here is to demonstrate properly how these two courts are working together to illegitimise CAS. The SFT is being told in Seraing that no matter its theoretical compliance with the ECHR in the future, it can never legally replace the review of an EU member court authorised to make a preliminary reference to the CJEU.

---

[74] Callewaert, J. (2025). '*Different but compatible approaches to international sports arbitration: comparing Semenya (ECtHR) with Royal Football Club Seraing (CJEU),*' Sports Law Commentary, 20 August 2025. https://johan-callewaert.eu/different-but-compatible-approaches-to-international-sports-arbitration-comparing-semenya-ecthr-with-royal-football-club-seraing-cjeu/ accessed 17/02/2026.

[75] ibid.

[76] ibid.

III.5 European Super League (ESL)

Here, a group of top clubs came together and proposed a breakaway league from FIFA and UEFA coined the ESL. FIFA and UEFA were understandably not keen on this proposal and threatened severe sanctions against players or clubs who joined the proposed rival league. ESL then brough a claim in Spanish courts which was referred to CJEU claiming that FIFA and UEFA were breaching EU law under Article 101, 102 and 56 of the TFEU which pertain to competition law and the freedom to provide services. It was held that the requirement of prior approval and the sanctions system put forward by FIFA and UEFA would violate these provisions unless they can be based on transparent, objective, non-discriminatory and proportionate framework. The facts are in this sense comparable to the ISU case as they boil down to the same issue within competition law, namely, 'To entrust an undertaking which exercises a given economic activity the power to determine [···] which other undertakings are also authorised to engage in that activity [···] gives rise to a conflict of interest' due to abuse of a dominant position which is unacceptable under EU law.[77]

This case then works to bolster the ISU decision by confirming that SGBs, and by extension CAS, cannot rely on vague invocations of the specificity of sport. It makes its relevance in the topic of this thesis for the incidental impact it has on CAS. It further solidifies the position that when disputes about matters relating to competition law or any other EU public policy CAS and the SFT are insufficient resolution chambers as they cannot facilitate an Article 267 TFEU preliminary reference to an EU authority. The authority of SGBs and CAS can only be acceptable within the EU if the rules themselves meet the ESL standards of transparency, objectivity, precision, non-discrimination and proportionality and if there is an effective path to EU courts to police those standards. While this case does not have the same weight in CAS's crisis as some of the previously mentioned it does exemplify the normative gap this thesis is hoping to address.

[77] *European Super League Company SL v FIFA and UEFA*, CJEU, C-333/21, 21/12/1023, at 133.

III.6 Royal Antwerp

This case, again, is one which has only incidental effect on this thesis. It is prudent to mention it as it was the final part of the trilogy of decisions rendered on the 21st of December 2023, alongside ISU and ESL. The issue at hand surrounded UEFA's home-grown player rule which imposes a minimum of domestically trained squad members. Ultimately, it was decided that rules such as these do violate Article 45 TFEU by restricting the free movement of workers, but the court was more sympathetic to the justification of the legitimate objective of encouraging investment in youth development than they had been in either of the other decisions rendered that day.[78]

I do think it is somewhat unclear how impactful these specific decisions have been on the legitimacy of CAS, when compared with those taken at the ECtHR and in Seraing. The reason they are mentioned here is to just show how under the umbrella of EU law these cases have moved Article 165 TFEU 'to the sidelines.'[79] This article discusses the EU's view on sport within its member states and specifically mentions the specificity of sport and the voluntary nature of its governance structures. This could have been read as 'a cross-cutting provision having general application' as was exemplified in AG Rantos' opinion delivered in ESL.[80] He claimed that Article 165 gave 'constitutional recognition' to 'the European Sports Model,' which was an 'adventurous' position to take and something the court looked to set straight in all three judgements of 21st December 2023.[81] By setting this right the court reaffirmed that 'competition law orthodoxy prevails over sporting specificity' and its focus 'on internal market law' can only be circumvented through clear analysis of the legitimate objectives involved.[82]

---

[78] Royal Antwerp, Grand Chamber Judgment, C-680/21, at 144.

[79] Weatherill, S. '*The impact of the rulings of 21 December 2023 on the structure of EU sports law*,' Int Sports Law J 23, 409–415 (2023), p 409.

[80] n. 78, Royal Antwerp, at 68.

[81] Opinion of AG Rantos, ESL, 15/12/2023, at 30; n. 79, *Weatherill*, p 409.

[82] ibid, *Weatherill*, p 411 and 415.

III.7 Conclusions, connecting the case law

The question then becomes what does this all mean. What does the totality of these cases reveal about the inadequacies of CAS as it currently sits. I believe the issues can be accurately distilled down to the exhaustion of consent-based legitimacy, the inadequacy of SFT review, a deficit in procedural safeguards and the perception of bias within ICAS governance. I will discuss each of these in turn, summarising the issues as this thesis sees them in light of the preceding jurisprudence review before presenting the changes we are proposing.

IV. MOVE TOWARDS LEGITIMACY

IV.1 The Issues Identified

Consent Based Legitimacy Exhausted: This has been a common theme throughout the majority of the cases discussed. The gap in negotiating position which underpins the arbitration agreements fundamentally undermines the position that assent to these clauses is consensual. 'Any customer can have a car painted any colour that he wants so long as it is black.'[83] SGBs have built a structure where athletes either accept arbitration or refrain from participation completely, rendering the agreement definitionally non-consensual, there is 'no choice but to accept.'[84] As long as it is true that an athlete has to submit to the arbitral clause or practice only 'in his own garden' these clauses will not be held valid by EU courts, this is one of the key takeaways and must make up a fundamental part of the reforms.[85]

SFT Review Inadequacy: Again, this permeated much of the case law in the preceding chapter. Swiss review is currently an expensive and unattractive option to parties to CAS proceedings. Even when parties do choose to appeal a CAS decision

[83] Ford H, "*My Life and Work*' 71, Wayne State University Press, 1923.

[84] *Guillermo Cañas v ATP Tour*, ATF 133 III, 234, at 4.3.2.2; as translated in 1 Swiss Int'l Ars. L. rep. 65, 2007, at 84-85.

[85] Knoepfler F & Schweizer P, '*International Arbitration,*' Arbitrage International, p 137.

there is no 'guarantee that Union competition law will be interpreted or applied' any differently to the arbitrators at CAS, assuming that this formed part of the basis of appeal.[86] In fact, as the decisions are rendered only on 'the facts as previously established by the arbitrators, with very limited exceptions' the SFT may not rectify facts to the matter 'even if the facts were established in a manner that is manifestly inaccurate or unlawful.'[87] This issue boils down all avenues of criticism levelled at CAS, for one thing 'the CJEU held that effective judicial review of EU law cannot be provided by the [SFT], and simultaneously CAS's 'limited human rights expertise' has been shown by the ECtHR to be compounded by the SFT's 'narrowly circumscribed supervisory role,' creating a 'systemic gap between formal human rights guarantees and their effective protection within' sport.[88]

ICAS Governance Bias: CAS has not actually been directly found to lack the requisite independence; however, it has been questioned. In Seraing, the 'mafia-like' role of FIFA was a key argument, and while the German Constitutional Court at its highest instance refused to decide on the impartiality of CAS due to the arbitration agreement being voided already, the lower courts did indeed find an issue here.[89] There is also an not insignificant amount of academic commentary which mirrors the 'worrying' link between the ICAS powers and the SGBs.[90] As such, the perception of bias is enough to add flames to the fire of CAS illegitimacy by other routes. Changes in governance structures should make a part of our proposals.

Procedural Safeguard Deficit: While CAS panels have 'started to regularly recognize the indirect applicability of the ECHR,' and try to 'account for [it] within the

---

[86] Duval A, '*The International Skating Union Ruling of the CJEU and the future of CAS arbitration in transnational sports governance*,' International sports law journal 23, 467–474 (2023), p 468

[87] Rigozzi A, '*Challenging Awards of the Court of Arbitration for Sport'* (2010) J Int'l Dispute Settlement, p 235.

[88] Edgeworth, M, '*EU law and sports arbitration: the CJEU's Seraing ruling,*' Ogier Legal Insights, published 8 September 2025. https://www.ogier.com/news-and-insights/insights/eu-law-and-sports-arbitration-lessons-from-the-cjeu-s-seraing-ruling/, accessed 27/02/2026; Heerdt, D., Jain, S. & Duval, A. '*Athletes as multifarious rightsholders: a new frontier for transnational sports law research and practice.*' *Int Sports Law J* 25, 225 – 233 (2025), p 230.

[89] n 42, *Pechstein v International Skating Union.*

[90] Lindholm J, '*A legit supreme court of world sports? The CAS(e) for reform'* (2021) Int'l Sports LJ, p 3.

framework of Swiss public policy,' I would argue that the previous jurisprudence review demonstrates at least a healthy potential for the lack of human rights expertise within CAS panels and, alongside the narrow interpretation of EU commitments inclusion within Swiss public policy has led to a deficit in the rights available to athletes through their dispute resolution mechanisms.

Access itself to CAS can be viewed as restrictive also, further escalating this issue. The advance costs for disciplinary matters 'usually [vary] between CHF 2,000 and CHF 8,000,' with CHF 5,000 being the most frequently requested, with the highest court fees in a sporting matter reaching 'CHF 40,000' 'in the Del Boque case;' which in and of itself is out of reach for a vast sway of athletes whose professional sport or position within that profession does not command great financial incentives.[91] If an athlete brings a case to CAS, and loses, 'which is statistically highly probable,' they will have to bear the entirety of the costs.'[92] This makes it difficult to go to CAS for many athletes and 'almost impossible' for them to appeal a decision to the SFT, particularly because legal aid is only granted where a case 'appears to have reasonable chances of success,' something which as we have seen the SFT interpret 'quite narrowly.'[93] So the issue here then becomes one of access to justice, it is unrealistic for many athletes to have access to the full system of courts theoretically available to them with the legal aid programme as it stands, and they are not guaranteed that they will be fully granted access to their human rights if they can afford to form the hearing.

IV.2 The Broader Picture

In the first chapter, we discussed how CAS is merely a victim of a wider dissatisfaction with arbitration as a mechanism for dispute resolution. It is useful here, before we make our proposals, to recognise just where the issues at CAS align with the issues in other arbitral courts. This is because, if we can identify common flaws across tribunals, then it follows that there will be comparable steps to legitimacy. CAS does not have the most money flowing through it when compared with commercial

[91] n 87, *Rigozzi*, p 229, referencing *Vincent Del Bosque v Besiktas JK*, CAS 2006/O/1055, 09/02/2007.

[92] ibid.

[93] ibid, p 230.

arbitration, international investment arbitration or arbitration relating to trade disputes. It could be true that this has led to greater financial incentives for more rapid legitimisation and need for reliability and global enforceability of the awards when compared to CAS, which means they may well be further down the path to legitimacy and their methods could be applicable to CAS.

It is true that the broad increasing suspicion against arbitration implies that 'it does not ensure the accurate application of the law' in all circumstances or as reliably as more formal courts which reflects the human rights issues we have seen at play in CAS.[94] There are more specific ties between the criticism also, for example, the Investor–State Dispute Settlement (ISDS) crisis of legitimacy is described as the lacking 'transparency, [⋯] independence and impartiality,' as well as inconsistency across decisions and failing to 'allow for correcting erroneous decisions,' while being 'very expensive for users' as well.[95] There is also a power disparity in the rights given to foreign investors over domestic ones, creating unequal competitive conditions, which are, while fundamentally unique, in some ways comparable to the power imbalance between SBGs and athletes in CAS.[96]

There are evident parallels in the specifics, but also in the theory underpinning them both, one commentator, when defining legitimacy in the context of the ISDS crisis said it was: 'the empirical study of beliefs in the rightness of rule. Legitimacy is thus not an objective quality, but rests on the perceptions of relevant stakeholders.'[97] This definition translates almost exactly over to CAS, if CAS is perceived as biased to SGBs or unqualified to handle sporting disputes of a certain nature or unable to fulfil its original goal of providing accessible and rapid justice to all, then its legitimacy as a tribunal can be brought into question. Ultimately, the tension in ISDS is 'about balancing the social need to induce capital growth against political claims to redistributive justice' to give the relationship between foreign investors and host states 'the elasticity needed to accommodate the inevitable tension between the political pull

---

[94] n 63, *Brenninkmeijer & Trinel,* p 768.

