# No forum beyond the EU Charter: RFC Seraing and the constitutional reordering of sports arbitration

# Ningún foro más allá de la carta de la Unión Europea: RFC Seraing y la reconfiguración constitucional del arbitraje deportivo

Francesco Seatzu
*Full Professor of International Law*
*Univ Cagliari*

Sara Tonolo
*Full Professor of International Law*
*Univ. Padova -*

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**Abstract:** This paper critically explores the implications of the CJEU judgment in RFC Seraing v. FIFA (C-600/23), an original judicial precedent reconfiguring the relationship between arbitral autonomy and the primacy of EU constitutional law. By imposing on national courts the investigation into arbitral awards for consistency with fundamental Charter rights, the judgment flouts the long assumptions about arbitral finality particularly when translated into the arena of sports governance. The paper explores both the normative insights and the structural challenges evoked by the line of reasoning of the CJEU on the assumption it relies on the contested ideal type of the "genuine consent" and discusses the little it says on the systemic role assigned to arbitration. While the ruling stabilises judicial responsibility and the ambit of European union law, it paves the way to legal fragmentation, forum shopping, and regulatory indeterminacy. The paper situates the ruling into broader discourses on constitutional pluralism and transnational adjudication on the assumption that a more harmonious regime is necessary to balance the protection of fundamental rights with the integrity of the arbitration.*

**Keywords:** Sports arbitration; arbitral autonomy; fundamental rights; Charter of Fundamental Rights of the EU; constitutional pluralism; sports governance; transnational adjudication.

**Resumen:** Este artículo examina de manera crítica las implicaciones de la sentencia del TJUE en RFC Seraing c. FIFA (C-600/23), un precedente judicial innovador que reconfigura la relación entre la autonomía del arbitraje y la primacía del derecho constitucional de la Unión Europea. Al imponer a los tribunales nacionales la obligación de examinar los laudos arbitrales a la luz de su compatibilidad con los derechos fundamentales consagrados en la Carta, la sentencia cuestiona supuestos largamente asentados sobre la definitividad del arbitraje, especialmente cuando estos se proyectan en el ámbito de la gobernanza deportiva. El trabajo analiza tanto los aportes normativos como los desafíos estructurales que se desprenden del razonamiento del TJUE, partiendo de la premisa —controvertida— del tipo ideal del "consentimiento genuino", y pone de relieve el escaso desarrollo que la sentencia dedica al

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papel sistémico atribuido al arbitraje. Si bien la decisión refuerza la responsabilidad judicial y delimita con mayor claridad el alcance del derecho de la Unión Europea, también abre la puerta a fenómenos de fragmentación jurídica, forum shopping e indeterminación regulatoria. El artículo sitúa la sentencia en el marco de debates más amplios sobre el pluralismo constitucional y la adjudicación transnacional, partiendo de la idea de que resulta necesario avanzar hacia un régimen más armónico que permita equilibrar la protección de los derechos fundamentales con la integridad del sistema arbitral.

**Palabras clave:** Arbitraje deportivo; autonomía arbitral; derechos fundamentales; Carta de Derechos Fundamentales de la UE; pluralismo constitucional; gobernanza deportiva; adjudicación transnacional.

**Sumario:** II. Introduction. II. The Legal Anatomy of the RFC Seraing Judgment. 1. The Case Background: Arbitration and Unilateral Imposition. 2. The Principle of Effective Judicial Protection. 3. Balancing Party Autonomy and Constitutional Supremacy. III. Systemic and Practical Consequences: Reforming or Undermining Sports Arbitration? 1. Erosion of Arbitral Finality and the Role of National Courts. 2. Positive Contributions: Cosntitutional Reach and the Limits of Private Autonomy. 3. Negative Externalities: Legal Fragmentation, Strategic Litigation, and the Erosion of Predictability. IV. Final conclusions: Recalibrating Arbitral Autonomy in a Multilevel Constitutional Order.

## I. Introduction

**1.** The formally institutionalized tension between the independence of arbitral tribunals and the primacy of the European Union law reappears with specific vigor in the recent preliminary ruling by the Court of Justice of the European Union (CJEU) in *RFC Seraing* v. *International Federation of Association Football* (*FIFA*) (C-600/23)[1]. Instead of representing a standard reassertion of settled dicta, the ruling casts into sharp relief an original conflict pitting the logic of private adjudication against the necessities of supranational constitutionalism. By doing this, it reopens an important line of question: to what degree can arbitral procedures—particularly in structurally isolated sectors such as international sports governance—function autonomously from the regime of judicial assurance imposed by the European union law?

**2.** Central to the challenge before the judiciary is the question whether the arbitral institutions and panels, the Court of Arbitration for Sport (CAS) being an example, can maintain their procedural autonomy in the event EU fundamental freedoms and rights are involved. Hitherto, sports arbitration had been accorded an extensive degree of deference due to the conditions of functional necessity, transnational uniformity, and institutional specialisation. However, the said approach had also evoked the concern over asymmetries of power, limited scope for appeal, and the danger of dilution of individual legal protections.[2] The *RFC Seraing* judgment appears to defy the usual normative consistency of the said exceptionalism by reaffirming that the enforcement and application of EU law cannot be excluded by contractual choice or institutional convenience.

**3.** From a doctrinal standpoint, the judgment may be interpreted as part of a larger line in the CJEU's jurisprudence, one wherein the Court claims an extensive interpretation of its controlling function toward non-state adjudication. Just as arbitration is frequently framed as a voluntary and depoliticized alternative to litigation, the ruling casts significant doubts upon whether such framings remain viable when arbitral awards have binding legal effects within the European legal order and engage norms of constitutional status. The tension between arbitral independence and legal accountability long recognized yet customarily muted now requires an explicit accounting both doctrinally and institutionally.

