

DECISION of the FEI TRIBUNAL

31 August 2022

Reasoned decision notified on 28 October 2022

(Ref. no. FEI Tribunal: A22-0004 AUT-NF v FEI)

In the matter of

The Austrian Equestrian Federation (the “AUT-NF” or the “Appellant”)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the “FEI” or the “Respondent”)

together the “Parties”

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr José A. Rodriguez Alvarez (MEX), Sole Panel Member

## INTRODUCTION

1. The Appellant submitted this Appeal (the “Appeal”) to the FEI Tribunal (the “Tribunal”) after it noticed a regulatory change in the quota guidelines related to the FEI WBFSH Dressage World Breeding Championships for Young Horses.

### **Applicable Rule Provisions:**

Statutes 24th edition, effective 19 November 2019 (the “Statutes”), Art. 38.1.

General Regulations 24th edition, updates effective 1 January 2022 (the “GRs”) Art. 161, Art. 162, Art. 165.

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (the “IRs”) Art. 18, Art. 23, Art. 38, Art. 39, Art. 40.

## FACTUAL BACKGROUND

2. On 15 March 2022, the FEI issued a regulatory update in respect of the FEI WBFSH Dressage World Breeding Championships for Young Horses Guidelines to reflect changes in the quotas allocated to National Federations **(the “Updated Guidelines”)**. This decision was notified by the FEI on 15 March 2022 via two means; firstly, a notice was published on the Dressage section of the FEI website and secondly all National Federations, including the Appellant, were notified directly by way of a “NF News Circular”<sup>1</sup>, sent via email on 15 March 2022 to inform all National Federations **(the “NFs”)** of the new guidelines **(the “Decision”)**.

## PROCEDURAL BACKGROUND

3. On 19 July 2022, the Appellant submitted an Appeal Brief to the FEI Tribunal contesting the Decision.
4. On 20 July 2022, the FEI Tribunal Chair (the “Chair”) acknowledged receipt of the Appellant’s Appeal Brief and enclosures.
5. On 8 August 2022 the Chair provided the Parties with the opening and nomination letter for this Appeal wherein the Chair noted that the Appellant had not provided the Tribunal with

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<sup>1</sup> The NF News emails were sent to the official email addresses of the National Federations.

a copy of the Decision under Appeal, i.e., the alleged Decision taken by the FEI on 15 March 2022. The Chair also noted that the Appellant did not submit a Power of Attorney nor proof of payment as to the appeal fee (cf. art 162.6 of the FEI General Regulations). The Chair requested the Appellant to provide such documentation to the Tribunal by the 10 August 2022. Finally, the Chair informed the Parties of the nomination of a Sole Panel Member to handle the present matter, informing them that they had a deadline to object to his nomination by 12 August 2022.

6. On 13 August 2022, the FEI submitted a brief outlining its position on the inadmissibility of the Appeal.
7. On 17 August 2022, the Chair acknowledged receipt of the FEI's submission on admissibility and granted the Appellant with an opportunity to provide its position regarding the admissibility of the Appeal by Friday 19 August 2022.
8. On 18 August 2022, the Appellant submitted letter its whereby it primarily highlighted that no argument had been presented by the FEI regarding the merits of the appeal.
9. On 31 August 2022, after considering all the briefs and exhibits submitted, the Sole Panel Member issued the Operative Part of its Decision, declaring the Appeal inadmissible. The Panel also explained that in accordance with Article 39.2 of the IRs the reasoned Decision would only be notified upon request of a Party and such request must be sent in writing to the FEI Tribunal within twenty-one days of receipt of the operative part of the Decision.
10. On 5 September 2022, the Appellant requested a reasoned Decision in respect of this Appeal.