[95] UNCTAD, '*World Investment Report 2015: Reforming International Investment Governance, United Nations Conference on Trade and Development,'* Table IV.5, p 147.

[96] ibid.

[97] T Dietz, M Dotzauer, & E S Cohen, '*The legitimacy crisis of investor–state arbitration and the new EU investment court system*,' Review of International Political Economy, 26(4), (2019) 749–72, 752.

to change and the economic rationale for stability'.[98] In this sense it is distinguished from CAS, where the pull is instead between the different value hierarchies of EU law and international arbitration, but the theory behind its move to legitimacy being a pull between two competing orders is incredibly comparable.

It does make sense to use these comparisons as these tribunals are largely all modelled on the same principles of international arbitration. So, what principles can be drawn from ISDS's move toward legitimacy which could be translated over to our issue and help bridge the gap between our recognised pattern of reactive incremental change from CAS and the EU sized lacuna which it now faces.

There are a range of views on this, some parties are looking to maintain the status quo largely and simply make adjustments to enforcement, or potentially increase the presence of third parties in the proceedings.[99] This something which could help with CAS, a requirement for human rights experts to be brought in to the proceedings could help solidify the court in this sense. However, I do still think this in and of itself is insufficient, as if CAS arbitrator independence is still called into question, it does not matter the expert witnesses which are brought as it is still down to the arbitrators to decide the extent to consider these perspectives. These incrementalist views have been taken by countries like 'Chile, Japan and the Russian Federation' which are notably all outside the EU, so, while the suggestion is a good one – if somewhat lacking by itself – it would be more pertinent to focus on the reforms proposed by the EU.[100] They have to this end, been trying to establish a 'Multilateral Investment Court' for over 10 years.[101] This court would remedy the issues discussed in the EU's eyes by having a first instance and appeals tribunal, having highly qualified judges trained in the highest ethical standards, be permanent, work transparently and by preventing disputing parties from having a role in choosing which judges can rule on their case among other

[98] T M Franck, '*Fairness in International Law and Institutions*,' (OUP 1998), 441.

[99] T Ishikawa, '*Third Party participation in Investment Arbitration*,' (International and Cooperative LQ, 59 (2010)), 411–12.

[100] A Roberts, '*Incremental, Systemic and Paradigmatic Reform of Investor–State Arbitration*,' (AJIL, 2018), 112(3), 410–32, 410.

[101] Multilateral Investment Court Project, https://policy.trade.ec.europa.eu/enforcement-and-protection/multilateral-investment-court-project_en accessed 20/02/2026.

things.[102] This quite clearly states the EU's issues with arbitration, while not all are applicable to CAS, and we certainly are not going to suggest dissolving CAS in lieu of some European ran sport dispute resolution court; it is very instructive as to what the EU is looking for from arbitration models derived from the principles of commercial arbitration which is has been in increasing conflict with across sectors. It will be useful to utilise some of these ideas in our proposals for CAS.

IV.3 The Proposal

This seems to me to be all the groundwork needed to propose a reform now which can have a suitable amount of bolstering. We have then identified the main issues as: independence, access to justice, procedural safeguards, consent and the inability to review decisions to the EU; we have also seen how similar mechanisms have proposed to reform some similar problems. We have identified an incremental pattern which CAS has used previously and discussed more EU focused goals which can be used to build upon this reactive pattern to be applied to something more radical.

This thesis is now going to take the aforementioned information and apply it as follows. We will attack the some of the main issues raised through the case law individually, proposing specific reforms, largely in line with the reactive pattern previously established. The ones which distinguish the issue from previous ones and cannot be rectified incrementally will then be solved using more radical means, in line with the propositions and what we have established as the standards for EU compliance. This framework will be based off the ISDS Multilateral Investment Court principles alongside a unique structuring based off some repurposed EU jurisprudence. This is where the analysis has to shift register somewhat. The preceding chapters have been largely diagnostic; this one is, necessarily, more constructive, and that means working through some doctrinal architecture that may feel like a departure but is, I hope, worth the detour.

[102] ibid.

IV.3.1 From Consent to Constitutional Legitimacy

The preceding chapters have shown how CAS emerged as a specialised response to the obvious shortcomings of ordinary state courts for international sport.[103] State courts lack the necessary expertise, and their procedures are often too slow and territorially bound to cope with pre-competition selection disputes or disciplinary suspensions that must be resolved before a race or tournament begins.[104] Arbitration in sport is therefore not an ideological luxury but a functional necessity; it offers speed, relative informality and specialist knowledge, and CAS has largely delivered on that promise.[105]

From the outset, however, this functional success was underpinned by a particular theory of legitimacy; the classic consent-based model inherited from commercial arbitration.[106] Parties were understood to waive recourse to ordinary courts in favour of a faster, more expert private forum, and the reduced intensity of court review was justified by that bargain.[107] As the previous chapters have shown, that picture no longer fits the reality of CAS proceedings. Arbitration clauses are now embedded in federation statutes, are a non-negotiable precondition for access to elite competitions, and are imposed in a context of structural inequality between athletes and SGBs.[108]

The classic consent theory starts from a simple proposition that two parties of roughly equal bargaining power freely choose arbitration because it is quicker, cheaper and more expert than state courts; the law then respects their choice by withdrawing or narrowing the scope of judicial review.[109] That may be a fair characterisation of large

---

[103] Pound R W, '*Sports Arbitration How it Works and Why it Works*,' 2015 12 McGill Journal of Dispute Resolution 77.

[104] ibid.

[105] ibid, 85-88.

[106] Steingruber A M, '*Consent in International Arbitration*,' OUP 2012, chapter 2, A.

[107] ibid.

[108] see Chapter 2, *ISU, Pechstein*

[109] n 106, Steingruber.

parts of commercial arbitration, but it is increasingly implausible in the sporting context.[110]

At the same time, CAS has slid into a position where it effectively exercises quasi-public authority. Awards decide who can compete, under which conditions, and subject to what restrictions; they shape livelihoods and reputations and frequently determine how EU competition rules, free-movement guarantees and Convention rights are applied in practice.[111] This is no longer simply a matter of private dispute resolution. If CAS now sits at the apex of a dense transnational regulatory order, it makes little sense to ask whether the parties consented in the thin contractual sense. The more meaningful question becomes whether the institutional features of CAS are such that public authorities within the EU can treat its decisions as constitutionally acceptable and give them deference comparable to that accorded to domestic courts.[112]

The Gundel-Paris Agreement-Lazutina sequence described in Chapter 1 fits this picture. In the 1990s and early 2000s, the SFT required CAS to sever organisational and financial ties with the IOC; CAS reacted through the creation of ICAS and structural reforms; the Swiss court then confirmed that, for Swiss law, CAS could be treated as an independent court of arbitration.[113] That pattern is important, but it also highlights why a new step is now required. The earlier reforms allowed CAS to achieve Swiss constitutional legitimacy; the current crisis turns on EU constitutional legitimacy. The SFT's endorsement remains relevant, but it cannot by itself answer whether CAS is acceptable as a final arbiter of disputes that engage EU public policy and fundamental rights.

The key decisions examined in Chapter 2 illustrate why. In *Mutu and Pechstein*, the ECtHR accepted that an arbitration agreement freely chosen between a club and a player can still fall within the traditional model, but it considered Pechstein's position

---

[110] Rigozzi A, Robert-Tissot F, '"Consent" in Sports Arbitration: Its Multiple Aspects Lessons from the Canas decision, in particular with regard to provisional measures,' *p 61.*

[111] ibid, see Chapter 2.

[112] van der Harst, M. '*The Enforcement of CAS Arbitral Awards by National Courts and the Effective Protection of EU* Law' In: Paulussen, C., Takacs, T., Lazić, V., Van Rompuy, B. (eds) '*Fundamental Rights in International and European Law*.' T.M.C. Asser Press, The Hague.

[113] n 17, *Lazutina*

fundamentally different, her only realistic choice was to accept CAS jurisdiction or abandon her career at the elite level.[114] Similarly, in *ISU* and *Seraing* the CJEU emphasised that eligibility and authorisation rules backed by mandatory CAS clauses operate as a gatekeeper to participation in economic activity and must therefore be subject to effective judicial review under EU law.[115]

Once arbitration becomes the unavoidable gateway to professional sport, the language of free choice loses its descriptive force. Athletes cannot meaningfully negotiate the arbitration clauses in federation statutes; they agree only in the sense that a consumer can choose any colour so long as it is black.[116] The empirical record of CAS fees, success rates and the narrow grounds for Swiss review described in section 3.1 confirms that, for many athletes, access to CAS and to the SFT is more theoretical than real.[117]

For that reason, this thesis adopts a post-consensual starting point.[118] The justification for CAS cannot turn on whether individual athletes signed arbitration clauses under conditions that courts themselves now recognise as structurally coercive.[119] Instead, legitimacy must be grounded in institutional qualities that can be assessed independently of any particular contract, namely independence and impartiality, equality of arms, accessibility, transparency, and the availability of meaningful external review.[120] Comparative work on sports arbitration and on other arbitral regimes in crisis, such as ISDS, similarly suggests that stakeholder perceptions of fairness and accountability, rather than formal consent, are what ultimately sustain or erode legitimacy.[121]

---

[114] see Chapter 2.1, *Mutu and Pechstein*.

[115] ibid, see Chapter 2, *ISU* and *Seraing*.

[116] n 83, Ford.

[117] see Chapter 3.1

[118] Duval A, '*Not in My Name! Claudia Pechstein and the Post-Consensual Foundations of the Court of Arbitration for Sport*' (2017) Max Planck Institute Research Paper.

[119] n 37, *Mutu and Pechstien*.

[120] n 118, *Duval*, p 24.

[121] n 97, *Dietz*; n 95, UNCTAD report

The concept I want to borrow here is one that arbitration commentators have been slow to take seriously; constitutional legitimacy. I do not mean this in a formal, public-law sense – CAS is not a state institution and nobody is suggesting it should become one. I mean something more specific, that the authority of an arbitral body to bind parties against their practical will in disputes touching on fundamental rights and EU public policy, cannot rest on the fiction of consent alone. *Pechstein* made this plain, *Semenya* confirmed it. What the case law collectively demands, and what CAS has so far failed to supply, is a basis for authority that survives scrutiny even when the arbitration clause itself does not. Three elements stand out from the case law and academic analysis reviewed so far which will help facilitate this.

1) CAS must be structurally independent and impartial. This concerns not only formal links to the IOC or SGBs, which were addressed in the Paris Agreement, but also the composition of ICAS, the appointment and rotation of arbitrators, and perceptions of bias when a small number of federations dominate both caseload and governance. The *Mutu and Pechstein* dissent, the German case law on structural imbalance in panel appointment, and arguments in *Seraing* all suggest that independence is now judged against a thicker, EU oriented benchmark than that applied by the SFT in *Lazutina*.

