

DECISION of the FEI TRIBUNAL

dated 10 August 2022

In the matter of

Mr Marc Juul H. Schelkens (the Respondent; Ref. C22-0020)

I. Composition of the FEI Tribunal Panel:

Mr Cesar Torrente (COL), One-member panel

Mr Gautier Aubert (SUI), FEI Tribunal Clerk

II. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

- Statutes 24th edition, effective 19 November 2019 (“Statutes”).
- General Regulations 24th edition, 1 January 2020, updates effective 1 January 2021 (“GRs”).
- Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (“IRs”).
- FEI Veterinary Regulations 14th edition 2018, updates effective 1 January 2021 (“VRs”).
- FEI Post-EHV-1 Return to Competition By-Laws (“EHV-1 By-Laws”)

III. General details of the case:

FEI Tribunal Reference: C22-0020 [FEI 2021/DP04]

Respondent/ID/NF: Marc Juul H. Schelkens/10050129/BEL

#### IV. Factual Background

1. In the equine industry, biosecurity refers to the precautions that are undertaken to prevent and limit the spread of equine infectious disease, like the Equine Herpes Virus ("EHV-1"). Properly implemented biosecurity measures may significantly decrease the risks for disease introduction and spread.
2. At the start of an FEI Event, all participating horses must be examined upon arrival in a designated Examination on Arrival Area. Examination on Arrival is mandatory at all FEI Events and is one of the most crucial precautions for minimizing the risk of introduction and transmission of equine infectious diseases into the Event venue. Any horse(s) showing clinical signs of infectious disease is refused permission to enter the Event stables and is immediately sequestered in isolation stables, apart from other competing horses.
3. The Veterinary Delegate/Veterinary Commission ("VD/VC") or an FEI Permitted Treating Veterinarian or Endurance Veterinary Treating Official appointed by the Veterinary Delegate must examine all Horses arriving at the Event venue and collect their Passports, before they are allowed to enter the stables (Art. 1031.2 of the VRs).
4. During the Examination on Arrival, the Veterinary Delegate must verify the identity of each Horse from its Passport, using the diagram, description and, when present, the microchip number; check that the Horse has been vaccinated against equine influenza; verify whether all details relating to the Horses' identification, vaccination record and other health requirements are correctly recorded in the Passport; ensure that the Horses do not have any clinical signs of infectious disease. This may include a clinical examination to assess the heart, respiratory rate, body temperature and the checking of any other clinical parameters; and palpate the limbs and/or body when there is a concern of a suspected injury or illness sustained during travel (Art. 1031.3 of the VRs).
5. The 2021 outbreak involved the EHV-1 strain. Affected horses may suffer respiratory disease, neurological disease and abortion in pregnant mares. Young foals are also at risk and can die from the infection. Recovery rates from Equine Herpes Virus are variable. It depends on the severity of the clinical signs and whether the horse has suffered secondary infections.

6. In February 2021, an outbreak of the neurological form of EHV-1 happened in Europe, which led the FEI to enforce a six-week shutdown of all international events in mainland Europe with immediate effect from 1 March to 11 April 2021, in order to limit the spread of the virus. Twelve European nations had to cancel planned events: Austria, Belgium, Estonia, France, Germany, Italy, Netherlands, Poland, Portugal, Slovakia, Spain and Sweden.
7. In order to further prevent the spread of the virus – which caused the death of 18 horses, in addition to respiratory and neurological diseases –, the FEI also blocked a total of 3'836 horses in the FEI Database, preventing these horses to enter any FEI Events until they had fulfilled the necessary health requirements as determined by the FEI Veterinary Department.
8. The FEI further took legal measures, such as the EHV-1 By-Laws, to ensure a safe return to competition. Amongst the rules adopted were the mandatory use of the FEI HorseApp by the VD/VC or a veterinarian assigned by the VD/VC, at Examination on Arrival with registration of horses' rectal temperatures. The main purpose of this examination is to identify horses with a suspected infectious disease, as well as to establish their identity and vaccination status, and it is therefore crucial as a preventive biosecurity measure.
9. In addition to the above measures, the FEI undertook, from the beginning of the outbreak, to communicate continuously with all stakeholders (National Federations, Athletes, FEI Officials, Organizing Committees, etc.) on the status of the outbreak and on the measures taken to contain it and prevent it from re-occurring.
10. The Respondent is an experienced FEI Official, namely a Level 3 FEI Official Veterinarian in the discipline of Jumping, Dressage and Vaulting. The Respondent is registered with the FEI through the Belgian National Federation (the "BEL-NF"). He has officiated at 144 FEI Events since 2011 in his capacity as a Veterinary Delegate, Foreign Veterinary Delegate, Additional Veterinary Delegate, President and member of the Veterinary Commission. The Respondent has further been an FEI Permitted Treating Veterinarian between 2016 and 2022.
11. In November 2021, the FEI Veterinary Department received some information that the Respondent would have failed to implement the biosecurity measures as required by the EHV-1 By-Laws and the VRs, while officiating in his capacity as a Veterinary Delegate at the CSI1\*, CSI2\* and CSIYH1\* in Lier (BEL) from 3 to 7 November 2021 (the "Lier Event").