**4.** This paper endeavors to critically examine the legal and practical impact of the *RFC Seraing* decision. The first section traces the legal foundations of the Court's reasoning, essentially concentra-

[1] *RFC Seraing* v. *International Federation of Association Football* (*FIFA*) (C-600/23), ECLI:EU:C:2025:617.

[2] A. Duval, Lex Sportiva: *A Playground for Transnational Law*, in *European Law Journal* , 2013, 19, p. 822 ss.; Id, *Seamstress of Transnational Law – How the Court of Arbitration for Sport Weaves the Lex Sportiva*, in N. Krisch (ed.), *Entangled Legalities Beyond the State*, Cambridge, Cambridge University Press, 2022, p. 260 ss.; A. Rigozzi, *Challenging Awards of the Court of Arbitration for Sport*, in *Journal of International Dispute Settlement* 1, 2010, pp. 217-265.

ting on the coherence—or lack thereof—between arbitral immunity and the duties and responsibilities imposed by European union law. It examines the manner the Court frames arbitration within the EU's constitutional system, and the extent to which arbitral proceedings remain subject to judicial examination when core rights and freedoms are at stake.

**5.** The second part takes considerations of the systemic and practical impact of the judgment into account, especially the dynamic position shift of CAS within the international sports arbitration system. It challenges the impact on the functionality, legitimacy, and architecture of norms of transnational sport conflict settlement due to intensified judicial examination. In addition, it touches on the broader considerations towards the arbitration regime within the EU, especially potential inconsistencies between legal integration and the independence of special adjudicatory bodies. By locating the *RFC Seraing* in a broader debate on the legal power, institutional responsibility, and limits of private adjudication, the current paper aims to participate in an ongoing re-assessment of the role of arbitration in a multilevel constitutional order. Instead of viewing the case as a singular event, it regards it as an important location through which the normative limits of adjudicative legitimacy are being dynamically re-defined.

## II. The Legal Anatomy of the *RFC Seraing* Judgment

### 1. The Case Background: Arbitration and Unilateral Imposition

**6.** The beginnings of the *RFC Seraing* v. *FIFA* case date back to disciplinary action brought by the Fédération Internationale de Football Association (FIFA) against the Belgian football club RFC Seraing. The contention involved the club making use of third-party ownership (TPO) agreements—contractual arrangements by virtue of which an independent investor purchases a percentage of the economic rights of a football player, customarily in expectation of future transfer fees. While formerly rife in the football market, these agreements were officially outlawed by FIFA in 2015 on the basis that they threatened the integrity and independence of clubs and skewed the operation of the transfer market. After the enforcement of this regulatory ban, FIFA punished RFC Seraing for its persistent usage of such arrangements. As part of an effort to challenge the sanction, the club had to take its claim before the Court of Arbitration for Sport (CAS), pursuant to the mandatory arbitration clause built into FIFA's rulebook. This clause, alongside others that international sports federations alike implement, is non-negotiable: it constitutes a vital term of association to organized football. Consequently, clubs like RFC Seraing lose the right to access conventional national courts even when the present dispute evokes problems basically legal.

**7.** This situation prompted the Belgian court hearing the case to send a preliminary question to the Court of Justice of the European Union (CJEU) due to doubts about the compatibility of the abovementioned obligatory arbitration mechanism with Article 47 of the EU Charter of Fundamental Rights of the European Union (CFR) on the right to an effective remedy before an independent and impartial tribunal established by law. The referring court was referring specifically to the absence of voluntariness on the part of the arbitration agreement and the practical impossibility of the club having access to the public courts to protect its freedoms and rights.

**8.** The CAS, although technically a private arbitral body seated in Lausanne and hence beyond the territorial jurisdiction of the European Union,[3] occupies a key position within the global regulation of sport, especially through the exercise of an exclusive right to try appeals against decisions reached by international bodies such as FIFA[4]. Traditionally, CAS had functioned significantly on a plane of ins-

[3] CAS 98/2000, *AEK Athens and SK Slavia Prague v. Union of European Football Associations (UEFA)*, § 10: in this case, the applicability of the EU competition rules was recognized, as they were deemed provisions of mandatory application pursuant to Article 19 of the Swiss Private International Law Act.

[4] Art. 49 FIFA Statutes: 1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents.

titutional independence and had been shielded from vigorous judicial challenge by national courts—a shielding that had its basis both in the extraterritorial siting of the CAS and the necessity to preserve the efficacy and integrity of the international sports adjudicatory process.

**9.** Nevertheless, the CJEU judgment in *RFC Seraing* brings an important change to this line of reasoning. The Court explicitly stated that the private or foreign nature of an arbitral body does not exempt it from the requirement to respect the fundamental rights safeguarded by Union law when its deliberations confer legal effects within the EU. Specifically, the Court underlined that arbitration processes imposed unilaterally —without the real consent of the involved parties—may not be employed to evade the essential safeguards enshrined by the Charter, such as the right to judicial protection.

**10.** By orienting itself towards the material effects of the arbitral procedure instead of its formal features, the Court took on a functional approach to jurisdiction. It found that although CAS acts extra-EU, its rulings have a direct impact on legal subjects within the EU and deal with issues falling within the scope of EU law, e.g., the economic freedoms of clubs and the individual freedoms and rights of persons.[5] By doing this, the Court challenged whether institutional autonomy, when reinforced by the force of international regulatory institutions and imposed through standard-form arbitration clauses, can be made compatible with the commitment of the European Union towards fundamental freedoms and rights.