2) CAS procedures must offer effective protection of rights. The ECtHR in *Semenya* stressed that SGBs exercise regulation-making powers comparable to public authorities and that athletes subject to those powers must benefit from safeguards equivalent to those guaranteed by the Convention.[122] The CJEU has similarly insisted, in *ISU*, *Super league* and *Royal Antwerp*, that sporting rules engaging EU competition law or free movement must be transparent, objective, non-discriminatory and proportionate, and that individuals affected by them must have access to effective judicial protection within the EU.

3) Constitutional legitimacy depends on how CAS is embedded in the broader judicial ecosystem. The SFT's endorsements in *Gundel* and *Lazutina* secured CAS's place within the Swiss constitutional architecture, but the *ISU* and *Seraing* lines of case law make clear that Swiss review is not, on its own, sufficient to satisfy EU

[122] see Chapter 2.2, Semenya.

demands. For disputes with an EU nexus, there must be a path to courts capable of making preliminary references under Article 267 TFEU and of applying EU public-policy norms as interpreted by the CJEU.

As can been seen here, the overlap is great. In order to move past the issue of forced arbitration through the façade of consent there must be a degree of constitutional legitimacy which is inherently tied to almost all the other issues which we have raised in this thesis. In order to continue to act in its quasi-judicial manner CAS is going to have to take on these concomitant quasi-judicial responsibilities. We will discuss the remedies for these issues in turn but it helps to mention now to emphasise the holistic approach which is needed, none of these issues exist in a vacuum and a modular response which fails to appreciate the big picture will fall short.

The question which gets drawn from this for this section becomes, as consent can no longer do the normative heavy lifting, the defence of compulsory sports arbitration must rest on other grounds. But as we have also established, the nature of ADR is very conducive to sport and arbitration has largely fitted this hole well.[123] As such, we are not proposing that arbitration no longer is the forum for dispute resolution, and that naturally comes with some consensual requirements. What is proposed, is that, as all the other issues raised get fixed the legitimacy of CAS becomes less questioned and the compulsion to arbitrate becomes increasingly like a compulsion to go to a state court.

The proposal to this end is as long as arbitration offers clear functional advantages; and the arbitral body is structurally independent and impartial; and access to arbitration and to any supervisory courts is realistic for those affected, compulsion to arbitrate can be justified at an EU level. Where these conditions hold, requiring disputes to go to CAS can be presented as a legitimate way of channelling conflicts into a forum capable of preserving the integrity and global coherence of sport. Much of the sports-arbitration literature adopts this structure. It emphasises CAS's role in delivering timely, expert decisions, acknowledges the importance of guarantees of independence,

[123] n 103, Pound.

and notes that legal-aid mechanisms and reduced fees exist on paper to ensure that athletes of modest means can access the system.[124]

Worded differently, the most persuasive doctrinal defences of compulsory sports arbitration implicitly support a conditional model, compulsion is acceptable only when the institutional and procedural safeguards are strong enough to make CAS a credible proxy for state courts.

Practically, scepticism is already visible among practitioners. Guidance produced for in-house legal teams in major firms now explicitly asks whether arbitration remains the most suitable forum for competition-law disputes, noting that while CAS offers speed and confidentiality, it may limit opportunities to challenge decisions or to generate public-facing precedent where EU law is engaged.[125] If that perception hardens, sophisticated actors will begin to route precisely the most legally and economically significant disputes away from CAS and into domestic or EU courts. CAS would then risk being left with a shrinking core of purely sporting cases, while the development of lex sportiva in areas such as competition, employment and human rights would take place elsewhere.

That would undermine the very rationale for CAS's existence outlined in Chapter 1: to provide a single, authoritative forum capable of delivering coherent, specialist dispute resolution across the global sporting ecosystem. In this sense, the reforms proposed in the remainder of this chapter are not merely about placating EU courts; they are about preserving CAS's centrality by ensuring that it remains an attractive and constitutionally acceptable forum for the full range of contemporary sports disputes.

[124] See discussion in Chapter 3.1

[125] Slaughter and May LLP, '*Shifting ground: competition law and the future of sports governance,*' Slaughter and May Insights, 17 July 2025. https://www.slaughterandmay.com/insights/new-insights/shifting-ground-competition-law-and-the-future-of-sports-governance/ (accessed 23/02/2026)

IV.3.2 The Solange Deference Model

The preceding discussion's extent has been to properly introduce this section. This model effectively takes the issues we have been discussing and demonstrates how they have been resolved in the past in a comparable context.

The Solange decisions of the German Federal Constitutional Court are an example of how one legal order can conditionally recognise the authority of another while retaining a residual power of review in exceptional circumstances.[126] At its core, the Solange formula is a 'so long as' approach. German courts accept the primacy and autonomy of Community (now EU) law so long as it provides a level of fundamental rights protection broadly equivalent to that guaranteed by the laws of Germany, but they reserve the right to intervene if that external protection falls below their constitutional minimum.[127] Transposed to the CAS context, this thesis argues for a comparable conditionality. EU courts would continue to defer to CAS awards, and to CAS's functional role as the apex of transnational sports dispute resolution, so long as CAS can demonstrate sufficient independence, procedural safeguards and effective protection of EU public policy; where those conditions are not met, deference would be withdrawn and national or EU courts would fully re-assert their jurisdiction.[128]

The first Solange decision arose from a conflict between the Common Agricultural Policy and German constitutional rights in Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel.[5] Under the EU Regulation 120/67/EEC on the common organisation of the market, supplemented by Regulation 473/67/EEC, exporters could obtain licences only by lodging a monetary deposit, which would be forfeited if the export was not carried out within the licence period. The German company argued that this system was a disproportionate interference with its freedom to conduct business and property rights under German Law and sought to have the regulations disapplied. The German court

---

[126]Möllers C, '*German Federal Constitutional Court: Constitutional Review of European Acts Only Under Exceptional Circumstances,*' (2012) 8 European Constitutional Law Review 161, p 165.

[127] BVerfG, 2 BvL 52/71, Solange I, BVerfGE 37, 271 (29 May 1974).

[128] Duval A, '*How the CJEU Should Supervise the Court of Arbitration for Sport: A Call for a Transnational Solange in the Seraing Case*' Verfassungsblog (18 February 2025) 〈https://verfassungsblog.de/the-court-of-arbitration-for-sport/〉 (accessed 04/03/2026)

made a preliminary reference to the ECJ in Case 11/70, asking whether the regulations were valid in light of fundamental rights.[129] The ECJ held that the validity of the measures could not be assessed against national constitutional standards, as recourse to national rules or concepts would undermine the uniformity and effectiveness of European law. At the same time, it asserted that respect for fundamental rights formed part of the general principles of that same European law, which was fundamentally itself inspired by the common constitutional traditions of the Member States, but ultimately found that the export-licence system did not violate those rights in the case at hand.[6] When the case returned to Germany, the Court which had made the reference to the ECJ then referred it to the German Federal Constitutional Court for review of the compatibility of the European regulations with German Law, leading to the Solange I decision.

The Court accepted that it could not itself declare Community acts invalid, this remained the ECJ's prerogative, but held that it was competent to decide whether German authorities could apply the European law where its content conflicted with the fundamental rights guaranteed by German Law. In its famous formula, it stated that as long as ('Solange') the integration process had not progressed so far that Community law contained fundamental rights equivalent to that of German Law, German courts would be entitled and obliged to refer to the Constitutional Court any European provisions which, in the interpretation given by the ECJ, appeared to violate German fundamental rights. Solange I was of systemic importance because it asserted the conditional nature of Germany's acceptance of European law primacy. It would be applied domestically, but only so long as it did not infringe the core of the German fundamental rights array.[130]

Solange I is a foundational moment in what is now described as constitutional pluralism.[131] It can be argued that Solange I is an early illustration of 'constitutionalism beyond the state,' the German Constitutional Court accepts that European law has

---

[129] Case 11/70 Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel EU:C:1970:114, [1970] ECR 1125.

[130] n 127, at 285.

[131] de Búrca G, '*The Principle of Subsidiarity and the Court of Justice as an Institutional Actor,*' (1998) 36 Journal of Common Market Studies 217.

constitutional status in its own sphere, but conditions its acceptance on the existence of an adequate rights framework.[132] This is exactly why Solange I is important for this thesis, it shows that functional necessity (the common market) and constitutional fidelity (fundamental rights) can be reconciled through conditional deference rather than through a take it or leave it hierarchy. Something which this thesis argues is applicable similarly to CAS.

In Solange II, the same court in Germany rejected the complaint but took the opportunity to recast its earlier position. After reviewing developments in ECJ case law and European guarantees, it held that the standard of fundamental rights protection in the European Communities was now generally equivalent to that required by German Law.

The crucial passage states that, so long as the European Communities, in particular the case law of the ECJ, generally ensure an effective protection of fundamental rights which is suitably similar to the protection required by German Law, and so long as the essence of those rights is safeguarded, the German Courts will no longer exercise its jurisdiction to review secondary European law by the standard of German Law.[133] This case thus transformed the relationship between German and Community law into one of cooperative constitutionalism. The domestic court effectively created a presumption of equivalence; it would, in principle, trust the ECJ to ensure adequate rights protection and would refrain from its own review, reserving intervention for the hypothetical case where the standards were to regress below the German constitutional minimum. In procedural terms, this meant that constitutional complaints aimed at European law became inadmissible so long as the Solange II conditions were fulfilled.

Subsequent decisions, including the Lisbon judgment and the so-called Solange III order, have further refined this conditionality logic by introducing the idea of constitutional identity review.[134] Under this strand of case law, EU law primacy does

---

[132] Von Bogdandy, A; and Schill S, '*Overcoming absolute primacy: Respect for national identity under the Lisbon* Treaty' (2011) 48 Common Market Law Review 1417.

[133] BVerfG, 2 BvR 197/83, Re Wünsche Handelsgesellschaft (Solange II), BVerfGE 73, 339 (22 October 1986)., at 387.

[134] See, Solange III order of 15 December 2015; n 132, *von Bogdandy and Schill.*

not extend to certain non-derogable elements of national law, and the domestic courts reserve a narrow safety valve where EU action threatens these essentials. This reinforces the image of Solange as a flexible collection of techniques rather than a rigid doctrine; the German Court continues to accept the functional necessity and general adequacy of EU level protection, but retains a residual safeguard for extreme cases affecting its constitutional core.

What drew me to the Solange doctrine was precisely this transferable logic. The German Federal Constitutional Court did not attempt to absorb EU law into the Basic Law, nor did it simply capitulate to EU supremacy. Instead, it built a conditional relationship, one in which jurisdictional deference was offered, but only so long as equivalent standards were maintained. That conditionality is exactly the structure this thesis is proposing for CAS's relationship with the European legal order. The SFT's deference from EU courts need not be total, nor need it be abandoned entirely. It should, like Solange, be earned and maintained through demonstrated structural equivalence. The question is not whether CAS can ever be good enough for Europe; it is whether CAS is prepared to prove that it is, and to keep proving it. Considered as a stream of reasoning rather than distinct judgments, the Solange decisions display some key features that are directly relevant for the CAS/EU relationship in the parameters of this thesis:

1) They are premised on functional necessity. The German court recognised that the common market could not operate effectively if every national court could freely set aside European law, just as international sport would struggle if every dispute were litigated afresh in domestic courts.

2) They embody a minimum-rights conditionality. Deference to the ECJ is explicitly tied to the adequacy of fundamental rights protection, with the national court reserving the possibility of renewed review if that standard deteriorates.

3) The Solange approach is revisable, the Court expresses a willingness to refrain from exercising its jurisdiction for "so long as" the Communities maintain a certain level of protection, thereby signalling that a future regression could justify a recalibration.