## THE PARTIES' SUBMISSIONS

11. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and documentary evidence submitted during these proceedings. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in this Appeal, the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

### *Submissions by and on behalf of the Appellant:*

12. The Appellant submitted the following in its written submissions:

- (i) The Appellant wished to appeal the Decision in respect of the Updated Guidelines and contested that the unilateral announcement of new dressage rules for young horses did not constitute a legal act.
- (ii) The Appellant argued that the regulatory change in the Updated Guidelines placed Austria and its members in a disadvantageous position, because only one horse (previously two horses) may be entered in each age category.
- (iii) The Appellant consider that the Tribunal's jurisdiction emanates from Article 38.1 of the FEI Statutes and that the Tribunal is the competent forum to issue a Decision to resolve this dispute.
- (iv) The Appellant also maintained that in accordance with Article 20.1 (vii) of the FEI Statutes; Sporting Rules can only be approved "*that cannot await the next General Assembly and are required by the IOC, the IPC and/or their Regional Organisations and Sport Rules for Series*"; furthermore, the Board may "*consider and, when appropriate, approve proposals of the Standing Committees, including but not limited to the grant of organisation rights to International FEI Events*". Thus, the Appellant submitted therefore that the change to the Updated Guidelines had not been approved by the Board, nor would the Board be competent to make such a change under the FEI Statutes. Moreover, the Appellant noted that the change was made during the current year (retrospective to 1 January 2022), which is generally inadmissible.
- (v) Furthermore, the Appellant maintained that the entire FEI WBFSH Dressage World Breeding Championships for Young Horses regulation was in breach of Directive 90/428/EEC, which prohibited discrimination in relation to participation in equestrian events. In addition, the Appellant contested that the exclusion of horses that are not registered in the Austrian Studbook constituted such discrimination; in particular, that it was not reasonable that countries did not have their own studbook were in a better position than the Appellant regarding the nomination of horses.
- (vi) Finally, the Appellant requested that the Tribunal "*declare that the FEI WBFSH Dressage World Breeding Championship for Young Horses Guidelines announced in March have not been legally put into effect and is therefore invalid in relation to the OEPS*"<sup>2</sup>.

### ***Submissions by and on behalf of the FEI***

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<sup>2</sup> Appellant's Submission to the FEI Tribunal dated 19 July 2022.

13. The FEI submitted the following in its written submissions:

***Initial Submissions:***

- (i) The FEI requested the Tribunal to first rule on the admissibility of the Appeal, as a preliminary matter before considering the merits of the Appeal. In this regard, the FEI submitted that since the Appellant missed the deadline to file its appeal by almost 3 (three) months, that the Appellant had not submitted an appeal in accordance with the requirements of Article 162.5 of the FEI GRs (i.e., the Appeal has not been “properly submitted”) and, therefore, that the Appeal was not admissible.
- (ii) The FEI outlined its position in this respect and referred to Article 162.5 of the FEI GRs.
- (iii) The FEI also referred to a decision of the decision 4A\_413/2019 of the Swiss Federal Tribunal to argue that the question of compliance with an appeal deadline is a question of admissibility rather than jurisdiction.
- (iv) The FEI explained that the Decision was notified on 15 March 2022 in two ways: Firstly, via a notice published on the Dressage section of the FEI website and secondly by way of a “NF News<sup>3</sup>”, also on 15 March 2022, sent out directly to all National Federations, including the Appellant to inform them of important information.
- (v) Thus, the FEI submitted that, contrary to the Appellant’s submission according to which it only discovered the Updated Guidelines on 31 March 2022<sup>4</sup>, the Appellant was in fact informed about the Updated Guidelines (along with all other National Federations) via the NF News on 15 March 2022. Therefore, the deadline for the Appellant to file an appeal to challenge the validity of the Guidelines ended on 5 April 2022 (i.e., 21 days after the FEI’s notification on 15 March 2022).
- (vi) The FEI noted that by its own admission, the Appellant became aware of the Updated Guidelines on 31 March 2022 (“...with routine inspection on March 31 the OEPS discovered that the “FEI WBFSH Dressage World Breeding Championships for Young Horses Guidelines” were updated<sup>4</sup>.”) At this juncture, the FEI explained that the Appellant subsequently contacted the FEI Dressage Director and the FEI President on 1 April 2022 to complain about the Updated Guidelines. The FEI Dressage Director replied to the Appellant’s Secretary General on 9 April 2022 that, despite

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<sup>3</sup> FEI Response on Admissibility of the Appeal dated 13 August 2022- Exhibit 1.