**11.** The scenario of RFC Seraing accordingly reveals a broader tension between supranational constitutionalism and regulatory private ordering. When access to justice is narrowly circumscribed by the design of institutions, and when the balance among powers among disputing parties is structurally asymmetric, the presupposition that arbitration is an issue of voluntary settlement of disputes comes to be legally and conceptually frail. The case raises intriguing queries as well as challenges relative to the validity of closed adjudicatory systems within regimes of transnational governance, particularly when the systems take their course virtually with the consequence of exclusion of EU-based actors from the safeguards of the legal order of the Union.

## 2. The Principle of Effective Judicial Protection

**12.** The ideal of effective judicial protection plays a cornerstone role in the European Union's constitutional framework serving both as a procedural assurance and a material requirement for the application of Union law. Enshrined in Article 47 of the Charter of Fundamental Rights of the European Union (CFR), and strongly ingrained among the general principles of EU policy and law, and in art. 6 ECHR[6] the standard plays an important role in drawing the allowable limits of alternative forms of dispute resolution mechanisms—especially where the mechanisms come into play with asymmetries of power, regulatory unilateral action, and the externalization of adjudicative power.

**13.** The *Seraing RFC* case provides a chance to scrutinise the implications of effective judicial protection in a situation where arbitration is neither classical consensual nor integrated into the Union judicial architecture. Although arbitration as a procedure is neither per se incompatible with the safeguards of Article 47,[7] its validity in the EU legal order cannot be taken for granted when access to ordinary courts

[2]. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

[…]

[5] See: CJEU, 1st August 2025, C-600/23, *Royal Football Club Seraing SA c. Fédération internationale de football association (FIFA), Union des associations européennes de football (UEFA), Union royale belge des sociétés de football association ASBL (URBSFA)*, ECLI:EU:C:2025:617.

[6] F. Shahlaei, *A Jurisdictional Vertigo: Compulsory Arbitration, Sports and the European Court of Human Rights*, in *Journal of Human Rights Practice* 16, 2024, pp. 869-885.

[7] Opinion of The Advocate General Čapeta delivered on 16 January 2025, Case C-600/23, *Royal Football Club Seraing*

is excluded contractually by a term imposed unilaterally, and when the arbitral forum is structurally isolated from EU judicial control. This opens a set of normative tensions that go beyond the particulars of the case and involve the general question of how much the autonomy of private or hybrid adjudicative bodies may go without jeopardizing the enforceability of European union rights and freedoms.

**14.** At stake is not the substantive validity of arbitration clauses, but the terms on which such clauses may coexist compatibly with the constitutional requirements of the EU. When arbitration acts as a *de facto* exclusive jurisdiction—it is imposed as a pre-condition to membership in a regulated market or sector—it ceases to be an alternative mechanism freely adopted by the parties and becomes instead an instrument of institutional closure. In those environments, the lack of real consent takes on constitutional significance: it destroys the assumptions on which alternative dispute resolution is founded—that it is based on party autonomy—and puts in question the notion that procedural efficiency may justify the dislocation of judicial guarantees.

**15.** In addition, the extraterritorial nature of certain arbitral bodies, e.g., the Court of Arbitration for Sport (CAS), adds an additional layer of complexity. Those bodies, though notionally autonomous, lie outside the EU's normative and institutional framework and escape substantive control by courts under an obligation to apply EU law. This institutional lack of transparency and jurisdictional isolation make it difficult on two significant fronts to ensure effective judicial protection:[8] firstly, by denying Union-founded parties effective access to a forum which may apply and interpret EU law; secondly, by preventing the realization of the uniformity and primacy of the same law in sectors where it is practically involved.

**16.** For such purposes, the notion of effectiveness cannot be thought as a formally void standard—not satisfied by the legal existence of an adjudicatory channel—but instead as a qualitative one entailing access to the judicial organs institutionally and normatively enabled to apply the rights conferred by the Union law. The effectiveness of judicial protection requires both access to procedure and institutional inclusion into the legal order of the Union on the one hand, namely the possibility of the adjudicator to interact with, interpret, and apply the EU law accordingly to its teleology and vertical hierarchy.

**17.** From this vantage point, regimes of arbitration that externalize the power of adjudication while at the same time closing off access to the courts of law present basic questions about the coherence of the constituent framework of the Union. They provoke inquiry into the possibility whether the transfer of the settlement of disputes into such platforms is ever reconcilable with the need to ensure the Union freedoms and rights are protected judicially in a way which is not merely formal, but substantively effective. In instances where the same is imposed not merely as a regime, but structurally insulated from the mechanisms of judicial review offered under EU law, the danger is not just one of procedural ineffectiveness, but systemic evasion of the guarantees of the constitution.[9]

**18.** The wider importance of *RFC Seraing*, accordingly, does not reside within any doctrinal originality on its part, but rather within the insight it offers into an emerging structural challenge: adapting the intensifying dependence on transnational, non-state adjudication to the constitutional requirements for effective judicial protection within the EU. As institutionalized arbitration extends to numerous regulatory sectors—from sport to finance, from investment to competition—the terms on which it takes place must be rigorously re-evaluated not merely on the autonomous party level, but on the larger requirement that any right and freedoms under European union law must remain enforceable within a context of judicial accountability.

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[v] *FIFA et a.*, ECLI:EU:C:2025:24, § 122.

[8] See: CJEU, C-124/21 P, *International Skating Union (ISU) v. Commission*, 21 december 2023, ECLI:EU:C:2023:1012.