4) It is non-hierarchical in its framing. Rather than asserting an absolute supremacy of either EU or German law, Solange constructs a cooperative relationship in which each court recognises the other's role while preserving a tightly circumscribed residual competence for itself.

This conceptual background justifies treating Solange as more than a random German doctrine, it is a general technique for managing normative pluralism through conditional deference. In the same way that the German courts accepted the functional indispensability of the ECJ subject to a constitutional minimum standard, this thesis proposes that EU courts accept the indispensability of CAS for the governance of transnational sport, but only so long as CAS meets the benchmarks discussed in the preceding subheading. Where those benchmarks are satisfied, CAS awards would be granted *res judicata* effect and enforced within the Union; where they are not, EU courts would withdraw deference and subject the relevant awards to full review. In this sense, the proposed Solange-style deference model does more than borrow a convenient label. It adapts the core insight of the Solange jurisprudence, that deference to an external adjudicator can be made conditional on that adjudicator maintaining an adequate level of fundamental-rights protection, to the specific context of CAS and EU law.

CAS is treated analogously to the ECJ, a specialised, functionally necessary adjudicator whose autonomy and deference are justified only so long as it meets a set of constitutional-type minimum standards. EU courts, in turn, mirror the German courts, they accept that many sports governance questions are best handled within an arbitral framework, but they refuse to allow that framework to shield violations of EU public policy or fundamental rights from effective judicial control.

It is a system which mirrors what is already happening in practice, the ECtHR in *Semenya* and the CJEU in *ISU* and *Seraing* have not banned CAS, but they have made the continued recognition of its awards contingent on better protection of rights and on the availability of EU-compatible review mechanisms. The Solange label simply makes explicit what is already emerging implicitly from the case law and from proposals for a transnational Solange approach in the literature.[135]

[135] See Chapter 2; n 128, *Duval.*

To move from these abstract ideas into real, implementable recommendations, the thesis restates the three issues which have been discussed at length already, but restates them in the form of their solutions. Namely, reform of ICAS governance and arbitrator independence; the strengthening of procedural safeguards and transparency; and the introduction of a dual-seat jurisdictional model with an EU-anchored division to allow for preliminary references. Together, these pillars will provide CAS with a post-consensual, constitutionally robust foundation while retaining the fundamental reactive pattern of reform established in Chapter 1.

I want to be clear about what these proposals are not. They are not an attempt to politicise ICAS, to smuggle EU institutional preferences into sports governance through the back door, or to hollow out the specialist character that makes CAS worth saving. The concern is narrower than that; the people who govern the arbitral institution are, at present, selected in ways which are too closely tied to the federations most likely to appear before it. That is not a radical critique, it is what the German Higher Regional Court found, what the dissenting judges in *Pechstein* suspected, and what the structural logic of the *Seraing* decision implies. The three changes proposed below are designed to close that gap, not to open a new one.

IV.3.3 ICAS Governance and Arbitrator Independence

The urgent structural issue is the institutional architecture of ICAS and the CAS list of arbitrators. As currently constituted, ICAS is still heavily dominated by nominees of SGBs; a substantial majority of its members are appointed directly or indirectly by organisations that are repeat litigants before CAS.[136] Even if, as the SFT held in Lazutina, CAS is no longer the vassal of the IOC, this concentration of influence sustains a perception of dependence that has been expressly noted in judicial dissents and academic commentary and that sits uneasily with the demands of constitutional legitimacy.[137]

This thesis therefore proposes a re-composition of ICAS to twenty-four members, with a rebalanced distribution of seats, one-third appointed by SGBs; one-

[136] See discussion in Chapter 2, *Seraing.*

[137] n 17, *Lazutina*; n 42, *Pechstein,*

third designated through athlete-led processes and independent professional bodies; and one-third reserved for individuals with demonstrated expertise in human rights, EU law and public policy who are neither current nor recent office-holders in sports organisations.[138] Term limits and basic diversity commitments would be written into the ICAS statutes.

On the arbitrator list, a minimum proportion of members should have had no decision-making role within SGBs in the preceding five years, and a significant share of arbitrators should be nominated through athlete-driven procedures rather than only by sports organisations or ICAS itself. All arbitrators would be subject to strengthened disclosure obligations regarding past and present links with sports bodies, sponsors or other stakeholders, and those disclosures would be available to parties prior to appointment.[139]

Panel appointment procedures should also change. At present, the standard model allows each party to appoint one arbitrator, with the president appointed either by the two-party appointees or by the President of the Appeals Division. In a context where SGBs are repeat players and athletes are usually first-time users, that model structurally favours the institutional side.[140] A randomised default, in which panels are usually drawn by lot from a suitably diverse list, with departures permitted only for stated and reviewable reasons, would better align CAS with the principles which underlie our constitutional legitimacy. This also mirrors the structure the EU are looking for in the previously discussed ISDS reformations, demonstrating European assent to the idea.[141]

These changes would not eliminate the value of expertise; their aim is to ensure that expertise is not monopolised by those whose decisions CAS is supposed to review. The goal is not to turn ICAS into a political body, but to create enough distance between the governors of CAS and its most frequent litigants that external courts and athletes can reasonably trust in its impartiality.

---

[138] n 90, *Lindholm*, p4.

[139] ibid.

[140] ibid.

[141] n 100, Roberts; n 101, Multilateral Investment Court Project.

IV.3.4 Procedural Safeguards and Transparency

Probably the most fundamental necessity for any reforms is the strengthening of procedural fairness in CAS proceedings, in line with Article 6 ECHR and the CJEU's requirements of effective judicial protection.[142] Hearings should be public by default, the secrecy surround arbitration has been such a key factor in its weakening across the board, not just localised to CAS. Confidentiality would remain possible but as an exception requiring justification, for example in cases involving minors or sensitive medical information. This directly addresses the issue in *Pechstein*, where the CAS Code did not provide for a right to a public hearing even in situations in which such a hearing is mandatory under the ECtHR's case law. This has actually already been somewhat implemented at CAS through an update to R57 of the CAS code as a result of the *Mutu and Pechstein* case.[143] However, this move from allowing for a 'request for a public hearing' should be flipped to a presumption of a public hearing with confidentiality being offered at the request of a physical person.[144] This signals CAS's commitment to fulfilling the deferred legitimacy, they should maximise the transparency rather than implementing the minimum possible amount.

Access to CAS must also be made realistically affordable. The statistics on advance costs and the statistically highly probable risk of having to bear all expenses in the event of failure show that current fee structures effectively deter many athletes from bringing meritorious claims and certainly from making appeals to the SFT.[145] Building on the existing legal-aid Guidelines, CAS should adopt a more generous and transparent regime in which eligibility depends primarily on financial need rather than on a restrictive ex ante assessment of prospects of success, and in which aid covers filing fees, administrative costs, basic travel and interpretation, and a reasonable contribution towards legal representation.[146] Aggregated data on grants and refusals should be

---

[142] n 37, *Mutu and Pechstien*

[143] Amendments to the Code of Sports-related Arbitration, https://www.tas-cas.org/generated/assets/lists/08acecdc-3a71-4ffe-80fa-77c5dd0260cb/Amendments_Code_2019__en_.pdf accessed 03/03/2026.

[144] ibid.

[145] see Chapter 3.1.

[146] CAS Legal Aid Guidelines, https://www.tas-cas.org/en/arbitration/legal-aid accessed 03/03/2026.

published annually to necessitate that these legal aid issues get dealt with in a more accommodating manner.

Third, arbitrators should receive structured training in EU law and human rights. The criticism that CAS panels have refused to engage properly with the compatibility of sporting regulations with the ECHR, relying instead on external expert opinions, points to a lack of internal legal capacity rather than to bad faith. Requiring arbitrators sitting on EU-relevant cases to complete accredited training modules on EU competition law, proportionality analysis and the indirect application of the Convention through Swiss and EU public policy would go some way towards remedying this.

The reasoning and publication of awards must improve also. Where parties raise EU or Convention-equivalent arguments, CAS awards should be obliged to address those points explicitly and to apply a structured test for necessity and proportionality, showing how any restrictions on rights or competition pursue legitimate objectives and do not go beyond what is necessary. Full awards in such cases should be published, with only minimal redaction where strictly required. Our slight exploration into the move towards legitimacy by other arbitral tribunals shows that transparency in reasoning can both improve quality and enhance legitimacy by allowing external scrutiny and academic analysis.

Finally, the rules on provisional and conservatory measures merit some change. The current CAS Code provision under which parties waive their right to seek such measures from state courts, in exchange for CAS's own power to grant urgent relief, only works if CAS can in fact offer functionally equivalent protection.[147] In EU-relevant disputes, that may not always be the case, especially where state-court interim measures are necessary to preserve the possibility of a preliminary reference. A revised rule should clarify that waivers of recourse to state courts for provisional measures are valid only where CAS can act with sufficient speed and where no EU-law issues requiring state-court involvement are at stake; otherwise, access to national courts for interim relief should remain open.

[147] R37, CAS Code.

This last point brings us quite neatly onto the next pillar. If CAS hopes to not be fragmented and loose its position at the 'Supreme Court for World Sport' it must be able to offer a preliminary reference under Article 267 to EU oversight.[148]

IV.3.5 Dual EU Seat

The third pillar is the most structurally far reaching, a dual seat model under which CAS retains its Lausanne headquarters but establishes an EU Division with a legal seat in an EU Member State for disputes with a sufficient EU nexus. As things stand, Article R28 of the CAS Code fixes Lausanne as the seat of all CAS arbitrations, with the result that Swiss law governs the arbitral procedure and the SFT is the only court competent to hear setting-aside actions.[149] This design was coherent when CAS disputes were seen as private matters with limited public-law implications. However, as we have seen it has become increasingly problematic as CAS awards have come to implicate EU public policy and fundamental rights. The CJEU's judgments in *ISU* and *Seraing* make it clear that where EU law applies, and where disputes are linked to the pursuit of sport as an economic activity and raise public-policy issues, effective judicial review must be available before courts capable of making Article 267 references.[150]

IV.3.5.1 UEFA's Dublin Seat and the potential wider CAS Application

UEFA's recent reforms show one way forward. In its Authorisation Rules governing international club competitions, UEFA now allows parties to elect Dublin, Ireland, as the seat of CAS arbitration, with UEFA bound by that choice.[151] Subsequent amendments to the UEFA Statutes have generalised this approach by recognising both Lausanne and Dublin as possible seats for CAS proceedings brought under UEFA regulations, with the applicable UEFA rules determiining which seat applies in a given

---

[148] n 17, *Lazutina*, at p. 462.

[149] Court of Arbitration for Sport, '*Code of Sports-related Arbitration,*' 2023 edition, Article R28.

[150] n 60, *ISU*.

[151] UEFA, '*Authorisation Rules Governing International Club Competitions,*' Edition 2024, in particular Article 25.

category of case[152] In practice, this means that disputes over the compatibility of UEFA rules with EU law can be heard by CAS panels whose awards are supervised not by the SFT but by Irish courts, which are themselves integrated into the EU judicial system and can make preliminary references to the CJEU.[153]

To understand its relevance, it is necessary to explain briefly what UEFA's statutes currently say about CAS, just how and why exactly Dublin has been introduced as an alternative seat, and how this sits in tension with the CAS Code as it stands.

Under the UEFA Statutes, CAS has long been entrenched as the exclusive dispute resolution body for European football. Article 61 (CAS as ordinary court of arbitration) provides that CAS has exclusive jurisdiction to deal with disputes between UEFA and its member associations, leagues, clubs, players or officials, as well as disputes of a European dimension between those actors, so long as the matter does not fall within the competence of a UEFA internal resolution mechanism. Article 62 (CAS as appeals arbitration body) then states that decisions of the UEFA internal dispute resolution mechanisms may be challenged exclusively before CAS. Earlier editions of the Statutes explicitly anchored this relationship to CAS in Lausanne, and required members to comply with decisions of CAS rendered there.