## V. Procedural Background

12. Having been made aware that the Respondent had possibly failed to implement the biosecurity measures as required by the EHV-1 By-Laws and the VRs, the FEI opened disciplinary proceedings and informed the Respondent thereof by way of a Notification Letter dated 19 April 2022.
13. The disciplinary proceedings related to two specific Events: the Lier Event and the Events (CSI1\*, CSI2\* and CSIYH1\*, between 17-20 June 2021, 24-27 June 2021, 9-12 September 2021 and 16-19 September 2021) that took place in Bonheiden (the “**Bonheiden Events**”), which are summarised below, under chapter VI.
14. The Respondent replied to the Notification Letter by email on 26 April 2022. His position will be summarized below, under chapter VI.
15. The FEI submitted the case to the Tribunal in its Claim Brief on 12 May 2022, in accordance with art. 30.4 of the IRs.
16. On 1 June 2022, the Tribunal Chair acknowledged receipt of the case file and informed the Parties of the composition of the Sole Panel Member appointed for the case, to which the Parties had until 7 June 2022 to provide any objections. In the same letter, the Tribunal Chair further granted the Respondent until 21 June 2022 to provide a written submission regarding the allegations and set a deadline for both Parties of 24 June 2022 to request a hearing.
17. On 2 June 2022, the FEI confirmed having no objection to the constitution of the panel. However, the FEI objected to the Respondent’s new deadline to submit an Answer to the FEI Claim. In accordance with Art. 30.5 of the Internal regulations of the FEI Tribunal, the FEI was of the view that the deadline for the Respondent to submit his response started as of receipt of the Claim Brief by the FEI, and not as of the opening of the proceedings at the Tribunal level. Thus, the deadline would actually have elapsed on 1 June 2022. If the Tribunal were to dismiss its request, the FEI reserved its right to request an oral hearing in order to respond to any new arguments and/or evidence set out in the Respondent’s answer, if submitted.
18. On 6 June 2022, the Tribunal Chair responded to the FEI’s correspondence of 2 June 2022. The Tribunal Chair explained that the Tribunal has a longstanding practice to always provide a deadline to parties to remit their position. Moreover,

under an independent instance and as in any adversarial system, it is a basic concept that both parties are to be given the right to provide their respective position within appropriate deadlines and circumstances. The Tribunal Chair therefore confirmed the deadlines provided in the opening letter.

19. On 20 June 2022, the Respondent submitted his position to the Tribunal, which will be referred to under chapter VI below.
20. By letter dated 22 June 2022, the Sole Panel Member acknowledged receipt of the Respondent's correspondence dated 20 June 2022, noting that the Respondent had admitted not having applied the EHV1-By-Laws in the present matter, further accepting the 3-year suspension requested by the FEI as a sanction. However, the Respondent did not indicate whether he agreed also to the additional requests for relief from the FEI, i.e. the imposition of a fine of CHF 5'000.- and a contribution towards the costs in the amount of CHF 2'000.-. Mr Schelkens further did not indicate whether he admitted having also breached the FEI Veterinary Regulations, the FEI Officials' Code of Conduct in conjunction with art. 164.12 (k) of the FEI General Regulations, and art. 164.12 (g) of the FEI General Regulations (Conduct that jeopardized the reputation of the FEI), as mentioned by the FEI in their Claim Brief dated 12 May 2022. The Sole Panel Member therefore requested the parties to indicate, by 30 June 2022, whether an agreement could be found with respect to the outstanding matters.
21. On 30 June 2022, the FEI informed the Tribunal that no settlement agreement had been reached and confirmed that no oral hearing was necessary from their point of view.
22. On 20 July 2022, the Sole Panel Member acknowledged receipt of the FEI's correspondence dated 30 June 2022. The Sole Panel Member further noted that since neither Party requested for an oral hearing to take place, a decision based on the file would be notified to the Parties.

## **VI. Submissions by the Parties:**

### **A. Submissions by the FEI**

23. The FEI submitted its Claim Brief on 12 May 2022, which contained therefore its position, and which can be summarized as follows.

24. The case brought forward by the FEI refers specifically to two Events, where the Respondent was officiating as VD: the Lier Event and the Bonheiden Events.

#### The Lier Event

- The CSI1\*, CSI2\* and CSIYH1\* Events took place in Lier (BEL) from 4 to 7 November 2021;
- By the time of the Horse Inspection which took place on 3 November 2021, none of the participating horses' rectal temperatures were taken;
- When asked by the Foreign Judge (the "FJ") how the temperature check was performed, the Respondent explained that he did not perform the check at all, and did not want to perform it. He further explained that he had already informed the FEI that in his opinion this procedure was not necessary and that he simply did not want to do this anymore;
- In the evening of 3 November 2021, the FJ noticed that the HorseApp had been filled with the relevant data, and saw the Respondent filling the HorseApp with his phone. According to the FJ, it could only have been "fake" temperature data as the Respondent would not have had the time to do the temperature checks on all the horses between the horse inspection and the conversation with the FJ and the time when the Respondent was filling the HorseApp with the temperatures of the horses;
- This course of events was confirmed by testimonies of a Ground Jury Member (who replaced the Chief Steward at the Horse Inspection) and the Assisting Veterinarian.

#### The Bonheiden Events

- There were four events in Bonheiden where the Respondent had not conducted the examinations on arrival, while acting as VD, and when the EHV-1 By-Laws were in effect:
  - o CSI1\*, CSI2\*, CSIYH1\* in Bonheiden (BEL) between 17-20 June 2021;
  - o CSI1\*, CSI2\*, CSIYH1\* in Bonheiden (BEL) between 24-27 June 2021;

- CSI1\*, CSI2\*, CSIYH1\* in Bonheiden (BEL) between 9-12 September 2021;
  - CSI1\*, CSI2\*, CSIYH1\* in Bonheiden (BEL) between 16-19 September 2021.
- Among others, the temperatures of the horses were taken at the horse inspection, or in the FEI stable, where non-examined horses were mixed with already examined horses. Furthermore, the temperatures were taken with a close contact/infrared thermometer in the horses' nostrils and not rectally as required by the applicable By-Laws and regulations.
  - The above is supported by a witness statement from the Chief Steward.