[9] CJEU, 1st August 2025, C-600/23, *Royal Football Club Seraing SA v. Fédération internationale de football association (FIFA), Union des associations européennes de football (UEFA), Union royale belge des sociétés de football association ASBL (URBSFA)*, par. 78

## 3. Balancing Party Autonomy and Constitutional Supremacy

**18.** The decision in *RFC Seraing* opens again, especially insightfully, the systemic tension between the ideal of party autonomy long cherished in the scholarship on arbitration[10] and the precedence of constitutional norms within the European Union legal order. The Court's attempt to inscribe a demarcation line between voluntary and imposed arbitration within hierarchically structured regimes of regulation is a valuable contribution to an older debate. At the core of the reasoning lies a normative claim: that the arbitral jurisdiction, when detached from real consent and employed by authorities exercising quasi-public regulatory powers, should defer to the constitutional protections of Union law.

**19.** This ruling elicits both support and criticism. On the one hand, the reasoning of the Court is appealing to those who perceive the growth of private adjudication—especially where there is structural asymmetry involved—as a danger to core rights and democratic accountability. Arbitration terms imposed as a prerequisite to market access or professional activity such as those that were rife in international sports management evoke strong doubts about the possibility of procedural autonomy, institutional neutrality, and effective legal redress. On this view, the intervention of the Court plays a corrective role: it reaffirms the proposition that the constitutional right cannot be ousted by contract, particularly where arbitration is made a prerequisite to access to a closed regulatory regime. In this respect, the argument about "genuine consent" is neither an abstract formalism, but rather an indispensable juridical instrument to differentiate private ordering on the basis of free will from quasi-coerced institutional arrangements.

**20.** Furthermore, the Court's position is consistent with an overall pattern in Union jurisprudence that aims to safeguard the coherence and enforceability of EU law despite the existence of alternative normative regimes. The constitutional necessity to afford effective judicial protection, consistent application of Union law, and access to the independent tribunals supports a greater level of vigorous examination of the arbitral regimes that fall beyond the jurisdiction of EU courts. The neutrality of arbitral institutions, their receptivity to EU law, and the enforceability of fundamental freedoms within their proceedings are not matters of lesser importance, but requirements of their compatibility with the EU legal order.

**21.** But the Court's approach also reveals conceptual vagaries and institutional dangers.

First, the use of the notion of "genuine consent" as a threshold of constitutional acceptability is both normatively precarious and operationally evasive. Consent, in legal thought, is notoriously difficult to specify absolutely, particularly in contractual contexts marked by systemic asymmetries, economic dependency, or functional standardization. In the sports arbitration context, consent is seldom individual or negotiated; it is group-based, sectoralized, and institutionalized. That the parties assent to these provisions as a term of regulatory involvement does not mean that the parties were ignorant of their contentions, nor does it mean the system is somehow illegitimate. In disqualifying such consent as inadequate, there is a danger of imposing a legal fiction of voluntariness that may fail to capture the concrete dynamics of regulatory regimes.

**22.** Secondly, the reasoning does not satisfactorily engage the pragmatic and structural role of specialist arbitration, especially in areas such as sport, where expeditionality, specialism, and worldwide consistency are universally recognized. By making arbitral autonomy subservient to the variable standard of "genuine consent," the Court potentially undermines the predictability and consistency of long-developed transnational systems of arbitration. The wider concern is that other institutional systems of arbitration—also beyond sport—will now come under greater legal uncertainty, since their validity will depend on levels of consent and procedure worked out by the judiciary rather than the rules agreed by the arbitral institutions.

[10] M. Blessing, *Mandatory Rules of Law versus Party Autonomy in International Arbitration*, in Journal of International Arbitration, 1997, 14, pp. 23-40.

**23.** Furthermore, the binary distinction between consensual and imposed arbitration drawn by the Court underestimates the complexity of legal pluralism in a globalized legal space. Many arbitration regimes operate in a grey zone between public and private, voluntary and mandatory, national and transnational. The attempt to map these regimes onto a rigid constitutional hierarchy may fail to accommodate the functional differentiation of adjudicatory forms, especially where traditional state structures are ill-equipped to handle sector-specific disputes.

**24.** Therefore, although the Court's stand is normatively justifiable and possibly indispensable in light of the erosion of judicial control in certain transnational areas, its formulation is incomplete and subject to challenge. Needed instead is not an absolute reunciation of institutional arbitration, but rather an enhanced framework of measuring its legitimacy relative to constitutional norms. This must transcend the evaded yardstick of consent and refer instead to institutional assurances of independence, transparency of procedure, and access to reviewing mechanisms effective to ensure conformity with EU law. Here the RFC Seraing decision makes a significant contribution to the development of an EU constitutional theory of arbitration, although the latter is done by creating new rather than bridging existing fault lines. The problem the future poses is the development of a list of requirements that would divide the acceptable from the constitutionally unsuitable regimes of arbitration without disturbing the wider ecosystem of private adjudication on which increasingly large sectors of industry come to rely.

## III.Systemic and Practical Consequences: Reforming or Undermining Sports Arbitration?

### 1. Erosion of Arbitral Finality and the Role of National Courts

**25.** The ruling in *RFC Seraing* conclusively redefines the long-authoritatively contentious dynamic between arbitral finality and the national judiciaries' reviewing role within the EU legal order. By finding that national courts ought to be empowered—to say, bound—to verify whether awards made by arbitral institutions such as the Court of Arbitration for Sport (CAS) respect the substantive rules of European union law, the Court of Justice encapsulates a rule explicitly contrarian to an erroneous cornerstone of international arbitration: the assumption of finality. In doing so, the ruling redefines national courts no longer as marginal players relegated to control over procedure, but instead as vibrant gatekeepers of the constitution responsible for ensuring that no arbitral award whatever, be it procedurally right or institutionally rooted, evades the reach of the protection under the fundamental rights.