In parallel, the Code of Sports related Arbitration adopted by the International Council of Arbitration for Sport (ICAS) fixes Lausanne as the default legal seat of all CAS arbitrations. Article R28 CAS Code states that the seat of the CAS and of each arbitration is in Lausanne, Switzerland, even if hearings may physically be held elsewhere (ad hoc divisions for example); this ensures that Swiss law, and in particular Chapter 12 of the Swiss Private International Law Act, governs the arbitration as the lex arbitri, and that the SFT remains the sole court competent to hear appeals. Up to very recently, therefore, both UEFA's internal regulations and the CAS Code converged on a single model, that all UEFA disputes that reach CAS are legally seated in Lausanne and reviewed, if at all, only by Swiss courts under Swiss public-policy standards.

---

[152] UEFA, '*UEFA Statutes,*' most recent edition, Articles 61-63.

[153] Murphy P, *'Dublin becomes alternative seat for CAS'*, 11 July 2024 https://www.ogier.com/news-and-insights/insights/dublin-becomes-alternative-seat-for-the-court-of-arbitration-for-sport-cas/ (accessed 15/03/2026).

This Lausanne centred architecture is precisely what much of the recent EU case law has called into question. Once CAS awards began to raise serious issues of EU competition law and fundamental rights, the fact that they were insulated within a Swiss supervisory regime, which cannot make preliminary references under Article 267 TFEU and interprets ECHR rights only through Swiss public policy, became increasingly problematic.[154] *ISU* and *Seraing* reveal a structural mismatch between CAS's Swiss seat and the EU's demand for effective judicial protection within its own legal order. UEFA's Dublin move must be read against this background. As has been discussed extensively in this thesis the lack of ability to make a preliminary reference under this Lausanne model is a huge issue which has been raised with CAS.[155] In this context, changing the seat of certain CAS arbitrations from Lausanne to an EU Member State such as Ireland is not a cosmetic adjustment but a way of re-routing supervisory jurisdiction into the EU judicial system.

The first opening came not in the Statutes themselves but in a specialist set of regulations, *the UEFA Authorisation Rules Governing International Club Competitions.*[156] These rules were adopted to codify UEFA's practices for authorising private cross-border club competitions and to ensure their compatibility with EU competition law, particularly after the CJEU's judgments in *ISU* and *ESL* highlighted the need for clear, objective and non-discriminatory authorisation criteria.[157] Within this package, UEFA inserted a novel dispute resolution clause providing that disputes arising under the rules shall be submitted to CAS, but with the party bringing the claim entitled to elect Dublin as the seat of arbitration.[158]

Under the revised clause, disputes over the compatibility of the Authorisation Rules with EU law can still be heard by CAS panels applying the CAS Code and, in substance, UEFA's own regulations, but if Dublin is chosen as the seat then Irish arbitration law becomes the lex arbitri and the Irish High Court becomes the primary court for setting-aside actions. This is highly significant for EU law purposes, Irish

[154] See Chapter 2 on SFT inadequacy.

[155] n 46, *Burchardt.*

[156] n 150, *UEFA.*

[157] n 60, *ISU.*

[158] n 152, *Murphy.*

courts are part of the EU judicial system and can make references under Article 267 TFEU, thereby enabling direct CJEU scrutiny of CAS awards that apply or affect EU public policy norms.

The second, and broader, step is found in UEFA's subsequent amendment of its Statutes. Reports from early 2026 indicate that UEFA's Ordinary Congress approved a revision of Article 63(2) to state that proceedings before CAS shall take place in accordance with the CAS Code, that CAS shall primarily apply UEFA statutes and regulations and subsidiarily Swiss law, that parties may invoke mandatory provisions of foreign law including EU public policy rules, and that the seat of arbitration for proceedings before CAS shall be Lausanne or Dublin, as determined by the applicable UEFA rules and regulations.[159] This amendment generalises the dual seat logic beyond the narrow context of the Authorisation Rules. While Lausanne will remain the default seat for most CAS proceedings arising from UEFA disputes, Dublin will now also be recognised in the Statutes themselves as an alternative seat wherever the relevant UEFA regulations so provide. The effect is twofold; it entrenches in UEFA's constitutional text the possibility of an EU based CAS seat, signalling a long-term shift away from an exclusive reliance on Swiss supervision; and secondly, it opens the door for future amendments to other UEFA regulations, such as disciplinary, financial fair play or competition organisation rules, to replicate the Dublin option that already exists for the Authorisation Rules.[160]

From a functional standpoint, this experiment effectively creates, for a narrow category of disputes, a de facto CAS EU seat attached to UEFA's Authorisation Rules. From the perspective of this thesis, any potential redraft of Article 63(2) this summer is more than a technical clarification. It amounts to an institutional acknowledgement that the traditional CAS Lausanne model is no longer sufficient to guarantee effective judicial protection for disputes that engage EU public policy, and that at least some subset of UEFA related CAS arbitrations must be brought within the jurisdictional orbit of EU courts.

---

[159] Murphy P, *'CAS arbitration in Ireland expected after UEFA amendment'*, 9 March 2026, https://www.ogier.com/news-and-insights/insights/cas-arbitration-in-ireland-expected-after-uefas-landmark-statute-amendment/ (accessed 17/032026).

[160] ibid.

These UEFA developments, however, sit uneasily with the CAS Code as currently drafted. Article R28 provides in categorical terms that the seat of the CAS and of each Arbitration Panel is in Lausanne, Switzerland. The UEFA clauses allowing Dublin as a seat therefore operate in practice as contractual derogations from the CAS Code, authorised by CAS in specific cases but not yet reflected in the general procedural framework. From a doctrinal point of view, there are at least two ways of characterising the situation. One is to say that the CAS Code is being flexibly applied and the parties' arbitration agreement, as framed by UEFA's rules, now stipulates a different seat, and CAS, by administering the case under its Code, tacitly accepts that the Code's reference to Lausanne can be varied by agreement in exceptional circumstances. Another, more critical, reading is that the CAS Code has not yet caught up with regulatory reality, and that ad hoc derogations to accommodate UEFA risk undermining the transparency and predictability of CAS's institutional design. Academic commentary on the broader CAS/EU relationship supports the latter concern. Brenninkmeijer and Trinel warn that piecemeal adjustments, such as limited carve outs or narrow special regimes, risk creating a slippery slope in which CAS awards lose their binding value in EU enforcement proceedings without a coherent alternative institutional settlement.[161] The fact is that regional and domestic courts are now articulating transnational procedural requirements for CAS, including access to courts capable of preliminary references and proper fundamental-rights review, and that ad hoc accommodations by individual federations are unlikely to satisfy these systemic expectations. On this view, UEFA's Dublin clauses are a vital first step but also highlight the need for a more structured and transparent EU compatible CAS division.

This thesis proposes to build on that precedent by formalising, within the CAS Code itself, a dual seat structure. Lausanne would remain the default seat for disputes without an EU nexus and for cases involving purely technical sporting issues. Alongside it, an EU Division, initially seated in Dublin to leverage the existing UEFA framework, would be established. Jurisdiction of the EU Division would be triggered where at least one party is domiciled in an EU Member State or where the dispute raises plausible issues of EU competition law, internal-market freedoms or rights guaranteed by the Charter or the ECHR.

[161] n 63, *Brenninkmeiier and Trinel,* p 788.

To implement this, Article R28 would have to be amended to allow for multiple seats, with the applicable division determined by the CAS Code and, in some instances, by the relevant SGB regulations. A simple triggering rule could allocate proceedings involving EU based athletes or clubs, or EU law issues, to the EU Division by default, while giving parties limited scope to agree otherwise where no public policy concerns arise. The appeal courts for EU Division awards would be the courts of the seat, which would ensure that EU law questions can be referred to the CJEU.

To preserve coherence of lex sportiva, an internal CAS jurisprudence committee could be tasked with monitoring consistency between Lausanne and EU Division awards and issuing non-binding guidance where divergences emerge. Arbitrators would be certified for one or both divisions, with EU Division certification requiring demonstrated competence in EU law. In this way, CAS would remain a single institution, but its awards would be embedded in different supervisory regimes depending on the dispute's legal context. It is a somewhat inelegant solution architecturally, I am aware of that, but I think the logic holds, or at least acts as a theoretical standard to work from when building a practical EU division.

From the EU perspective, such a model directly addresses the concerns articulated in *ISU* and *Seraing*, it ensures that CAS awards applying EU law are subject to review by courts that can engage with that law and, if necessary, seek guidance from the CJEU. From CAS's perspective, it preserves the benefits of a Swiss seat for global disputes, while adding an EU anchored route where that is constitutionally required. UEFA's willingness to move in this direction suggests that major sports bodies already recognise the need to embed at least some CAS proceedings within the EU judicial space.

IV.4 Measuring Success

Finally, any legitimacy-oriented reform must include criteria for evaluation. How would we know if any of this had worked? The honest answer is that the clearest signal would be a negative one, namely the absence of new adverse decisions from Strasbourg or Luxembourg grounded in the structural critiques this thesis has mapped. A reformed CAS that stops generating *Pechstein*-style ECtHR applications, and whose awards are enforced by Belgian or German courts without constitutional objection, has

by that measure succeeded. Beyond that, I would look for the SFT to begin engaging substantively with EU law arguments rather than deflecting them on jurisdictional grounds, not because the SFT would become an EU court, but because a genuinely independent appellate body should not need to avoid the question. What I would not treat as a measure of success is institutional comfort. If the SGBs find the reformed CAS broadly acceptable from the outset, that is probably a sign that the reforms have not gone far enough. I will nonetheless try to propose some points of reference which would indicate the success of any reform proposals, the point here is not to offer a rigid scorecard, but to indicate what success could look like over time, was a proposal comparable to this one implemented.

Quantitatively, you would expect to see, after an initial period of adjustment, a reduction in the number of CAS awards refused enforcement by EU Member State courts on public policy grounds, alongside a stabilisation or even reduction in the rate of Swiss appeals in EU relevant cases as confidence in first instance CAS decision making grows. At the same time, you might anticipate an increase in preliminary references from courts supervising EU Division awards in the short to medium term, as EU law questions are finally channelled to the CJEU through proper institutional routes. That uptick should not be read as a sign of failure; it would demonstrate that the dual seat model and the Solange framework are functioning as intended.

In a manner which would be harder to measure but just as important, success would be reflected in shifts in judicial tone. Namely, fewer explicit doubts about CAS independence and procedural adequacy in ECtHR and CJEU judgments, greater reliance on CAS awards as persuasive authority, and a gradual reframing of CAS in the academic literature from an institution in crisis to one that has successfully navigated the tension between private arbitration and public law demands.

Building on this, athlete representation bodies and sport's governing organisations would increasingly treat CAS as a shared institution rather than as an extension of federation power, and empirical work on stakeholder perceptions would show higher levels of trust, especially among athletes and their representatives. Ultimately, constitutional legitimacy is not a static property but a relationship between an institution and its users. The reforms proposed in this chapter, governance changes, enhanced procedural safeguards and an EU dualseat structure, underpinned by a

Solange style conditional deference model, are designed to place CAS on a trajectory where that relationship can be repaired and sustained.

IV.5 Conclusions

The three pillars set out in this chapter are not a menu from which CAS may pick and choose. They are interdependent. Governance reform without procedural improvement would produce an impartial institution that still fails athletes at the hearing. Procedural reform without a revised supervisory architecture would leave awards unenforceable in the jurisdiction where the overwhelming majority of CAS's economically significant disputes arise. And an EU-anchored seat, transplanted without the other two, would simply relocate the existing problems to a Dublin courtroom. The coherence of the proposal is the point.