25. The Respondent was required to submit a Veterinary Report for each FEI Event he officiated at as a Veterinary Delegate. The respondent therein expressed multiple times his disapproval of the stringent requirements of the Examination on Arrival. The FEI submitted examples of the Respondent's opinions:

25.1 *"According to the riders, and i share their opinion, the Vet Check used to be the most dangerous moment of the concours . With the examination at arrival, we now have two dangerous situations, not only physically, but also for infectious diseases . Since mid april, the horses come much more in contact with eachother, and that was the opposite purpose .. It simply takes too long to check the horses' temperature and fill in the HorseApp . Head thermometers should be allowed to minimize personel risk . The HorseApp should be more UserFriendly . To exit a horse, it still takes long to find the concours-place, and my chipreader (omnimax) still doesn't connect with the App"* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Lier (BEL) from 10 June to 13 June 2021)

25.2 *"smooth organisation . a pity that the EHV- rules are so stupid . Knowing that they are just a theoretical "umbrella" for the FEI in case of an infectious outbreak, but that they are not effective, make it difficult to accept . Riders and officials are well aware of that . As a FEI Veterinary Delegate, it feels very uncomftable ..Suggestion , not for the organiser, but for the FEI : Stop those hypocritic ineffectif EHV-rules, and make the EHV vaccination mandatory as soon as possible"* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Lier (BEL) from 12 August to 15 August 2021)

25.3 *"No reaction on the Covid rules, but plenty of reaction on the EHV rules .. What a hippocritic situation ! All the riders are just laughing with it . From the 348 horses, only a few, i guess 4, were OK with the temperatures and self cetification in their HorseApp ... so i put them all in quarentaine ;-). For me it's 12 (twelve!) hours senceless work extra on each show . The horses' health isn't helped at all this way . I am seriously thinking of stopping to work for the FEI if this situation continues"* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Lier (BEL) from 3 September to 5 September 2021)

25.4 *"apart from the Examination by arrival, it was a smooth event . The examination by arrival is the most dangerous situation on the whole event . The control and input of the HorseApps takes so much time that you cannot avoid a long waiting line .. It's not going to take long before a serious accident happens, but in Lausanne apparently no one is aware of this ."It only takes a minute to fill in the Self Declaration form in the HorseApp" was written in Victoria's and Gaspars' last mail !!!???*  
*Stop this HorseApp, or make it more user friendly . The HorseApp should improve the horses' welfare, but now it does the opposite"* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Bonheiden (BEL) from 9 September to 12 September 2021)

25.5 *"smooth organisation . A pitty that the extra EHV rules take obstruct a smooth examination by arrival . It takes long to check the horses in the Horse App . Jorun Wyns of the show office did her best trying to exit the horses on the App, but it didn't work . She must have tried it a dozen times, but she had to give it up . The App on her smart phone fell out every time .. Simplifie the EHV rules , so they really improve the horses wellfare by diminishing infectious risks . Stop with measures that are purely theoretical, and makes the riders cheat .."* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Bonheiden (BEL) from 16 September to 19 September 2021)

25.6 *"smooth organisation . growing indignation by riders and grooms concerning the EHV rules . They are aware of the uselessness and uneffectiveness ... if the FEI doesn't take effective precautions against EHV1, we will have the same problems in the spring of '22 or '23 ..., this applies to all CHI's"* (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Bonheiden (BEL) from 30 September to 3 October 2021)



25.7 "it 's high time to make the EHV vaccination mandatory, in fact it 's already too late ..." (Extract from the Veterinary Report for the CSI1\*, CSI2\* and CSIYH1\* in Bonheiden (BEL) from 4 November to 7 November 2021)

*FEI Submission as per the Rule Violations*

26. The Claim Brief set out the FEI's view that the Respondent's conduct amounted to several offences as per Art. 164.12 of the GRs, as detailed below.

### **Breach of the FEI Veterinary Regulations and the EHV-1 By-Laws**

27. In accordance with Art. 1029.1 of the VRs *"The VD/VC must ensure the Examination on Arrival is carried out according to Article 1031."*

28. Furthermore, Art. 1029.4-7 states:

*"4. Horses must be stabled in the isolation stables if they show any clinical signs of infectious disease, or have been in contact with other Horses that show clinical signs of infectious disease. These Horses must be refused permission to enter the Event stables and stabled in isolation stables pending recovery, or until alternative arrangements have been made.*

*5. Horse(s) developing clinical signs of infectious disease must be immediately managed according to Article 1078.*

*6. Horses recently recovered from an illness, or suspected of illness during an Event, must be reported to the VCND. On the written recommendation of the VCND and in accordance with the GRs and VRs, the GJ will decide whether the Horse may compete or continue to compete at the Event.*

*7. Horses that show clinical signs of neurological Equine Herpes Virus, or have been in-contact with such Horses, will not be allowed access to FEI Events by the VD/VC and GJ. Any affected or in-contact Horse may not be entered in future FEI Events until they have fulfilled health requirements as determined by the FEI Veterinary Department."*

29. Pursuant to Art. 1030.1 of the VRs, *All Veterinary Examinations and Horse Inspections at FEI Events must be carried out in accordance with these VRs, and be adopted by each Discipline.*

30. The Examination on Arrival of all participating horses must be conducted in the following manner as per Art. 1031.1-3 of the VRs:

*"Article 1031 (Examination on Arrival)*

*1. Examination on Arrival must be carried out at all FEI Events and take place in a designated Examination on Arrival Area as described by Article 1010.*

2. The FVD/PVCVD or PTV/EVT appointed by the FVD/VD, must examine all Horses arriving at the Event venue and collect their Passports, before they are allowed to enter the stables.

3. During the Examination on Arrival, the veterinarian must:

- a) verify the identity of each Horse from its Passport, using the diagram, description and, when present, the microchip number;
- b) check that the Horse has been vaccinated against equine influenza in accordance with Article 1003;
- c) verify whether all details relating to the Horses' identification, vaccination record and other health requirements are correctly recorded in the Passport;
- d) ensure that the Horses do not have any clinical signs of infectious disease. This may include a clinical examination to assess the heart, respiratory rate, body temperature and the checking of any other clinical parameters; and
- e) palpate the limbs and/or body only when there is a concern of a suspected injury or illness sustained during travel."