**26.** The normative argument underlying this position is uncontroversial: when arbitral rulings generate legal effects within the Union and engage EU-based actors, it would be incongruent with the constitutional character of the EU legal order to allow those rulings to remain immune to the control of the judiciary. In this respect, the judgment fortifies the enforceability of Union law within a pluralistic adjudicatory sphere, assuring that rights and freedoms drawn from the Treaties are neither frustrated by procedural obstacles nor private institutional design. The approach thus reasserts the primacy and justiciability of EU norms even within areas long subjected to non-state adjudication.

**27.** But this argument also raises great concern about the systemic effect on bringing substantive review back into a system founded on efficiency, finality, and deference to the autonomy of the arbitral. One cornerstone of international arbitration--particularly in the commercial and sporting sectors--is the very fact that awards are binding and enforceable with minimal judicial intervention. The 1958 New York Convention, to which every EU Member State is a contractual party (but not the EU itself), evidences this philosophy by restricting the bases on which recognition or enforcement may be refused largely to procedural defects, public policy, and rudimentary due process considerations.[11] The Court's role in

[11] On the NY Convention, see: R. Luzzatto, *Accordi internazionali e diritto interno in materia di arbitrato: la convenzione di New York del 1958*, in *Riv. dir. int. priv. proc*., 1968, p. 24 ff.; Id., *Accordi internazionali e diritto interno in materia di ar-*

*RFC Seraing* injects a manifestly constitutional exception into this scheme: the requirement to review the awards for compatibility with EU fundamental rights and freedoms.

**28.** From a functionalist viewpoint, the development threatens to divide the consistent application and enforceability of arbitral awards. As national courts within the European Union are now empowered—or required—to conduct substantive review where EU law is in play, the mutual recognition principle may be overwhelmed by a patchwork of jurisdictional determinations, shaped by domestic perceptions of the scope and content of Union rights and freedoms. Legal certainty, hitherto considered a virtue of arbitration,[12] may be defeated by delayed litigation and conflicting determinations, eating away the very rationale that underlies the employment of arbitration in transnational industries like sport.

**29.** Moreover, the approach is likely to introduce tensions among international legal needs and EU constitutional claims. National courts may find themselves caught between their duty under the New York Convention to apply foreign awards and their duty under Union law towards effective judicial protection. The Court does neither definitely rule out the normative conflict nor does it offer an exemplar on balancing the opposing imperatives of international comity and supranational constitutionalism. This lacunae places national judges into structural vulnerability, particularly in those Member States where the judiciary already stands under political or institutional strain.

**30.** That said, one cannot ignore the transformative potential of the Court's intervention. By elevating the role of national courts as conduits for constitutional control over arbitral proceedings, the CJEU reaffirms the principle that no adjudicatory system, however specialized or autonomous, can exist in a vacuum, free from the oversight mechanisms that safeguard fundamental legal norms. In this respect, the decision invites a reconceptualization of the role of domestic courts not merely as executors of arbitral enforcement, but as institutional guardians of the Union's constitutional space, even when operating at the intersection of transnational and private regimes.

**31.** Critically, however, the judgment leaves unresolved the question of proportionality: to what extent can judicial oversight expand without eroding the core attributes of arbitration as an alternative to litigation? The Court offers no principled criteria for delimiting the scope of substantive review, nor does it clarify whether all categories of EU rights and freedoms trigger such obligations, or only those considered fundamental in a narrow sense. The risk, in the absence of such clarification, is that the distinction between procedural and substantive review collapses, giving rise to an open-ended form of constitutional control that undermines the predictability of arbitral enforcement.

**32.** As part of the Court's larger logic, the RFC Seraing decision accordingly solidifies an arbitration vision that is subordinated to the Union's constitutional architecture regardless of its international nature or institutional lineage. The requirement on the primacy of fundamental freedoms and rights — which is realized through national control by the courts — reasserts domestic courts as the institutional broker between supranational legality and arbitral independence. This move is consistent with the Court's pre-existing jurisprudence on the indivisibility of Union liberties and its opposition to the development of autonomous legal regimes that exist free from constitutional control.[13]

**33.** Yet, precisely because it reinforces this model of constitutional embeddedness, the decision amplifies existing uncertainties surrounding the limits of arbitral autonomy in the internal market. The absence of a clear threshold delimiting when and how national courts are to engage in substantive re-

*bitrato: la convenzione di Ginevra del 21 aprile 1961*, in *Riv. dir. int. priv. proc*., 1971, p. 47 ff; Id., *International Commercial Arbitration and the Municipal Law of States*, in *Recueil des Cours de l'Académie de droit international*, 1977-IV, p. 9 ff.

[12] Opinion of The Advocate General Ćapeta delivered on 16 January 2025, Case C-600/23, *Royal Football Club Seraing v FIFA et a.*, ECLI:EU:C:2025:24, § 133.

[13] CJUE, 1st June 1999, in C-126/97, *Eco Swiss China Time Ltd v. Benetton International NV*, ECLI:EU:C:1999:269; 26 ottobre 2006, C- 168/05, *Elisa María Mostaza Claro v. Centro Móvil Milenium SL*, ECLI:EU:C:2006:675.

view opens the door to doctrinal indeterminacy, institutional friction, and practical inconsistency across Member States. Where arbitral finality has traditionally functioned as a structural safeguard for procedural efficiency and legal predictability,[14] the Court's intervention destabilizes that safeguard without offering a fully elaborated alternative.