What I have also tried to show in this chapter is that the direction of travel here is not as radical as it may first appear. UEFA's recognition of Dublin as an alternative CAS seat did not emerge from a vacuum. It was a direct institutional response to exactly the pressures this thesis has been analysing. CAS has adapted before under structural pressure; that was the central lesson of Chapter 1. The question is whether it will do so again, and whether it will do so with sufficient ambition to match the scale of the challenge. The following chapter puts the proposals under stress by engaging with the strongest objections in the literature. That stress testing is necessary. If the framework cannot survive serious scrutiny, it is not worth proposing.

V. ANTICIPATED CRITIQUES OF PROPOSAL

This chapter anticipates the most serious doctrinal criticisms that could be levelled at the model proposed in Chapter 3 and offers responses. It is deliberately written with a view not to deny that the objections have force, but to show why, on these particular facts, they are either misplaced or can be accommodated without abandoning the core of the project.

V.1 Solange and constitutional pluralism are unstable and abusable

One line of criticism targets the Solange template itself. On this view, constitutional pluralism and Solange style formulas are not a sophisticated way of reconciling competing legal orders but a dangerous source of instability, easily instrumentalised by bad actors.[162] The worry is that a doctrine built around conditional acceptance of another order's authority so long as certain conditions are met invites courts to pick and choose when to comply, undermining the supremacy and unity of EU law.[163] Transposed to this thesis, the concern would be that a Solange for CAS risks importing the same instability into sports law. If EU courts start saying that CAS awards will be recognised only so long as CAS behaves, the binding force of awards may appear always contingent and potentially revocable.[164] And if Solange narratives have already been used by central European constitutional courts to assert authority against the CJEU, it may be asked whether it is wise to elevate Solange into a model for managing the CAS/EU relationship at all. There are, however, several reasons why this objection does not defeat the thesis's use of Solange.

For one thing, the direction of travel is reversed. The most worrying uses of Solange style reasoning have involved national courts resisting the authority of the CJEU and the EU legal order.[165] Here, by contrast, the proposal is for EU courts to condition their recognition of decisions emanating from a private arbitral body that sits outside the EU's judicial system. Secondly, the Solange model defended here is highly specific, it is tied to the independence and procedural adequacy of CAS and to the availability of effective judicial review for EU law issues through courts empowered to

---

[162] Canihac H, 'Is Constitutional Pluralism (Il)liberal? On the Political Theory of European Legal Integration in Times of Crisis' (2021) 22 German Law Journal 1039, p 497; Sadurski W. '*Constitutionalism and the enlargement of Europe*' Oxford University Press, 2012, Chapter 3: '*Return of the Solange Ghost: the Supremacy of EU Law and the Democracy Paradox,*' p 99

[163] Scholtes J, *'Abusing Constitutional Identity*' (2021) 22 German Law Journal 904, p 535

[164] Podhalicz M '*Caught in the grey area between European Economic Community and European Federation?* (2020) 13 Baltic Journal of Law & Politics 28, p 175.

[165] Kelemen D R, Pech L, '*The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland*,' 21 CUP 2019, p 59, p 61.

make Article 267 TFEU references; as opposed to general invocations of national court's constitutional priorities. As well as this, the original Solange jurisprudence is often understood as having pushed the ECJ towards stronger rights protection, which shows that conditional deference can strengthen international legal frameworks rather than undermine it.[166] Ultimately however, *ISU* and *Seraing* already make recognition of CAS awards within the EU implicitly conditional; the choice is therefore not between conditionality and stability, but between an explicit and disciplined framework and an implicit and unguided one.

V.2 Solange cannot be transplanted to a private arbitral body

A second criticism is more conceptual; Solange was developed to manage the relationship between public legal orders the German constitutional order and the EU. CAS, by contrast, is a private arbitral institution; the SFT's recognition of CAS as a 'true court of arbitration' does not turn it into a constitutional court.[167] On this view, transplanting Solange to CAS is a category mistake. At best, it confuses public law and private law logics; at worst, it risks over constitutionalising sport and eroding the contractual foundations of arbitration altogether.

This critique draws support from the broader debate on the autonomy of international arbitration. Writers coming from the arbitration side of the *Eco Swiss* line of cases worry that EU law's expansion of public policy and mandatory norm review undermines party autonomy and the finality that makes arbitration attractive.[168] From that perspective, treating CAS as if it were a constitutional actor subject to Solange type conditionality and to structural reforms inspired by public law runs against the arbitral model rather than improving it.[169]

---

[166] Lang A, Kriszta K, Mattius K; '*Re-Examining Solange I: Constitutionalism, Rule of Law and the Future of European Integration and related German constitutional-law commentary on the constructive role of Solange*,' p 401.

[167] See Chapter 1, *Gundel* and *Lazutina.*

[168] C-126/97 *Eco Swiss China Time Ltd v Benetton International NV* EU:C:1999:269

[169] de Zitter, A. '*The Impact of EU Public Policy on Annulment, Recognition and Enforcement of Arbitral Awards in International Commercial Arbitration,*' University of Oxford, 2019.

The answer lies in recognising that CAS sits in an intermediate position. It is formally a private arbitral body, but its functional role is much closer to that of a public regulator. CAS awards determine who can work, under what conditions and subject to which disciplinary sanctions, in an industry that is both economically significant and normatively dense.[170] The ECtHR in *Mutu and Pechstein* treated compulsory sports arbitration as engaging the full guarantees of Article 6 ECHR, and *Semenya* confirmed that Switzerland's review of CAS awards will have to satisfy Convention standards where serious rights issues are raised.[171] The CJEU in *ISU* has likewise treated CAS clauses as structural elements in systems of economic regulation that must be compatible with EU competition law and effective judicial protection.[172] Applying a Solange style framework therefore does not pretend that CAS is a state, but acknowledges that the conditions under which EU courts recognise its awards raise public-law concerns of exactly the sort Solange was designed to address.

V.3 A dual seat EU division undermines neutrality and fragments lex sportiva

A third objection targets the proposed dual seat model. Advocates of a single Swiss seat, including AG Rantos in his Opinion in *ISU*, stress that CAS's value lies in providing one neutral forum for global sport, insulated from the particularities of any single Member State's law.[173] On this view, allowing an EU division with a seat in Dublin would undermine neutrality, create incentives for forum shopping and fragment lex sportiva. If different supervisory courts start reviewing awards under different standards, legal uncertainty may follow for federations and athletes alike.[174]

That concern is not fanciful. Even in his defence of CAS, AG Rantos warned against a situation in which regulatory disputes in sport are dispersed across multiple national courts in ways that could jeopardise equal treatment and coherent adjudication which

[170] Evidenced perfectly by the decisions in Chapter 2 which show CAS awards have had to deal with EU law level public/administrative issues.

[171] n 37, *Mutu and Pechstein*; n 48, *Semenya.*

[172] n 60, *ISU.*

[173] n 57, *AG Rantos.*

[174] ibid.

is something CAS was envisioned to solve initially and is a key part of its DNA.[175] Some Swiss-based commentary has also suggested that ISU should be read narrowly, as addressing a lack of effective review for weak parties rather than as a general condemnation of non-EU seats in sports arbitration.[176] From that perspective, the answer would be to improve CAS internally while leaving the seat in Lausanne.

The stronger response is that the real risk of fragmentation lies in not adapting. Where CAS awards touch EU public policy norms, *ISU* and the subsequent commentary make clear that national courts cannot simply treat them as neutral foreign awards; they must consider whether effective judicial review has been available, including the possibility of a preliminary reference.[177] If CAS retains a purely Swiss seat for all such disputes, review will inevitably take place ex post and at the enforcement stage, under differing national approaches to public policy and competition law. A carefully designed dual seat model reduces rather than increases fragmentation, because it channels EU relevant disputes into a single EU anchored jurisdiction while leaving global disputes without an EU nexus in Lausanne.[178] UEFA's recent move towards recognising Dublin as a CAS seat for certain disputes demonstrates that this kind of jurisdictional differentiation is no longer merely theoretical.[179]

V.4 Expanding EU public policy undermines arbitration's autonomy

A fourth criticism focuses less on Solange and more on the underlying trend in EU law. Commentators sympathetic to arbitration have long been uneasy about decisions such as *Eco Swiss* and *Achmea*, which treat EU competition norms and the autonomy of EU law as part of public policy that Member States must enforce at the expense of arbitral finality.[180] On this view, every additional step towards conditioning

[175] ibid; and see Chapter 1.

[176] Landolt P '*EU law in international arbitration---the example of Switzerland*' 2025 41 Arbitration International, p 573

[177] Vedder, H. '*On Thin Ice: The Court's Judgment in Case C-124/21 P, International Skating Union v Commission*,' *European Papers, 20249* (1), 87-103.

[178] See Chapter 3.1.4.1.

[179] ibid.

[180] n 27, *Dillon.*

recognition of arbitral awards on compliance with EU law standards further erodes arbitration's autonomy. From this angle, the thesis might be accused of pushing in exactly the wrong direction. It recommends that CAS accept an EU division, that EU courts adopt an explicit Solange framework, and that public policy review focus not only on narrow public policy in the sense used by Swiss courts but also on broader EU constitutional values. Critics would say this accelerates the trend by which arbitration ceases to be a genuinely autonomous method of dispute resolution and becomes a merely pre-judicial stage in a process ultimately controlled by public courts.

The response is, unfortunately in the eyes of these critics, the autonomy of arbitration in Europe is already conditional. *Eco Swiss* held that if a Member State treats offence to domestic public policy as a ground for annulling an award, it must do the same for EU public policy, *Achmea* and its aftermath have further restricted certain forms of intra-EU arbitration, and *ISU* treats Swiss seated CAS arbitration as reinforcing a competition law violation where it deprives weak parties of timely access to EU compatible review.[181] Secondly, the thesis is conservative rather than radical. It does not argue that EU public policy should be expanded; it takes the case law as a constraint and asks how CAS can continue to operate effectively within it. In that sense, the proposed reforms are best understood as a strategy for preserving as much sports arbitration autonomy as is realistically available in the legal environment.

V.5 The reforms are politically unrealistic or will be captured in practice

A fifth, more pragmatic objection concerns feasibility. It may be said that SGBs and ICAS will never agree to the scale of reform envisaged. A rebalancing ICAS composition, introducing a randomised panel appointment default, accepting an EU division with a different seat and supervisory court, and publishing more awards in sensitive areas. Even if such reforms were formally adopted, critics may argue that they would be watered down in practice, with the same small circle of sports insiders retaining effective control.

---

[181] *n 166, Eco Swiss;* n 23, *Achmea;* n 60, *ISU.*

The experience of other arbitral regimes gives this objection some bite. Reform efforts in ISDS have met entrenched resistance, and there is a long history of cosmetic changes being made while core power structures remain intact. CAS itself was for many years able to rely on Swiss recognition and on the sports world's need for a single forum to fend off deeper governance change.[182]

At the same time, the Gundel–Paris Agreement–Lazutina sequence shows that significant change is possible when external pressure is strong enough. CAS was once structurally dependent on the IOC; it reformed after the SFT made clear that continued recognition depended on greater independence.[183] Once those reforms were in place, the Swiss court endorsed CAS as a true arbitral tribunal. More recently, UEFA's Authorisation Rules and statutory changes recognising Dublin alongside Lausanne as a possible CAS seat show that major federations are already willing to rethink jurisdictional architecture where EU law requires it.[184] The realistic scenario is therefore not wholesale overnight reform, but incremental adaptation under sustained judicial and political pressure.