31. The Role of the Veterinary Delegates is specified at Art. 1108 of the VRs:

*"1. VCs/MDs are responsible for ensuring that the Veterinary Regulations and any relevant Discipline regulations, are maintained during Events and must work in association with the GJ. VDs must be knowledgeable and experienced in the Discipline and the specific rules.*

*[...]*

*8. VCs/ VDs are responsible for taking all necessary measures for the prevention and control of infectious transmissible diseases during Events, as described in Chapter III."*

32. Art. 2.1 of the EHV-1 By-Laws states that, *"All National Federations ("NFs"), Organising Committees ("OCs"), Officials, Horse Owners, Persons Responsible, Athletes, team officials, Veterinarians and other individuals and bodies involved in FEI Events shall comply with, and are bound by the EHV-1 By-Laws and any EHV related requirements and/or restrictions imposed by the FEI. In addition, by virtue of accepting an accreditation to an FEI Event, such person agrees to be bound by the EHV-1 By-Laws."*

33. All FEI Officials were obligated in accordance with Art. 2.2.3 of the EHV-1 By-Laws, to:

*"a) Know these EHV-1 By-Laws.*

*b) Understand and comply with mitigation measures for outbreaks of infectious disease applying at the Events they are appointed to.*

*c) Within their respective functions, assist OCs with the measures implemented under these EHV-1 By-Laws.*

- d) *Provide any relevant feedback to the FEI in their respective reports or as directed by the FEI.*
- e) *Report any suspected case of EHV-1 to the FEI Veterinary Department immediately."*

34. The EHV-1 By-Laws expanded the Examination on Arrival with a rectal temperature measurement which had to be registered by the Veterinary Delegate/Veterinary Commission or a veterinarian assigned by the Veterinary Delegate/Veterinary Commission into the FEI Horse App for each and every horse participating at FEI Events, in accordance with the EHV-1 By-Law no. 3:

*"3. Mandatory use of FEI HorseApp by the VDNC or a veterinarian assigned by the VDNC at Examination on Arrival with registration of horse's rectal temperatures."*

35. *In casu*, the Respondent, in his capacity as Veterinary Delegate, was the sole person responsible to ensure that the Examination on Arrival was carried out both at the Lier Event and the Bonheiden Events, as no Veterinary Commission or Foreign Delegate were required for these specific Events (considered as "Minor International Events", as per Annex X of the VRs). The FEI submitted that the Respondent knowingly and deliberately failed to obtain rectal temperatures of participating horses which was a required part of the Examination on Arrival as per the VRs and the EHV-1 By-Laws. In doing so, the Respondent failed to apply Art. 1029.1, 1029.4-7, Art. 1030.1, Art. 1031.1-3, Art. 1108.1 and 1108.8 of the VRs and By-Law no. 3.

36. Since the Respondent did not ensure that the horses did not have any clinical signs of infectious diseases by registering their rectal temperatures the Respondent furthermore failed to apply Art. 1029.4-7 of the VRs i.e. to identify and isolate any horse showing any clinical signs of infectious disease or any horse that has been in contact with other horses showing such clinical signs. Furthermore, the Respondent was unable to prevent such horses from entering the FEI Event Venue and placing them in isolation stables, and entered false rectal temperatures in the Horse App, based on testimonies from FEI Officials.

37. By his behaviour, not only has the Respondent endangered the health of participating horses by refusing to perform one of the key biosecurity measures that minimizes the introduction and transmission of a disease agent into an FEI Event Venue, but the Respondent also resorted to falsifying official FEI records by recording false rectal temperatures of the participating horses into the Horse App. The Respondent resorted to registering false rectal temperatures once he realised that he may be sanctioned for his misconduct as not all FEI Officials share his disapproval of the biosecurity measures.

### Breach of the FEI Officials' Code of Conduct

38. As an FEI Official, the Respondent undertook to respect all FEI Rules and Regulations at all times, in accordance with the FEI Officials' Code of Conduct:

*"As an FEI Official I undertake to respect all FEI Rules and Regulations at all times, and in particular the FEI Code of Ethics and Conflict of Interest Policy and the FEI Code of Conduct for the Welfare of the Horse.*

*I am aware that I am a representative of the FEI while officiating at any FEI Event (hereinafter the "Event/s"). I am also conscious of my role as an authority and of the associated obligation to have adequate knowledge of the principles of equestrian sport and the relevant FEI Rules and Regulations, and to apply them at all times in a fair and consistent way."*

39. In the present case, the FEI submitted that the Respondent blatantly disregarded and refused to apply the FEI Rules and Regulations more specifically the VRs and the EHV-1 By-Laws.

40. Furthermore, the Respondent shared his disapproval and advocated his negative opinion on the additional biosecurity measure of temperatures' checks under the EHV-1 By-Laws at min. to other FEI Officials which is not in accordance with the following paragraphs of the FEI Officials' Code of Conduct:

*"I will maintain a neutral, independent and fair position towards Athletes, Owners, Trainers, Grooms, Organisers, other Officials and stakeholders. Financial and/or personal interests will never influence my officiating duties and I will spare no effort to avoid any such perception."*

*"In the course of my duties or when representing the FEI I will refrain from making any public statements, including to the media or in social media, that might cause harm to the FEI or to equestrian sport in general. This includes statements that might create a perception of bias."*

41. The FEI therefore asserts that the Respondent has committed the following offence: "Breach of the FEI Officials Code of Conduct" as per Art. 164.12(k) of the GRs.

Conduct that brings the FEI and/or equestrian sport into disrepute, i.e conduct that cause the public opinion of the FEI and/or equestrian sport to be diminished

42. It is a breach of Article 164.12(g) to engage in conduct that *'brings equestrian sport, and the FEI in particular, into disrepute'*, i.e., to engage in a conduct that causes the public opinion of the sport to be diminished. Intent is not required to establish the offence, i.e., a person may bring a sport into disrepute even where s/he did not intend to do so.