**34.** What is revealed instead is a redefinition of the national court's role—not as the passive enforcers of arbitral enforcement, but rather as normative arbiters charged with screening awards through the prism of EU constitutional norms.[15] Though this trend may increase the legal liability of private adjudicatory systems, it imposes enormous interpretive demands on domestic judiciaries and poses the real danger of greater fragmentation to the recognition and enforcement of international arbitral awards within the Union.[16]

**35.** This tension –between the need for judicial protection and the pressures on legal certainty– echoes through the Court's argument.[17] It betrays a greater structural ambivalence within the EU's developing relationship to non-state dispute resolution: one which acknowledges the practical usefulness of arbitration even as it insists that such usefulness cannot be purchased at the cost of constitutional coherence and enforceability. Whether such recalibration is possible without destroying the inner logic of arbitration is a question of substantial significance both to doctrinal development and institutional design.

## 2. Positive Contributions: Constitutional Reach and the Limits of Private Autonomy

**36.** The reasoning built into RFC Seraing does posit a straightforward position on long-malinable doubts about the constitutional reach of transnational private rule of law and the norm preconditions under which the arbitral tribunal's power might co-exist within the European legal order. Rather than offering a doctrinal explanation on the decision, the worry here is the broader legal and theoretical challenges on which the ruling offers a constructive input, particularly the interrelationship between arbitral independence and the protection of the fundamental freedoms and rights safeguards.

**37.** It marks the first important contribution to the elucidation of the functional scope of Union law. The ruling enforces an increasingly apparent principle in EU case-law: that the scope of application of constitutional safeguards does not depend on the formal character of the decision-maker, but on the material impact of its decisions within the EU legal order. This functional approach enables the law to apply to private regulatory regimes that, although formally located outside the institutional architecture of the EU, confer binding effects on EU-based actors.[18] In doing so, the judgment helps to close the accountability gaps that result when normative power is delegated to bodies that escape the limits of public law. It reiterates that constitutional control follows the flow of normative power irrespective of its institutional provenance.

**38.** Another area where the judgment provides a substantive input is the refashioning of the role of the national court within a multilayered adjudicatory complex. By requiring domestic courts to vet

[14] H. Kronke, P. Nacimiento, D. Otto, N.C Port (a cura di), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, II ed., Alphen aan den Rijn, 2025.

[15] CJEU, 1st August 2025, C-600/23, *Royal Football Club Seraing SA v. Fédération internationale de football association (FIFA), Union des associations européennes de football (UEFA), Union royale belge des sociétés de football association ASBL (URBSFA)*,§ 89.

[16] CJEU, 1st August 2025, C-600/23, *Royal Football Club Seraing SA v. Fédération internationale de football association (FIFA), Union des associations européennes de football (UEFA), Union royale belge des sociétés de football association ASBL (URBSFA)*,§ 103.

[17] CJEU, 1st August 2025, C-600/23, *Royal Football Club Seraing SA v. Fédération internationale de football association (FIFA), Union des associations européennes de football (UEFA), Union royale belge des sociétés de football association ASBL (URBSFA)*,§ 89.

[18] L. Fumagalli, *Ordine pubblico dell'Unione e controllo giurisdizionale effettivo dei lodi emessi dal Tribunale arbitrale dello sport (TAS), ...ma non solo: la Corte di giustizia si pronuncia nel caso Seraing,* in Eurojus, 2025, 3.

the compatibility of arbitral awards with the core rights enshrined within the Charter, the Court enhances their role as constitutional intermediaries. This redefines the national court role from passive executors of arbitral finality to active custodians of constitutional coherence particularly where non-state adjudication intersects with the enforcement of Union law. This refashioning cements the horizontal integration of fundamental rights and lends structurally consistent Charter application across regimes.

**39.** Just as important is the ruling's discussion of the horizontal aspect of the protection of fundamental rights. The reasoning is conducive to an interpretation of the Charter as placing restrictions on both public authorities and private actors that play norm-shaping or adjudication roles with regulatory effect. On this front, the judgment is consistent with an evolving constitutional logic within EU law under which rights function as structural limits on every type of normative power within the internal market. This aspect is especially significant in the areas—such as sport, financial market regulation, and ICT regulation—where transnational private regimes play large *de facto* regulatory roles, and where formal distinctions risk obscuring the necessity for effective legal protection.

**40.** The decision also contributes to ongoing debates on the institutional evolution of arbitral systems. It does not deny the utility or legitimacy of arbitration in transnational governance; rather, it sets normative coordinates for its compatibility with the EU legal order. While the Court does not prescribe institutional reform, the legal reasoning it advances may prompt arbitral institutions to reconsider their procedural frameworks and their relationship to the EU legal system. This may include greater procedural transparency, enhanced rights protections, or even the establishment of operational links with the EU legal space, such as through a formal seat within the Union or adherence to EU-compatible procedural standards. These developments would not undermine arbitral autonomy but rather ground it within a more constitutionally robust architecture.

**41.** Finally, the ruling enables a thicker conceptualization of arbitral legitimacy. It concludes that arbitral legitimacy cannot be limited to the effectiveness of procedure or institutional autonomy, but it must include responsiveness to constitutional values, particularly the right to an effective remedy. This conceptualization is reinforced by broader theoretical developments on constitutional pluralism and transnational legal theory, which underscore that both functionality and normative justification towards foundational rights are indispensable in plural legal orders where legitimacy comes into play.