<sup>4</sup> Appellant’s letter to the FEI Tribunal dated 10 August 2022.

their objection, the Updated Guidelines would be applied to the 2022 Championships.

- (vii) In addition, the FEI commented that even if it were to be deemed that the date of notification of the Updated Guidelines would have been 31 March 2022 (the date mentioned by the Appellant), the Appellant's deadline to appeal would have been 21 April 2022.
- (viii) However, the FEI noted that the Appellant did not file an Appeal with the FEI Tribunal until 19 July 2022 and, therefore, according to Article 18 of the IRs the FEI Tribunal would no longer be competent to adjudicate this matter, especially since the formalities set out in Article 162.4 of the FEI GRs were not complied with.
- (ix) Moreover, the FEI referred to the Appellant's argument according to which *"The sending of information is not a "decision". Therefore, there is no deadline to file the appeal to challenge the validity of the Guidelines. The 21-day period has a new beginning every day"*. The FEI disagreed with this interpretation and maintained that a decision had been clearly taken to update the guidelines and it was duly notified on 15 March 2022.
- (x) The FEI referred to Article 165.2 of the FEI GRs, to highlighted that said provision clearly stated that the deadline to appeal started to run from the date on which the Decision was notified.
- (xi) The FEI submitted that it had clearly demonstrated that the Updated Guidelines were notified to the National Federations on 15 March 2022. Consequently, there can be no interpretation other than one according to which the deadline for National Federations to appeal against the Updated Guidelines started to run on 15 March 2022, the date of notification. The FEI stated that this interpretation, unlike the Appellant's, is fully in line with Article 162.5 of the FEI GRs.
- (xii) Finally, the FEI noted that because the Appellant had missed the deadline to file its appeal by almost 3 (three) months, the Appellant had therefore not "properly submitted" an appeal in accordance with the requirements of Article 162.4 of the FEI GRs and, therefore, the Appeal was not admissible.

#### ***Subsequent submissions from the Appellant***

14. The Appellant submitted a further letter in response to the FEI's submission on admissibility.

Instead of addressing this issue, the Appellant noted that there was *“no submission from the FEI regarding the main argument of the appeal: that the FEI Statutes do not provide the Board or another body of the FEI to approve the Updated Guidelines”*. The Appellant maintained that only the General Assembly of the FEI has the right to update guidelines and as such there was no legal basis for the Decision which *“is a “non-decision and remains invalid”*.

## LEGAL DISCUSSION

15. Firstly, the Tribunal notes that it must consider the relevant provisions under Article 162 of the GRs regarding the basis for an appeal.
16. In particular, the Tribunal notes Article 162.5 of the GRs outlines the *“Process for Filing an Appeal against other FEI Decisions”* (i.e., other than an Appeal against a Decision arising from a Protest). It is particularly noted that any appeal *“must reach the FEI Tribunal within twenty one (21) days of the date on which the notification of the earlier Decision was sent”*. As such based on the arguments presented by the Parties and in line with this provision, the Tribunal must consider (1) whether the Decision is indeed a decision and (2) whether the Appeal was filed on time.
17. The Tribunal notes that it has the power to adjudicate appeals provided notably that an actual *decision* has been issued.
18. It is therefore necessary to analyse the features that a communication must generally have in order to be deemed as a decision.
19. According to the established general principles identified by CAS panels – which this Tribunal agrees with and considers applicable to the present case –:
  - (i) *“the form of the communication has no relevance to determine whether there exists a decision or not.”*<sup>5</sup>
  - (ii) *“[I]n principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties” and “an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an animus decidendi, i.e. an intention of a body of*

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<sup>5</sup> CAS 2008/A/1633.