43. Non-compliance with the FEI's biosecurity measures has the potential to impact various derogations the FEI has succeeded in achieving with the OIE in relation to the High Health, High Performance (HHP) system. HHP horses are considered a sub-population of the global equine population, and as such they are kept under a high-level biosecurity management that ensures they represent a lower risk than other horses. They can therefore be considered a compartment with a higher health status compared to the horses outside this sub-population. The HHP system is built on the precondition that competition horses are under continuous veterinary supervision and of general high health status in order to be fit to compete in top level international competitions.

44. Not applying the Examination on Arrival by the FEI's own Officials as required by the VRs and the EHV-1 By-Laws can potentially endanger the HHP system. It needs emphasizing that the Respondent's misconducts occurred following one of the biggest EHV-1 outbreaks in recent history when the application of biosecurity measures was absolutely crucial to maintain the health of the horse population.

45. The EHV-1 By-Laws and their amendments and extensions were approved by the FEI Board on 30 March 2021 and on 25 May 2021. Furthermore, the GRs, the VRs and other FEI Rules and Regulations have been approved by the General Assembly, the highest representative body of the FEI comprised of member National Federations. It is not the Respondent's position, as an FEI Official, to challenge the already approved laws, however, it was the Respondent's duty to apply them.

*FEI Submission as per the Applicable Sanction*

46. The FEI submitted that the Respondent has admitted the Rule Violations i.e. that the Respondent did not apply the EHV-1 By-Laws. The Respondent however chose to have the sanction determined by the FEI Tribunal.

47. Art. 164.14 of the GRs stipulates a range of sanctions that shall apply for the offence of “Bringing the FEI and/or equestrian sport into disrepute”:

Low-End: 1 month and up to CHF 1,500

Mid-Range: Up to 6 months and CHF 1,500-3,000

Top-End: Up to 9 months and CHF 3,000-7,000

Max: 1 year and CHF 10,000

48. Where an offence is not listed in the table above, such as the breach of the (i) FEI Veterinary Regulations; (ii) EHV-1 By-Laws and (iii) FEI Officials’ Code of Conduct, general sanctioning power will apply and sanctions may be imposed in accordance with Art. 164 of the FEI General Regulations.

49. The general sanctioning provisions of Articles 159.2 and 164 of the FEI General Regulations are as follows:

Article 159.2

*“2. The FEI Tribunal may impose the following sanctions, or, where appropriate, delegate the ability to do so to the FEI Secretary General and/or the FEI Legal Department: [...]*

*(b) A fine, taking into account the FEI Guidelines for Fines and Contributions towards Legal Costs [...];*

*(e) Suspension of individuals and Horses for any period up to Suspension for life; [...]*”

Article 164 (Types of Sanctions)

*“164.1 The Sanction(s) imposed in any given case can consist of any of the Sanctions set out in Articles 164.2 – 164.10 below. The level of the Sanction shall be decided according to the guidelines mentioned in Article 164.13 below and to the circumstances of the case.”*

Article 164.13 (General Sanctioning Principles and Table of Sanctions)

*“164.13 In deciding on the appropriate sanctions to be imposed and whether to categorise the offence in question as “low-end”, “mid-range”, “top-end” or “max”, the body imposing the Sanction shall consider the following factors, together with any other relevant factors:*

*(a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.*

*(b) Whether the action or omission resulted in a material disadvantage to any other person or body involved.*

*(c) Whether the action or omission involved the maltreatment of Horses.*

*(d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.*

*(e) Whether the action or omission involved fraud, violence or abuse or similar criminal acts.*

*(f) Whether the action or omission was deemed to be deliberate."*

Article 164.5 (Fine)

*"(a) A fine is appropriate particularly in cases where the offender has acted negligently. [...]"*

Article 164.7 (Suspension)

*"[...]"*

*(c) The Suspension may be provisional or final and may be imposed on such terms and subject to conditions as the FEI Tribunal, the FEI Headquarters or the FEI Secretary General, as the case may be, may impose. In certain cases a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules.*

*(d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension."*

50. In determining the appropriate sanction, the FEI submitted that the following elements should be taken into consideration in the present case:

- The Respondent's offences involved the potential maltreatment of horses in so far as the horses attending the FEI Events in question were put at an unnecessary risk of contracting equine infectious diseases as the Examination on Arrival was not conducted in accordance with the EHV-1 By-Laws and the VRs. The preamble to the FEI Code of Conduct for the Welfare of the Horse states that 'the FEI requires all those involved in international equestrian sport to adhere to the FEI Code of Conduct and to acknowledge and accept that at all times the welfare of the Horse must be paramount. Welfare of the horse must never be subordinated to competitive or commercial influences';
- At the Lier Event, not only has the Respondent made a conscious decision to intentionally not apply the requirements of the EHV-1 By-Laws i.e. to not check the rectal temperatures of participating horses but the Respondent also resorted to fraudulent behaviour of falsifying the rectal temperatures of each and every participating horse. For each horse a false rectal temperature was fabricated and registered into the Horse App by the Respondent intended to deceive the FEI into believing that proper

Examination on Arrival was conducted in accordance with the EHV-1 By-Laws and VRs.

- The Respondent's offences were carried out deliberately and with full consciousness of their non-compliance as admitted by the Respondent himself;
- The Respondent endangered the FEI's reputation and the High Health, High Performance (HHP) standing of FEI Horses by not applying the biosecurity measures in accordance with the EHV-1 By-Laws and VRs. Additionally, the Respondent advocated his negative opinion on the biosecurity measure to other stakeholders;
- The Respondent breached the FEI Officials' Code of Conduct and the undertaking therein to respect all FEI Rules and Regulations. Furthermore, the Respondent completely dismissed his role as the representative of the FEI, who shall maintain a neutral, independent and fair position towards other Officials and stakeholders as per the Code. As an FEI Official the Respondent is an emblematic figure at FEI Events and is therefore responsible for setting an example by complying with the FEI Rules and regulations;
- The same conduct also constituted a violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, in breach of Article 38.1 of the FEI Statutes.