**42.** Rather than treating arbitration and EU constitutional law as mutually exclusive domains, the ruling contributes to an integrated perspective in which private adjudication is not exempt from public law constraints, but shaped by them.[19] In doing so, it opens a space for legal evolution—one in which arbitral regimes are not displaced, but progressively aligned with the normative infrastructure of the Union. This alignment does not demand homogenization but encourages a dialogical relationship between institutional autonomy and constitutional accountability—one that is increasingly necessary in a legal landscape marked by normative plurality and regulatory complexity.

## 3. Negative Externalities: Legal Fragmentation, Strategic Litigation, and the Erosion of Predictability

**43.** Although the RFC Seraing ruling extends the constitutional responsibility of private adjudication, it concurrently creates a stream of systemic externalities whose effect is to confer complexity on

[19] See the CJEU case-law: CJEU 15 December 1995, C-415/93, *Union Royale Belge des Sociétés de Football Association ASBL a o. v. Jean-Marc Bosman*, ECLI:EU:C:1995:463; 21 December 2023, C-333/21, *European Super League Company SL v. Fédération internationale de football association (FIFA) e Union of European Football Associations (UEFA)*, ECLI:EU:C:2023:1011; 4 October 2024, C-650/22, *Fédération internationale de football association (FIFA) c. BZ*, ECLI:EU:C:2024:824.

the functioning and normative unity of transnational arbitration in the EU legal order. Foremost among these is the danger of legal fragmentation. By enabling national jurisdictions to scrutinize the conformity of arbitral awards with European union law, the Court inadvertently reimports jurisdiction-specific filtering mechanisms into a regime whose reliance had been placed on mutual recognition principles and finality of procedure. Absent harmonized norms shaping such interventionist acts by the judiciary, differential perceptions of cardinal rights and varying levels of intervention thresholds will tend to arise among the Member States.

**44.** This asymmetry undermines the transnational uniformity and predictability that international arbitration—particularly in the domain of sport—was designed to preserve.[20] Where actors had previously relied on the near-automatic recognition of arbitral awards under the New York Convention, they must now anticipate a more uncertain legal environment in which awards may be subject to constitutional review *ex post* and refused enforcement on grounds that vary across jurisdictions. The result is a weakening of arbitration's traditional virtues: finality, speed, and legal certainty.

**45.** Here, the most controversial element of the Court's rationale is the application of the notion of "genuine consent" to draw a line separating legitimate from constitutionally inadequate arbitral regimes. By delineating the line separating negotiated arbitration from structurally imposed adjudication of disputes, the Court provides a normative account of why arbitral autonomy should be confined where consent comes to be seen as formalistic or economically coerced. Despite the consistency of this argument with wider constitutional values of substantive fairness and the protection of weaker parties, it introduces conceptual ambiguity into the regime. In institutionalized contexts like international sport—where regulatory consistency and centralized adjudication obtain as conditions of functionality—the line between coercion and compliance is less than clear.[21] Consent comes to be systemic, embedded, and norm-internalized, raising doubts about whether dichotomic construction does justice to the muddied experiential realtiy of regime participance.

**46.** Further, the Court's reasoning provides scant discussion of the institutional role of arbitral finality, which is something other than a procedural convenience but rather a structural requirement of effective international regulatory regimes. Arbitral finality guarantees not just the efficacy of the process of resolving disputes but the coherence and force of special normative orders that exist outside the jurisdiction of national courts.[22] The refusal on this aspect on the part of the judgment indicates an implied hierarchy where the logic of design of institutional arbitration is systematically overridden by fundamental freedoms and rights. However, without specific indications on the manner in which conflicting values should be weighed, the decision risks upsetting the existing arbitral systems without providing principled benchmarks for reform.

**47.** This uncertainty creates room for strategic litigation and forum shopping, since frustrated parties may now recharacterize their losses in arbitration as rights-based claims and attempt to take their causes to better-receptive jurisdictions within the EU judicial framework. The possibility of re-litigation before national jurisdictions undercuts procedural finality and motivates tactical conduct that might pervert the course of dispute resolution. In addition, varied levels of readiness among the Member States towards challenges of a constitutional nature risk producing an asymmetry of jurisdiction, in which litigants flock towards jurisdictions considered to be interventionist—a trend that even further would compromise mutual trust and harmonization of the EU legal sphere.

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[20] F. Shahlaei, A Jurisdictional Verigo: Compulsory Arbitration, Sports and the European Court of Human Rights, *Journal of Human Rights Practice* 16, 2024, 869-885.

[21] A. Rigozzi, *Challenging Awards of the Court of Arbitration for Sport*, *Journal of International Dispute Settlement* 1, 2010, pp. 217-265.

[22] A. Duval, *Seamstress of Transnational Law – How the Court of Arbitration for Sport Weaves the* Lex Sportiva, in N. Krisch (ed.), *Entangled Legalities Beyond the State*, Cambridge, Cambridge University Press, 2022, p. 260 ss.

**48.** At the macro-institutional level, such developments might trigger contractual and structural changes geared towards restricting exposure to EU judicial challenge. Arbitral institutions would be incentivized to move seats outside the Union, or to reconfigure their rules of procedure such that the risk of challenge on enforcement is minimized. While such reconfigurations might insulate certain awards from the possibility of constitutional review, such reconfigurations would also betoken the wider dislocation of arbitral governance from the Union's normative order, posing challenges to the long-term integration of private adjudication into European constitutional space.