V.6 Other, smaller foreseen objections

Several more tangential objections are worth attention briefly. One is that the thesis may overstate the reach of *Achmea* by treating it as a harbinger of a general incompatibility between EU law and arbitration. Some commentary, and parts of the reasoning around *ISU*, insist on keeping *Achmea* confined to intra-EU investment arbitration and distinguishing commercial and sports arbitration on the basis that the latter occur between private parties rather than between Member States. While this reasoning is something that is yet to be resolved, in the first chapter when explaining this, the thesis does explain why it has taken the position that this reasoning is weak. The logic provided by proponents of this argument do not explain why the model cannot be properly transposed onto New York Convention signatories the same way it is with member states party to a bilateral investment treaty. Nonetheless, the thesis can

[182] See Chapter 1.

[183] ibid.

[184] See Chapter 3.1.4.1.

accept that distinction without difficulty, because its argument does not depend on *Achmea* applying directly to CAS. *Achmea* is used only as evidence of a broader EU concern with keeping certain EU law disputes within the judicial system.

Another objection points out that *ISU's* core problem may have lain in the lack of effective review for weak parties and in the severity and discretion of the federation's own rules, rather than in the Swiss seat as such.[185] On that reading, improving internal CAS procedures and federation rules would suffice. The thesis already accepts that those reforms are necessary; it differs only in treating an EU supervisory route as an additional requirement where EU law is engaged, insulating CAS from future extensions of the *ISU* reasoning even for critics who do not think it has yet reached that point.

Finally, some may argue that too much law risks paralysing sport; thicker rights review, public hearings and proportionality analysis may slow proceedings and encourage strategic litigation. That tension is real, but where the stakes involve exclusion from economic activity, discrimination or serious competition law concerns, a modest increase in procedural friction is justified. The thesis confines its most demanding proposals to high stakes, EU relevant disputes, preserving a lighter touch for purely internal sporting questions. However, the primary rebuttal to this claim is simply that it is not the wishes of the sporting establishments which want this, it is something being forced upon them by the EU at threats of being rendered useless. The risks attached to adaption are there yes, but adaption is the only way to move forward.

V.7 Conclusions

None of the objections addressed in this chapter are trivial, and I have not tried to treat them as such. The Solange analogy is imperfect. The dual seat model introduces complexity. The political obstacles to reform at ICAS level are real. These are concessions worth making, because the alternative, pretending the proposals are costless would undermine the credibility of the argument as a whole.

But the objections, taken at their strongest, do not defeat the framework. They refine it. What emerges from this chapter is not a weakened version of the proposals

[185] n 174, *Landholt.*

set out in Chapter 3, but a clearer picture of the conditions under which they can work and the sequencing through which they might realistically be implemented. The critics of reform, whether they invoke fragmentation, institutional overreach or practical infeasibility, share a common assumption that the status quo is a stable baseline from which departure carries risk. It is not. CAS awards already lack *res judicata* effect across significant parts of the EU. The SFT has already been told its review is inadequate. The consent upon which the entire edifice rests has already been characterised, by the very courts whose recognition CAS depends on, as no consent at all. The risk, in other words, does not lie in reform. It lies in the absence of it.

VI. CONCLUDING REMARKS

The Court of Arbitration for Sport stands at a crossroads. For much of its history, it was able to justify its centrality within international sport by reference to expertise, speed, uniformity and the practical necessity of a specialised transnational forum. That justification has not disappeared. What has changed is that it is no longer sufficient on its own. The legal environment in which CAS operates has altered fundamentally, and with it the conditions upon which its authority can be regarded as legitimate. The recent interventions of the ECtHR and the CJEU do not merely expose isolated procedural defects. What these decisions collectively expose is a deeper crisis in the normative foundations of sports arbitration as presently organised. CAS is therefore no longer being asked simply to resolve disputes efficiently. It is being asked to justify the basis on which it exercises quasi-judicial power over athletes, clubs and federations whose livelihoods, rights and economic interests are increasingly protected by legal orders external to sport. When I began this thesis, I was not entirely sure the problem was solvable. The case law felt, at first reading, like a series of blows aimed at an institution that had simply been left behind by the legal environment it operated in and that the only honest conclusion was that CAS, as currently constituted, had no durable future within the European legal order. I do not think that anymore and I have become more precise about why.

VI.1 The Research Questions

This thesis set out to answer four interconnected research questions. The first asked what the historical development of CAS and its previous responses to external criticism reveal about the institution's capacity for reform. The answer emerging is that CAS has always been, at its most resilient, a reactively adaptive institution. Its history shows that external legal pressure has not destroyed it, but has instead acted as the catalyst for its most significant transformations. The aftermath of *Gundel* demonstrated that when the legitimacy of CAS is seriously called into question, structural reform is both possible and necessary if the institution is to preserve its authority. That history matters because it undermines any claim that the present crisis must be met through defensiveness or simple fidelity to the status quo. At the same time, the historical record also reveals the limits of past reform. The Paris Agreement responded successfully to concerns about IOC influence, but it did so within a legal and political environment very different from the present one. The current crisis is broader, deeper and more constitutionally charged. The lesson of CAS history is therefore not that minor adaptation will always suffice, but that the institution's survival has depended upon a willingness to reform in proportion to the seriousness of the challenge before it.

The second research question asked what specific structural and normative deficiencies in CAS the European courts have identified, and how those critiques interact with one another. The second chapter of this thesis answered that question by demonstrating that the present crisis cannot be reduced to a single defect. Rather, the jurisprudence reveals four interlocking deficiencies; the exhaustion of consent-based legitimacy, the inadequacy of review by the SFT, a deficit in procedural safeguards, and a persistent perception of structural bias within CAS governance. The force of these criticisms lies not merely in their individual weight, but in the way they reinforce one another. The more implausible it becomes to describe CAS arbitration as genuinely consensual, the less acceptable it is to tolerate weak procedural safeguards or a governance structure marked by structural imbalance. Equally, the more limited and formalistic the review exercised by the SFT appears, the less convincing it becomes to treat that review as an adequate answer to concerns about rights protection, EU law compliance or institutional independence. What the case law ultimately demonstrates is that the present crisis is systemic rather than episodic. What is at stake is not one

problematic rule or one unfortunate doctrinal development, but the cumulative erosion of the justificatory framework upon which CAS has long relied. On top of this, what the jurisprudence review showed me, more sharply than I had anticipated, was how the ECtHR and the CJEU are pulling in the same direction without coordinating their routes. Strasbourg is doing it through the substance of rights protection; Luxembourg is doing it through the architecture of judicial review. The SFT is being caught in the middle, told simultaneously that its review is too narrow on the merits and structurally incapable of substituting for a court that can make a preliminary reference. That double bind is not resolvable by the SFT alone. It required a response from CAS itself, which I hope to have achieved with the proposals which responded to the third research question in this thesis.

This was namely, what reform framework is capable of addressing those deficiencies in a manner compatible with the European legal order while preserving the integrity and functional autonomy of international sports arbitration? In response, the thesis advanced a reform model that does not seek the dismantlement of CAS, but its reconstruction upon firmer constitutional foundations. The central claim of this thesis has been that the age of legitimacy through notional consent has passed. In its place, CAS must move toward legitimacy through institutional design. That requires, first, governance reform capable of reducing the structural dominance, or perceived dominance, of sporting bodies within ICAS and of introducing a more credible representational balance. It requires, secondly, stronger procedural safeguards, including more robust hearing rights, greater transparency, deeper engagement with human rights and EU-law arguments, and a framework of access to justice that is meaningful in practice rather than merely formal in theory. Finally, it requires an external review mechanism capable of satisfying the demands of the European legal order where questions of EU public policy arise. For that reason, this thesis has proposed a dual-seat model as the most convincing means of preserving CAS as a specialised arbitral body while ensuring that, where necessary, its awards can be supervised within a judicial system able properly to engage with EU law. In that sense, the thesis has answered the third question by contending that a post-consensual and constitutionally structured model of sports arbitration is not only conceptually coherent, but institutionally achievable.

The fourth and final research question asked what the principal objections to such a framework are, and whether they can be met. We tested the proposed model against its strongest criticisms, including concerns about fragmentation, the erosion of arbitral finality, the risk of excessive judicialisation, the instability of borrowing from constitutional theory by analogy, and the institutional reluctance of sporting bodies to accept reforms that dilute their control. The thesis concluded that these objections are serious, but not fatal. In many respects, they overstate the risks of reform while understating the risks of inaction. Fragmentation is not merely a hypothetical future danger. It is already emerging in the uneven relationship between CAS awards and European legal orders. The erosion of finality is not something reform would create from nothing. It is already occurring where domestic and supranational courts decline to accept the sufficiency of existing review mechanisms. Likewise, the suggestion that constitutionalisation would destroy the specificity of sport rests on a false opposition. This thesis has shown that preserving the functional autonomy of sport does not require insulating its adjudicative mechanisms from standards of fairness, independence and judicial review. On the contrary, sporting autonomy is only likely to endure if it is exercised within a framework that external legal orders can recognise as legitimate. The objections considered in Chapter 4 therefore refine the proposed framework, but they do not displace its central claim.

What, then, is the ultimate conclusion of this thesis? It is that CAS can no longer rely upon the justificatory model that sustained it for much of its modern history. The significance of the present moment should not be understated. The crisis produced by *Gundel* was serious, but it concerned the relationship between CAS and the IOC. The crisis produced by the more recent European case law concerns the relationship between CAS and the wider constitutional environment in which global sport now operates. That is a more profound challenge, because it cannot be answered through symbolic adjustment or narrow governance correction alone. It requires CAS to accept that specialist expertise and transnational efficiency, however valuable, do not exempt it from the minimum structural demands that accompany adjudicative authority in Europe.

That should not, however, be understood as an argument against CAS itself. This thesis has not argued for the dismantlement of the institution, nor for its absorption

into state court systems, nor for the abandonment of transnational sports arbitration as an organising ideal. Quite the opposite. It has proceeded from the premise that there remains a strong and defensible case for a specialist global forum for sports disputes. The problem is not the existence of CAS as such, but the inadequacy of the justificatory model upon which it presently rests. To reform CAS is therefore not to renounce its purpose, but to preserve it. Constitutional legitimacy is not the enemy of sporting autonomy. Properly understood, it is the condition upon which sporting autonomy can continue to carry authority beyond the closed normative universe of sport itself.

VI.2 Further Research Potential

This thesis also leaves open several questions that warrant further academic attention. One concerns the relationship between *Seraing* and the doctrine of *res judicata* across the Member States of the European Union. A comparative study of how national courts in different Member States actually treat CAS awards in enforcement proceedings would provide an important empirical complement to the doctrinal analysis developed here. Another concerns access to justice within CAS proceedings themselves. The issue has been addressed in this thesis as one aspect of the wider legitimacy crisis, but it merits sustained attention in its own right, particularly through empirical work on costs, legal aid, representation asymmetries and the practical ability of athletes and smaller clubs to vindicate their rights within the present system. A third concerns the longer-term viability of the dual-seat model proposed in Chapter 3. As alternative EU-based supervisory arrangements begin to be tested in practice, future work will be needed to assess whether such a model can genuinely reconcile arbitral specialisation with constitutional accountability, or whether it generates new tensions of its own.

The path forward is therefore neither surrender nor stasis, I would argue it is much more hopeful, structured adaptation to align with the standards of an evolving legal ecosystem. CAS has survived previous legitimacy crises because it proved capable of change when change became unavoidable. The present crisis demands the same instinct, but on a larger scale and with greater normative honesty. If CAS wishes to remain the apex forum of international sports dispute resolution, it must evolve from

an institution defended primarily by tradition, expertise and formal consent into one defended by credible structural safeguards, meaningful external accountability and a form of autonomy compatible with the European legal order. I think the path forward is clear; the question is whether ICAS has the institutional courage to walk it.