51. In accordance with Art. 155.12 of the GRs, the FEI Officials are acting on behalf of the FEI while officiating at FEI Events and are bound by all FEI Rules and Regulations. As representatives of the FEI, they therefore need to be held to high standard of rule compliance and should be sanctioned when warranted. Although the Respondent expressed his wish to retire from officiating, upon receiving the FEI's Notification Letter of 19 April 2022, the FEI is of the view that the legal proceedings for the alleged rule violations must continue and must ultimately result in an appropriate sanction for the Respondent's misconduct.

52. Based on case law that can bring comparisons to the present matter<sup>1</sup>, the FEI, considering the Respondent's serious misconduct, as well as in a will to send a signal to all stakeholders in the sport and to the animal health authorities that this sort of conduct is not acceptable and must be avoided at all costs, submits that it is necessary and proportionate to preclude the Respondent from all FEI activity (including acting in any capacity at FEI events) for a cumulative period of three (3) years and to fine him CHF 5'000 for his various breaches.

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<sup>1</sup> FEI v. Wilson, FEI v. Jogina, FEI v. Sommersteth and FEI v. Arnould



53. The FEI proposed a three-year period of suspension, a fine of CHF 5'000 and a contribution to the costs of CHF 2'000.

## B. Submissions by the Respondent

54. The Respondent replied to the FEI's Notification Letter by way of an Email on 26 April 2022.

*"Dear all,*

*i do write this mail as an answer on your Notification Letter from 19/04/22 .*

*first of all, i do admit that i didn't apply the EHV1 By-Laws as intended by the FEI, but at least I did my best to try it .*

*I gathered information from many other officials that officiated at other CHI's last year . They told me that, for example in Spain and in Italy, it is common practice not to take temperatures at all !!? This was also the case at CHI's in Bonheiden and Bornival when i was not on duty . Last month in Den Bosch NL no temperatures were taken .. Even in Opglabbeek, where the VD apparently is holly, the temperatures are taken in the boxes, mixing non-controlled with controlled horses .*

*I am not surpriced to hear that, since the EHV1 By-Laws as intended by the FEI, are not appliable in reality. It looks very nice on paper, but do they realise in Lausanne that it takes about 5 minutes per horse to check microchip, app, passport and temperature. For 600 horses, this means 50 hours !!?*

*If a VD claims he applies the EHV1 By-Laws properly, you know he's cheating .*

*I wrote in previous mails that i don't believe in the efficiency of temperature controls, and the only way to minimise EHV1 risk is vaccination . I am not the inventor of this idea . All the Veterinary Delegates in Belgium, except 1 ( only André Aumann doesn't think so, but he even has problems seeing if a horse is lame), share my opinion. The virologist of EquiFocusPointBelgium is also convinced .*

*Goran wrote me in a whatsapp that my opinion didn't influence the decision for my suspension... do i really have to believe this ?*

*In your "Statement of the Facts" you reproach me that i hurt the reputation of the FEI, and that i endangered the horses' health .*

*By introducing those EHV1 By-Laws you created a ridiculous situation, and really jeopardized the good reputation of the FEI .*

*By not making the EHV1 vaccination mandatory for all FEI competition horses, you 're playing with the horses' health .*

*You have a good tool to diminish the risk for an EHV1 outbreak, that 's already proven for more then 30 years, but you don't use it !?*

*I wouldn't want anymore to take the risk of officiating at CHI's as long as the EHV vaccination is not imposed . As an FEI Veterinary Delegate i would feel very responsible in case of an outbreak . I can not accept this anymore .*

*I have always had good support from the KBRSF, and i really regret to stop the cooperation with the KBRSF and with many loyal officials, but under these FEI conditions it stops for me.*

*If this is the present i get for 35 years of hard work and loyal service for the FEI, just erase my FEI id .*

*I wish the FEI good luck to find enough Veterinary Delegates who are willing to do this job.*

*I can only recommend the FEI-Board to open the eyes.*

*Best regards,*

*Marc Schelkens DVM*

*(FEI id 10050129 ... final use)"*

55. As a submission in front of the Tribunal, the respondent submitted an email on 20 June 2022.

*"Dear all,*

*i gladly do accept the 3 year suspension. I intended not to officiate anymore on CHI's, as long as the EHV vaccination for horses is not mandatory.*

*The way the FEI is treating me makes my decision easier. Now i have a reason to say no to the organisers. It's a pity to hear they don't find enough officials willing to officiate because of the EHV1-By-Laws .*

*In these condintions, i don't want to be an FEI official anymore .*

*You didn't leave me the choice, but it is not my intention to have the sanctions determined by the FEI-tribunal.*

*Indeed I admitted not applying the EHV1-By-Laws, and that's apparently the only thing you picked up from my mail. You forgot that those EHV1-By-Laws are impossible to carry out, and i don't know any other FEI official who can do so.*

*I got the sanction because an overzealous FJ wrote it in her report. She could do so with any FEI official.*

*You didn't appreciate that i wrote you "I suppose the FEI Veterinary Commission is sleeping".*

*The only thing i wanted was a constructif discussion about the EHV1-By-Laws. I never got an answer on my mails. Am i the only one who cares about the horsse's health?*

*Do me a favor, and do oblige the EHV1 vaccination for FEI competing horses as soon as possible.*

*Yours sincerely,*

*Marc Schelkens"*

## VII. Legal Analysis

### A. Jurisdiction

56. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes and Article 18.1 of the IRs. The jurisdiction of the Tribunal is undisputed.

57. The Respondent, as a member of the Royal Belgian Equestrian Federation and a Level 3 FEI Official Veterinarian was bound at the time of the alleged conduct by the FEI Rules and Regulations.

### B. Legal Discussion

58. Both at the stage of the proceedings in front of the FEI and in front of the Tribunal, the Respondent admitted having not applied the EHV-1 By-Laws.