**49.** The wider concern is that although RFC Seraing fortifies the primacy of EU constitutional values, it does so by using categories—like effect-based applicability, filtering by the judiciary, and real consent—that continue to be doctrinally blurry and operationally fissiparous. The ruling defers the fundamental question of how to balance the Constitution's controlling sovereignty with the functional dynamics of global arbitration, and whether this control is possible to exercise without destroying the institutional vitality of non-state adjudication. The failure to provide elaborate criteria for the judiciary to review, the uncertainty about the scope of the rights to apply, and the omission on the systemic function of the finality of the award all argue towards the necessity of a better coordinated and operationalizable regime.

**50.** In this light, the judgment does not simply recalibrate the relationship between arbitration and constitutional law—it redefines the terrain on which that relationship must now be navigated. The challenge going forward lies in developing mechanisms that translate the Court's normative aspirations into workable legal standards, capable of guiding both national courts and arbitral institutions without compromising the core functions of either. Unless such mechanisms are articulated, the risk is that the judgment's principled commitment to rights protection will give rise to practical fragmentation, regulatory uncertainty, and institutional displacement—consequences that may ultimately weaken the very coherence it seeks to affirm.

## IV. Final conclusions: Recalibrating Arbitral Autonomy in a Multilevel Constitutional Order

**51.** The Seraing RFC judgment represents a significant turning point in the Court of Justice of the European Union's evolving jurisprudence on the constitutional character of arbitration. On the simplest level, the judgment does not merely endorse the pre-eminence of Union law relative to private systems of dispute settlement—it redefines the normative limits within which such systems must operate when they intersect the EU legal order. The judgment thus participates in a broader transformation in the way that the regimes of arbitration come to be considered within a constitutional framework: once more, neither as self-contained legal orders insusceptible to the action of the judiciary, but instead as spheres of adjudication ruled by the structural logic of right, responsibility, and enforceability that defines the European legal architecture.

**52**. This move is of great doctrinal and institutional importance. The Court's rationale cements a thread of precedent that extends the scope of constitutional protection even past the outer boundaries of the institutions of the EU, towards a functionally orientated approach to jurisdiction that privileges the impact of legal determinations over the identity of the determiner. In this way, the Court both strengthens the justiciability of the right to liberty and enhances limits on the permissible exercise of private regulatory power in the transnational sphere. Arbitration under this approach is neither ruled out, yet its procedural independence is subordinated to the requirement that it be integrated into a system of effective legal protection.

**53.** Nevertheless, this redefinition also creates structural challenges. As the ruling helps to close normative gaps in the protection offered by the legal order, it meanwhile clears the way to legal uncertainty, fragmentation, and forum manipulation. The danger of divergent judicial standards among the

Member States, erosion of the finality of arbitral awards, and re-calibration of litigation tactics by the prospect of constitutional review mechanisms all threaten the coherence and stability of the arbitration paradigm as a system of dispute resolution. All these tensions highlight the challenge inherent in maintaining a double commitment to both institutional efficiency and constitutional supremacy within the same regime of adjudication.

**54.** At a conceptual level, the judgment invites further reflection on the very nature of consent, autonomy, and legitimacy in contemporary arbitration. By foregrounding the importance of "genuine consent" as a condition for the validity of arbitral arrangements, the Court articulates a normative standard that resonates with broader debates in legal theory, particularly those concerning the legitimacy of regulatory power in non-state systems. However, the operationalization of this standard remains underdeveloped, leaving open questions about how it is to be assessed in institutional contexts characterized by standardization, sectoral hierarchy, and limited individual bargaining power.

**55.** The implications of RFC Seraing are likely to reverberate well beyond the sports sector. The logic of the judgment applies, in principle, to any arbitration framework that operates within—or produces effects within—the Union[23]. This raises the prospect of systemic reconfiguration in areas such as commercial, investment, and professional arbitration, where private adjudication intersects with rights-based claims under EU law. Whether this development leads to a deeper integration of arbitral regimes into the constitutional fabric of the Union, or instead generates resistance, circumvention, or jurisdictional displacement, remains to be seen.

**56.** What the ruling ultimately reflects is not the resolution of a long-standing conflict between arbitral independence and constitutional accountability, but its renewed juridical intensity. The model of arbitration that emerges from RFC Seraing is one that must navigate a complex landscape: it must remain procedurally autonomous and functionally effective, while also being normatively open to external scrutiny and constitutionally grounded in its design. This demands a recalibration of institutional expectations, doctrinal standards, and regulatory design—a task that will fall not only to the Court, but also to national judiciaries, arbitral institutions, and private actors themselves.

**57.** Against this backdrop, RFC Seraing can best be viewed less as a breach than as a turning point on the long history of European legal integration: a moment when the polarity of private autonomy and public authority is being redefined in the face of the challenges posed by a complex multilayered legal order.[24] The question for the future is to ensure that this redefinition is both principled and practical, able to maintain arbitration as an acceptable mode of adjudication without corroding the underlying commitments of the Union to legality, to rights, and to judicial protection.

[23] L. Fumagalli, *Ordine pubblico dell'Unione e controllo giurisdizionale effettivo dei lodi emessi dal Tribunale arbitrale dello sport (TAS), ...ma non solo: la Corte di giustizia si pronuncia nel caso Seraing,* Eurojus, 2025, 3.

[24] See also J. Wauters, A. Komninos, N. Hertel, Court of Justice of the European Union delivers ruling in Royal Football Club Seraing (C-600/23), available at: https://www.whitecase.com/insight-alert/court-justice-european-union-delivers-ruling-royal-football-club-seraing-c-60023