

Dublin becomes alternative seat for the Court of Arbitration for Sport (CAS)

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In a significant departure for UEFA and the Court of Arbitration for Sport (CAS), disputes as to UEFA rules concerning the authorisation of its international club competitions can now be arbitrated in Dublin, Ireland under CAS rules.

UEFA, the governing body for European football, recently amended the UEFA Authorisation Rules governing International Club Competitions (the Authorisation Rules) to make it possible for the moving party to elect Dublin as the seat of arbitration and UEFA agrees to be bound by this choice. Prior to this amendment, the only possible seat of arbitration in relation to a CAS hearing was Lausanne, Switzerland, the home of the CAS, previously the mandatory seat of arbitration unless the President of the Panel decided to hold the hearing elsewhere after consultation with the parties to the case R28 CAS Code.

The European Super League decision

UEFA's decision follows the European Court of Justice judgment in the 'European Super League Case' in December 2023 where a proposed new European football competition (backed by Barcelona and Real Madrid) challenged the Authorisation Rules in place at that time. The key takeaway for UEFA from that judgment was that the Authorisation Rules must be based on objective, transparent and non-discriminatory criteria to be compliant with EU competition law. You can read our summary of that [judgment here in a recent article](#).

Effective Judicial Review of EU Law Rights not available under CAS

On the same day as the European Super League judgment, the CJEU issued another significant judgment in International Skating Union (ISU) v Commission (Case C-124/21 P) The CJEU held that the mandatory provision in the ISU rules for appeals to be made exclusively to the CAS, an arbitration body which is ultimately subject to appeal to the Swiss Federal Tribunal, undermined

the protection of rights available under EU law and the effective compliance with EU competition law.

It held that effective judicial review of those rights under EU law requires that the court having jurisdiction to review the awards made by that body can confirm that those awards comply with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Switzerland is not a member of the EU and the Swiss Federal Tribunal does not have jurisdiction to rule on EU law nor refer such questions of law to the CJEU in accordance with the preliminary reference procedure enshrined in Article 267 of the TFEU.

Therefore, in order to ensure those rights, effective judicial review must be available under the confines of EU member state law, including being able to make a preliminary reference under Article 267 of the TFEU to the CJEU to determine a matter of EU law. The Court further held that while sporting associations maintain autonomy to adopt rules governing their proper functioning, including mandatory arbitration clauses, they cannot do so in a manner which curtails the exercise of rights and freedoms bestowed upon parties by virtue of EU law.

Practical implications

In practice, this ruling will require international European competitions and/or governing bodies to provide effective judicial review mechanisms in respect of questions of EU competition law. UEFA has adopted the principle from the ISU case by adopting Dublin as an alternative seat of arbitration for CAS cases arising from a dispute under the Authorisation Rules.

If a party wished to raise an EU law point in an arbitration in Dublin, effective judicial review under EU law would be available by making a preliminary reference from the Irish Courts to the CJEU.

Arbitration in Ireland

Ireland is a favourable choice for seat of arbitration. In addition to being a neutral country which trades globally and the only native English-speaking and common law jurisdiction in the EU, Ireland is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning that awards granted in accordance with arbitration carried out in Ireland will be directly enforceable and have reciprocal effect in other signatory states.

Arbitration in Ireland is governed by the Arbitration Act 2010 which adopted the UNCITRAL Model Law on International Commercial Arbitration (as revised in 2006) in its entirety, with limited modification. Irish courts are supportive of arbitration and the grounds upon which an arbitral award can be potentially challenged are very limited.

While the general legal principle under Irish law is that third party litigation funding is prohibited,

third party funding of international commercial arbitration is now permitted in Ireland since the enactment of the Courts and Civil Law (Miscellaneous Provisions) Act 2023. Being both international and commercial in nature, CAS cases involving the organisation of international club competitions could be conceivably funded by third parties.

Conclusion

The UEFA decision to make a seat of arbitration available in Ireland marks a departure from the exclusive supremacy of Lausanne as a seat of arbitration under the CAS procedures.

It is conceivable that European competitions and governing bodies in other sports will consider following UEFA's example. For more information on this or any sports law related topic, please contact our team via their contact details below.

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