59. Furthermore, in his 20 June 2022 email addressed to the Tribunal, the Respondent "gladly" (sic) admitted the 3-years suspension to be imposed on him, as requested by the FEI.

60. As indicated by the FEI, no agreement could be reached between the parties, with respect to the other rule violations, as well as the other prayers for relief from the FEI.

61. The Tribunal will therefore analyse whether the Respondent's actions amounted to the various breaches of FEI's Regulations as brought forward by the FEI.

*Alleged breach of the VRs and the EHV-1 By-Laws*

62. After the Outbreak of the EHV-1 in Spring 2021, the FEI had to take strict measures, such as a six-week shutdown of all international events in mainland Europe with immediate effect from 1 March to 11 April 2021, to prevent the spread of the EHV-1. In this context, the FEI had to take regulatory measures, which resulted in the adoption of the EHV-1 By-Laws.
63. The severity of the EHV-1 Outbreak is not contested by the Respondent, which strongly advocates for a vaccination of all FEI competing horses against the EHV-1 virus.
64. However, despite understanding the seriousness of the situation, the Respondent adopted a behaviour which could potentially harm the competing horses, by his failure to properly implement the mandatory biosecurity measures.
65. In view of the high stakes involved in the spread of this disease, compliance with the rules in this case is of particularly crucial importance. Indeed, as an FEI official, the expectations of the Respondent's behaviour are high, and he is expected to set an example by applying the FEI's rules.
66. With respect to the VRs, the Tribunal is also comfortably satisfied that the Respondent's conduct was in violation of Art. 1029.1, 1029.4-7, Art. 1030.1, Art. 1031.1-3, Art. 1108.1 and 1108.8 of the VRs. Indeed, the Respondent failed to obtain rectal temperatures of participating horses at Events where he officiated as VD, which was a required part (and an important one due to the EHV-1 Outbreak) of the Examination on Arrival, pursuant to both the EHV-1 By-Laws and the VRs.
67. Art. 1029.1 of the VRS states that the VD/VC must ensure that the Examination on Arrival is carried out according to Art. 1031 VRs, which provides a list of tasks the veterinarian must perform during the Examination on Arrival, such as "ensure that the Horses do not have any clinical signs of infectious disease. This may include a clinical examination to assess the heart, respiratory rate, body temperature and the checking of any other clinical parameters" (cf. art. 1031.3 VRs).
68. Furthermore, the EHV-1 By-Laws provide that a rectal temperature check must be performed and recorded into the HorseApp.

69. By recognizing that he did not perform the Examinations on Arrival, the Respondent committed a breach of Art. 1029, Art. 1030 and Art. 1031 of the VRs, which are to be read in conjunction with Art. 1108 of the VRs, determining the VD's duties.
70. In view of the above, the Tribunal is furthermore comfortably satisfied that the Respondent has breached the EHV-1 By-Laws, which is not contested by the Respondent himself.
71. The Respondent explained that the EHV-1 By-Laws are "impossible to carry out", and that he does not know any other official who can do so. The Respondent is of the view that the only possible way to protect the horses against the EHV-1 Outbreak is to make vaccination mandatory for all FEI competing horses.
72. The Tribunal notes in this respect that, although the Respondent admitted not applying the relevant and applicable laws and regulations, he did not appear to have done so with the aim of gaining any personal advantage, being material or financial. His explanations, also by way of the various Veterinary Reports he submitted, were that the way the EHV-1 By-Laws were drafted were impossible to carry out, and that those rules should be changed.
73. It is however not the Tribunal's role, in the present disciplinary proceedings, to determine the pertinence and concrete applicability, also in terms of medical requirements, of regulations that were regularly adopted by the competent bodies. In this regard, the Tribunal notes that the EHV-1 By-Laws – and the strict requirements specified therein – were adopted by the FEI's Board, and the VRs and GRs by the FEI's General Assembly. The EHV-1 By-Laws were adopted in response to the 2021 EHV-1 Outbreak in Europe, which required immediate actions from the FEI in order to ensure the safety of horses.
74. The Tribunal will however take into consideration the Respondent's explanations and motives in determining the appropriate sanction.

*Alleged breach of the FEI Officials' Code of Conduct in conjunction with Art. 164.12 k of the GRs*

75. A breach of the FEI Officials' Code of Conduct, which is provided under Appendix H of the FEI's GRs, is an offence that the FEI Tribunal may sanction (art. 164.12 (k) GRs).

76. Pursuant to the FEI Officials' Code of Conduct, any FEI Official shall respect all FEI Rules and Regulations at all times and apply them at all times in a fair and consistent way. The FEI Official also must maintain a neutral, independent and fair position towards Athlete, Owners, Trainers, Grooms, Organisers, other Officials and stakeholders.
77. According to the FEI, the Respondent would have breached the Code of Conduct as he chose not to apply the FEI Rules and Regulations and furthermore advocated his negative opinion to various stakeholder. As mentioned before, for the Tribunal it is very clear that by not applying the FEI Rules and Regulations, the Respondent breached the Code of Conduct. However, regarding his negative opinions regarding the rules, a more detailed analysis will be done in the following paragraphs.
78. The Tribunal must emphasize that one or several professional and or technical comments regarding measures taken by the FEI, made by any stakeholder, rider, trainer or official during an Event or at any other time, cannot be construed nor interpreted, in itself, as a breach of Article 164.12(g).
79. Indeed, if we were to accept the FEI's interpretation, no stakeholder, rider, trainer or official could ever express his opinions regarding rules, regulations and measures adopted by the FEI, without having the risk to be infringing the FEI's Officials' Code of Conduct. Such an interpretation of the article would be against the overall recognized principle of freedom of speech, and would prevent any stakeholder to freely express his opinions about the FEI, which at the end would be detrimental to the discussion of amendments to FEI rules.
80. The Tribunal is of the view that the Respondent's professional comments that contradict the FEI's criteria underlying the expeditions of some rules, did not bring the FEI and/or equestrian sport into disrepute: These comments were of professional nature and any professional difference of opinion, cannot be prevented nor sanctioned by the FEI because it would violate not only freedom of speech but would diminish the possibility of revision of rules, that usually arise out of shows, where stakeholders, while confronted with the reality of the sport and the rules, realize that they could be amended, modified or enhanced to better suit the realities of the sport worldwide.
81. In view of the above, the Tribunal rejects the FEI's submission by means of which the Respondent, by his negative comments regarding the rules, would have breached the FEI Officials' Code of Conduct, in conjunction with Art. 164.12 k of

the GRs, Alleged breach of Art. 164.12 g of the GRs (conduct that brings the FEI and/or equestrian sport into disrepute)