*the association to decide on a matter. [...] A simple information, which does not contain any ruling, cannot be considered a decision."*<sup>6</sup>

20. In this regard the Tribunal finds that it is undeniable that by modifying the Updated Guidelines and notifying them to the NFs, the NF News Circular constituted a unilateral act intending to produce legal effects (i.e., the change to the allocation of quotas) on its addressees. In other words, the ruling to amend the guidelines related to the FEI WBFSH Dressage World Breeding Championships for Young Horses contained an *animus decidendi* which therefore reveals the presence of a decision in this case. This conclusion is in line with this Tribunal's case law on the previous classification of a *decision*.<sup>7</sup>
21. Having established this, the Tribunal moves on to decide whether the Appeal was filed within the appropriate time limit.
22. Particularly, the Tribunal takes in account the legal arguments put forward by the FEI and the jurisprudence of the Swiss Federal Tribunal<sup>8</sup>, wherein the question of compliance with an appeal deadline is a question of admissibility rather than jurisdiction.
23. The Tribunal concurs with this conclusion of the Swiss Federal Tribunal and further supports this viewpoint with reference to the FEI Tribunal appeal case A20-0001 Eketoft v. FEI<sup>9</sup>, wherein after careful consideration of the timeline, it was confirmed that said appellant "*did not lodge the Appeal within the deadline foreseen in the GRs*" and therefore declared the appeal inadmissible.
24. As such the Tribunal notes that an appeal may only be admitted for consideration by the Tribunal if all formalities set out in Article 162.5 of the FEI GRs were fully complied with. However, the Tribunal notes that, when filing an appeal against FEI Decisions, the submitted appeal and supporting evidence "*must reach the FEI Tribunal within twenty-one (21) days of the date on which the notification of the earlier Decision was sent*".

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<sup>6</sup> Ibid.

<sup>7</sup> Ms Linda Eketoft v Fédération Equestre Internationale (FEI) 2020

<sup>8</sup> 4A\_413/2019, WADA v FINA. English translation of the decision available at <https://www.swissarbitrationdecisions.com/atf-4a-413-2019>

<sup>9</sup> Ms Linda Eketoft v Fédération Equestre Internationale (FEI) 2020



25. As demonstrated by the FEI, the Decision was notified on 15 March 2022 in two ways: firstly, via a notice published on the Dressage section of the FEI website and also secondly by way of a NF News<sup>10</sup> circular sent by email on 15 March 2022 to all FEI NFs.
26. Accordingly, and contrary to the Appellant's submissions, the Tribunal is satisfied with the FEI's evidence and concludes that the Decision was properly and duly notified to the Appellant on 15 March 2022.
27. On this basis, the Tribunal considers that any appeal against the Decision should have been filed by 5 April 2022.
28. The Appellant's argument according to which no deadline would have existed to file an appeal to challenge the Decision and that the *"21 day period has a new beginning every day"* is rejected by the Tribunal. Not only does such argument lack any legal basis, but should it upheld, it would cause an unwarranted legal uncertainty amongst the whole equestrian community.
29. Furthermore, and for the sake of completeness only, the Tribunal is also cognisant that by the Appellant's own admission, it became aware of the Updated Guidelines on 31 March 2022.<sup>11</sup> In this regard, even if 31 March 2022 were to be deemed as the date of "notification", the Appellant's deadline to lodge an appeal against the Decision would have been 21 April 2022.
30. As a result, the Tribunal confirms that the time limit contained in art. 162.5 GRs was not complied with under any of the two potential scenarios.
31. Accordingly, the Appeal is declared as inadmissible.
32. No deposit will be returned to the Appellant and each party shall be required to pay their own procedural costs.
33. All other prayers for relief are dismissed.

## DECISION

34. The Tribunal decides as follows:

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<sup>10</sup> The NF News emails are sent to the official email address of the National Federations, FEI Response Exhibit 1.

<sup>11</sup> Appellant's letter to the FEI Tribunal dated 10 August 2022.

1. The Appeal is not admissible.
  2. All other requests are dismissed.
  3. No deposit shall be returned to the Appellant.
  4. Each party shall pay their own costs in these proceedings.
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35. 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.
  36. According to Articles 162.1 and 162.7 of the GRs, this decision may be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE TRIBUNAL

A handwritten signature in black ink, appearing to be 'J.A. Rodriguez', written over a large, loopy 'C' shape.

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Jose A. Rodriguez Alvarez (MEX), Sole Panel Member