REFERENCES

Statutes

Court of Arbitration for Sport, *Code of Sports-related Arbitration*

European Convention of Human Rights

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

UEFA, *UEFA Statutes*

Jurisprudence

Eco Swiss China Time Ltd v Benetton International NV EU:C:1999:269, C-126/97

Elmar Gundel v FEI

- CAS 92/A/63, 01/02/1992
- SFT 119 II 271, 15/03/1993

European Super League

- *ESL v FIFA and UEFA*, CJEU, C-333/21, 21/12/1023
- Opinion of AG Rantos, *ESL*, 15/12/2023

Guillermo Cañas v ATP Tour, ATF 133 III, 234

International Skating Union

- Decision C (2017) 8230 final on International Skating Union's Eligibility Rules (Case AT/40208), adopted 8 December 2017
- EU General Court (T-93/18) , 20/10/2021
- AG Rantos Opinion, C-124/21 P *ISU v Commission*, 15/12/2021
- CJEU, *ISU v European Commission*, C-124/21, 21/12/2023.

Lazutina and Danilova v. IOC, FIS & CAS, AFT 129 III 445, 27/05/2003.

Mutu and Pechstien

- *Chelsea v Mutu*, CAS 2006/A/1192.
- *Chelsea v Mutu*, 4A_458/2009.
- *ISU v Pechstien*, CAS 2009/A/1912.
- SFT 4A_612/2009, 4A_144/2010.
- ECtHR, Application Nos. 40575/10 and 67474/10, 02/10/2018.
- German Constitutional Court (Bundesverfassungsgericht), *Pechstein v. International Skating Union*, BVerfG, 1 BvR 2103/16, Judgment of 03/06/2022.

Royal Antwerp, Grand Chamber Judgment, C-680/21

Semenya

- CAS 2018/O/5794 & 5798
- SFT 4A_248/2019

Slovak Republic v Achmea B.V., C-284/16, 06/03/2018.

Seraing

- CAS 2016/A/4490.
- SFT 4A_260.2017
- Advocate General Ćapeta. (2025). Opinion in *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA*, Case C-600/23, 16 January 2025
- CJEU, *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA*, Case C-600/23, Grand Chamber Judgment of 1 August 2025

Solange

- *Solange I*:. BVerfG, 2 BvL 52/71, Solange I, BVerfGE 37, 271 (29 May 1974); Case 11/70 Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel EU:C:1970:114, [1970] ECR 1125.
- *Solange II*: BVerfG, 2 BvR 197/83, Re Wünsche Handelsgesellschaft, BVerfGE 73, 339 (22 October 1986).

Vincent Del Bosque v Besiktas JK, CAS 2006/O/1055, 09/02/2007

Authored Works

Bermann G A, '*Navigating EU Law and the Law of International Arbitration,*' (2012, *Arbitration International*)

Brenninkmeijer, Mees & Paul E. Trinel. (2025). The relationship between EU law and sports arbitration in ISU v Commission: the good, the bad, and the ugly, Arbitration International, 2025

Burchardt, D. Transnational procedural requirements: What do regional and domestic courts expect from the Court of Arbitration for Sport?. *Int Sports Law J* (2025)

Callewaert, J. (2025). "Different but compatible approaches to international sports arbitration: comparing Semenya (ECtHR) with Royal Football Club Seraing (CJEU)," Sports Law Commentary, 20 August 2025. https://johan-callewaert.eu/different-but-compatible-approaches-to-international-sports-arbitration-comparing-semenya-ecthr-with-royal-football-club-seraing-cjeu/ (Accessed 17/02/2026).

Canihac H, 'Is Constitutional Pluralism (Il)liberal? On the Political Theory of European Legal Integration in Times of Crisis' (2021) 22 German Law Journal 1039

Cordero-Moss G, *'Chapter 12: Court Control on Arbitral Awards: Public Policy, Uniform Application of EU Law and Arbitrability'*, in Calissendorff A and Schöldström P (eds), *Stockholm Arbitration Yearbook 2020, Stockholm Arbitration Yearbook Series, Volume 2* (Kluwer Law International 2020)

de Búrca G, '*The Principle of Subsidiarity and the Court of Justice as an Institutional Actor,'* (1998) 36 Journal of Common Market Studies 217.

Dietz T, Dotzauer M, & Cohen E S, '*The legitimacy crisis of investor-state arbitration and the new EU investment court system*,' Review of International Political Economy, 26(4), (2019) 749-72

Dillon T, '*The Court of Arbitration for Sport and the EU – a crisis in the making?*,' https://www.4-5.co.uk/assets/future-of-the-cas.pdf. (Accessed 23/02/2026).

Duval A, '*How the CJEU Should Supervise the Court of Arbitration for Sport: A Call for a Transnational Solange in the Seraing Case'* Verfassungsblog (18 February

2025) 〈https://verfassungsblog.de/the-court-of-arbitration-for-sport/〉 (Accessed 04/03/2026).

Duval A, "*Lost in translation? The European Convention on Human Rights at the Court of Arbitration for Sport*" (2022) Int'l Sports LJ

Duval A, '*Not in My Name! Claudia Pechstein and the Post-Consensual Foundations of the Court of Arbitration for Sport*' (2017) Max Planck Institute Research Paper.

Duval A, '*The International Skating Union Ruling of the CJEU and the future of CAS arbitration in transnational sports governance*,' International sports law journal 23, 467–474 (2023)

Edgeworth, M, '*EU law and sports arbitration: the CJEU's Seraing ruling,*' Ogier Legal Insights, published 8 September 2025. https://www.ogier.com/news-and-insights/insights/eu-law-and-sports-arbitration-lessons-from-the-cjeu-s-seraing-ruling/. (Accessed 27/02/2026).

Franck T M, '*Fairness in International Law and Institutions*,' (OUP 1998)

Ford H, "*My Life and Work*' 71, Wayne State University Press, 1923

Heerdt, D., Jain, S. & Duval, A. Athletes as multifarious rightsholders: a new frontier for transnational sports law research and practice. *Int Sports Law J* **25**, 225–233 (2025)

Ibáñez Colomo, Pablo, Competition Law and Sports Governance: Disentangling a Complex Relationship (June 7, 2022)

Ishikawa T, '*Third Party participation in Investment Arbitration*,' (International and Cooperative LQ, 59 (2010)), 411–12.

Kelemen D R, Pech L, '*The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland*,' 21 CUP 2019,

Knoepfler F & Schweizer P, '*International Arbitration,*' Arbitrage International, Landolt P '*EU law in international arbitration---the example of Switzerland*' 2025 41 Arbitration International

Lang A, Kriszta K, Mattius K; 'Re-Examining Solange I: Constitutionalism, Rule of Law and the Future of European Integration and related German constitutional-law commentary on the constructive role of Solange,'
Lindholm J, '*A legit supreme court of world sports? The CAS(e) for reform'* (2021) Int'l Sports LJ

Mavromati D, SFT Judgment 4A_260/2017 in the TPO case between FC Seraing v. FIFA & the Brussels Court of Appeal Decision: A parallel Universe? 〈https://www.sportlegis.com/2018/09/10/the-swiss-federal-judgment-in-the-third-party-ownership-case-fc-seraing-v-fifa-and-the-decision-of-the-brussels-court-of-appeal-a-parallel-universe/〉

Möllers C, '*German Federal Constitutional Court: Constitutional Review of European Acts Only Under Exceptional Circumstances,*' (2012) 8 European Constitutional Law Review 161

Murphy P, *'Dublin becomes alternative seat for CAS'*, 11 July 2024 https://www.ogier.com/news-and-insights/insights/dublin-becomes-alternative-seat-for-the-court-of-arbitration-for-sport-cas/ (Accessed 15/03/2026).
Podhalicz M '*Caught in the grey area between European Economic Community and European Federation?* (2020) 13 Baltic Journal of Law & Politics 28

Pound R W, '*Sports Arbitration How it Works and Why it Works*,' 2015 12 McGill Journal of Dispute Resolution

Reeb, M, '*The Court of Arbitration for Sport: History and Operation,*' in '*Digest of CAS Awards II 1998-2000*,' (2002, Kluwer Law International)
Rigozzi A, '*Challenging Awards of the Court of Arbitration for Sport'* (2010) J Int'l

Roberts A, '*Incremental, Systemic and Paradigmatic Reform of Investor-State Arbitration*,' (AJIL, 2018), 112(3), 410-32,

Rigozzi A, Robert-Tissot F, '"Consent" in Sports Arbitration: Its Multiple Aspects Lessons from the Canas decision, in particular with regard to provisional measures,'
Sadurski W. '*Constitutionalism and the enlargement of Europe'* Oxford University Press, 2012,

Scholtes J, *'Abusing Constitutional Identity'* (2021) 22 German Law Journal 904
Steingruber A M, '*Consent in International Arbitration*,' OUP 2012

Van der Harst, M. '*The Enforcement of CAS Arbitral Awards by National Courts and the Effective Protection of EU* Law' In: Paulussen, C., Takacs, T., Lazić, V., Van Rompuy, B. (eds) '*Fundamental Rights in International and European Law*.' T.M.C. Asser Press, The Hague.

Vedder, H. (2024). On Thin Ice: The Court's Judgment in Case C-124/21 P, International Skating Union v Commission. *European Papers*, *9*(1), 87-103.
von Bogdandy, A; and Schill S, '*Overcoming absolute primacy: Respect for national identity under the Lisbon* Treaty' (2011) 48 Common Market Law Review 1417.

Weatherill, S. The impact of the rulings of 21 December 2023 on the structure of EU sports law. Int Sports Law J 23, 409 – 415 (2023),

Unauthored Works

Agreement Related to the Constitution of the International Council of Arbitration for Sport, 22/06/1994, https://arbitrationlaw.com/sites/default/files/free_pdfs/ICAS%20Agreement.pdf,. (Accessed 23/02/2026).

Amendments to the Code of Sports-related Arbitration, https://www.tas-cas.org/generated/assets/lists/08acecdc-3a71-4ffe-80fa-77c5dd0260cb/Amendments_Code_2019__en_.pdf. (Accessed 03/03/2026).

CAS Legal Aid Guidelines, https://www.tas-cas.org/en/arbitration/legal-aid accessed 03/03/2026.

CAS History, https://www.tas-cas.org/en/general-information/history. (Accessed 11/02/2026).

International Council of Arbitration for Sport (ICAS). (2025). "Statement on Review of CAS Awards by European Courts for Matters of EU Public Policy, " 1 August 2025. https://www.sportslawandtaxation.com/news/2700-icas-statement-on-review-of-cas-awards-by-european-courts-for-matters-of-eu-public-policy (Accessed 19/02/2026).

Multilateral Investment Court Project, https://policy.trade.ec.europa.eu/enforcement-and-protection/multilateral-investment-court-project_en accessed 20/02/2026.
UEFA, '*Authorisation Rules Governing International Club Competitions,*' Edition 2024
UNCTAD, '*World Investment Report 2015: Reforming International Investment Governance, United Nations Conference on Trade and Development*

Slaughter and May LLP, '*Shifting ground: competition law and the future of sports governance,*' Slaughter and May Insights, 17 July 2025. https://www.slaughterandmay.com/insights/new-insights/shifting-ground-competition-law-and-the-future-of-sports-governance/ (Accessed 23/02/2026).

SPORTS JOURNAL

OREI.INSTITUTE

OREI
SPORTS LAW INSTITUTE