82. A conduct that brings the FEI and/or equestrian sport into disrepute, i.e. conduct that causes the public opinion of the FEI and/or equestrian sport to be diminished is an offence that the FEI Tribunal may sanction (art. 164.12 (g) GRs).
83. It is a breach of Article 164.12 (g) to engage in conduct that brings equestrian sport, and the FEI in particular, into disrepute, i.e., conduct that causes the public opinion of the sport to be diminished.
84. According to the FEI, the Respondent would have engaged in a conduct that brings the FEI into disrepute by not applying the Examination on Arrival as required by the VRs and the EHV-1 By-Laws, which were crucial to maintain the health of the horse population. The Respondent furthermore shared his disapproval and his negative opinion on the additional biosecurity measures.
85. The Tribunal considers that the Respondent's conduct consisting in violating the VRs and the EHV-1 By-Laws has already been duly taken into account, by the fact that he has been found in breach of such violations by the Tribunal (cf. above, paragraphs 62-74). Sanctioning again the Respondent for what appears to be a similar conduct, would be contrary to the *ne bis in idem* principle, by means of which no person may be sanctioned twice for the same offence.
86. With respect to the Respondent's behaviour of sharing his disapproval and negative opinion about the biosecurity measures, as it has been explained above under paragraph 78-80, sanctioning the Respondent for his behaviour would amount to a limitation of his freedom of speech.
87. In view of the above, the Tribunal rejects the FEI's submission by means of which the Respondent would have breached Art. 164.12 g of the GRs.

#### *Applicable Sanction*

88. In view of the above, the Tribunal is therefore satisfied that the Respondent committed breaches of the VRs and the EHV-1 By-Laws, which he did so voluntarily and in a repeated manner.
89. Pursuant to Art. 164.13 of the GRs, the Tribunal considers that the Respondent's conduct involved the potential maltreatment of Horses (let. c), since the horses

attending the Lier Event and the Bonheiden Events were put at an unnecessary risk of contracting equine infectious diseases as a result of the (in)actions of the Respondent.

90. While the Tribunal has not been provided with concrete evidence that horses were actually harmed by the Respondent's behaviour, the Respondent accepted to take such risks, by not applying the EHV-1 By-Laws, which had been adopted to prevent, as much as possible, the spread of the virus.
91. The Respondent's breaches of the VRs and the EHV-1 By-Laws are therefore, in the Tribunal's view, very serious offences.
92. Furthermore, the Respondent's role and duties as an FEI Official has also been taken into account by the Tribunal, as the Respondent shall be expected to set an example in this respect.
93. The Tribunal further notes that both the FEI and the Respondent agreed, during the course of the proceedings, to a Period of Ineligibility of three years to be imposed on the Respondent.
94. While the Tribunal finds that sanction severe considering the Respondent's overall behaviour, and the fact that two offenses submitted by the FEI were rejected by the Tribunal, it nonetheless considers that, in view of the Parties' agreement, it cannot go below or beyond such sanction. Furthermore, this suspension does not appear to be outside of the general sanctioning principles and tables of sanctions provided for under Art. 164 of the GRs.
95. All in all, the Tribunal is therefore satisfied that an overall suspension of three (3) years from all FEI-related activities to be imposed on the Respondent is a proportionate sanction, and takes into account all relevant factors of the case. The Tribunal further notes that the Respondent already accepted this sanction.
96. With respect to the fine to be imposed, the Tribunal considers that the Respondent never acted with the aim of getting an unfair advantage (comp. Art. 164.13 let. a of the GRs), or in a will to enrich himself. Furthermore, and in view of the fact that the Tribunal rejected the FEI's submission by means of which the Respondent would have breached Art. 164.12 g and k of the FEI GRs, a reduced fine of CHF 2'000.- shall be imposed on the Respondent, taking into considerations all circumstances of the case and particularly those listed in paragraphs 88 ff.



97. Finally, the Respondent will bear the costs of the proceedings. Since no hearing took place, and the proceedings were straightforward both at the FEI and the Tribunal level, the costs of the proceedings will be reduced to CHF 1'000.-.

#### VIII. Terms of the Decision

98. As a result, the Tribunal therefore decides as follows, and imposes the following sanctions on the Respondent in accordance with Article 164 of the GRs:

- 1) The Respondent's actions violated the VRs and the EHV-1 By-Laws.
- 2) The Respondent shall be suspended for a period of **three years**. The period of provisional suspension, which commenced on 11 November 2021, shall be credited against this period of suspension which will therefore come to an end on 10 November 2024. Pursuant to Article 164.7 of the FEI GRs, as from notification of this decision, the Respondent is barred for the period of his suspension, from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation.
- 3) The Respondent is fined CHF 2'000.
- 4) The Respondent shall pay a contribution towards the FEI legal costs in the amount of CHF 1'000.

99. According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.


#### IX. Legal Action

100. According to Articles 162.1 and 162.7 of the GRs, this decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

X. Decision to be forwarded to

- a. The Parties:
  - The FEI
  - Mr Marc Juul H. SCHELKENS
- b. Any other:
  - The NF of the Respondent, the BEL-NF

FOR THE TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', is centered on the page. The signature is stylized and written over a light gray rectangular background.

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Mr. Cesar Torrente (COL)