

## DECISION of the FEI TRIBUNAL

18 January 2024

Ref. no. FEI Tribunal: A23-0003  
German Equestrian Federation v. FEI

In the matter of

The German Equestrian Federation (the "GER-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. Rodríguez Álvarez (MEX), Sole Panel Member

## I. INTRODUCTION

1. The Appellant submitted this appeal (the “Appeal”) to the FEI Tribunal (the “Tribunal”) on 8 August 2023, against the FEI’s decisions of 2 and 3 August 2023, refusing to allow additional nominated entries for two events taking place in the Netherlands starting on 23 and 30 August 2023 (respectively, CH-EU-A4 in Exloo and CH-M-Combined Ponies in Oirschot).

### **Applicable Rule Provisions:**

FEI Statutes 24th edition, effective 17 November 2021 (the “Statutes”).

FEI General Regulations 24th edition, updates effective 4 April 2023 (the “GRs”).

FEI Driving Rules, effective 1 January 2022, updates effective 1 January 2023, (the “DRs”).

FEI Qualification Criteria for 2023 FEI Driving Championships.

Schedules for the championships CH-EU-A4 in Exloo and CH-M-Combined Ponies in Oirschot.

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (“the IRs”).

## II. FACTUAL BACKGROUND

### *i. FEI World Driving Championships for Ponies, 2023 Oirschot (“Oirschot”)*

2. On 28 July 2023, the FEI Driving and Para-Driving department sent an email to all national federations announcing that the organizing committee of the event CH-M-Combined Ponies scheduled to take place in Oirschot (Netherlands) between 30 August and 3 September 2023 decided to open the entries for additional individual entries according to the article 927.5.1 of the FEI Driving Rules and to the FEI Approved schedule.

3. On 31 July 2023, the Appellant sent its additional entries to the FEI whereby it nominated four single and four pair pony drivers.
4. On 2 August 2023, the FEI Driving and Para-Driving department explained that there was a maximum of two athletes per class and requested an updated list complying with this parameters.
5. On that same day, the Appellant sent an email expressing its disagreement with the FEI's interpretation of article 927 of the DRs.
6. On that same day, the FEI Driving and Para-Driving department replied to the Appellant explaining that the number of additional entries was specified in the championship's schedule and that national federations were not entitled to nominate twice the number mentioned in the schedule.
7. On that same day, the Appellant reiterated its position and explained that a joint reading of articles 927.4 and 927.6 of the DRs supported its position.
8. On that same day, the FEI Driving and Para-Driving department replied stating that *"Additional Entries are not considered as Nominated Entries and, therefore, only the specific number of entries permitted as Additional Entries in the Schedule may be entered."*
9. On that same day, the Appellant requested the FEI Legal department to explain what would be the purpose of Art. 927.4 and 927.6 if there was no nominate entry phase for additional athletes.
10. On that same day, the FEI Legal department sent a final e-mail (the "First Appealed Decision") explaining that *"the reference to "nominated Athlete Entries" in 627.6 is a reference to the general rule for nominated entries (i.e. NFs can enter twice the number of entries permitted for definite entries as nominated entries) and this is clear from the fact that the Article cross references the FEI General Regulations Article 116.4.2 which only refers to nominated entries (and does not make any reference to the nominated entries provisions applying to Additional Entries)." It also stated that "the rule has never previously been interpreted to consider Additional Entries as Nominated Entries or to allow NFs to make double the number of Additional Entries specified in the Schedule."*

*ii. FEI European Championships, Four in Hand 2023 Exloo ("Exloo")*

11. On 2 August 2023, the Appellant sent a list of additional entries for Exloo including the drivers Maximilian Reith and Christoph Sandmann (the "Drivers").
12. On 3 August 2023, the FEI Driving and Para-Driving department informed the Appellant that, since the Drivers had not fulfilled the qualifying criteria before 1 January 2023, they had not been added as additional entries.
13. On that same day, the Appellant explained that the Drivers had fulfilled the qualifying requirements during the previous weekend which was *"before the date of Nominated Entries for additional individual entries."*
14. On 4 August 2023, the FEI Driving and Para-Driving department sent an e-mail (the "Second Appealed Decision") explaining that the qualification period ended on the *nominated entries* date (i.e., 26 July 2023), as per the qualification criteria document. Therefore, the Riders were not qualified for Exloo.

**III. PROCEDURAL BACKGROUND**

15. On 4 August 2023, the Appellant submitted an Appeal Brief to the Tribunal contesting the First and Second Appealed Decisions (jointly referred to as the "Appealed Decisions"). The Appellant attached a copy of the proof of payment of the Appeal deposit. In view of the imminent start of both championships (i.e., Exloo on 23 August 2023 and Oirschot on 30 August 2023), an expedited procedure was required.
16. On 5 August 2023, the Tribunal sent an Opening and Nomination letter for the Appeal and informed the Parties of the appointment of Mr José A. Rodríguez Álvarez as Sole Panel Member (the "Panel"), to handle the matter. The Parties were given a deadline until 8 August 2023 to object to this appointment. Concurrently, pursuant to articles 23.1(e) and 44.1 of the IRs and in view of the expedited nature of the procedure, the FEI as Respondent, was given the opportunity to submit an answer to the Appeal by 14 August 2023.
17. On 7 August 2023, both Parties confirmed that they had no objection to the appointment of the Panel. In addition, the FEI announced that, in the interest of an expedited resolution of the appeal, it would seek to file an answer by 8 August

2023. Moreover, the Panel was requested to issue the operative part of the decision first and before 18 August 2023.

18. On that same day, the Panel acknowledged receipt of the Parties' e-mails and requests for an expedited nature. Moreover, since no oral hearing had been requested, the Panel announced that it intended to pass its decision based on the written submissions only.

19. On 8 August 2023, the FEI filed its answer to the Appeal (the "Answer").

20. On 10 August 2023, the Panel acknowledged receipt of the Answer and requested to be provided with an exhibit that was referred to in the submission but not attached along with the remaining exhibits.

21. On that same day the FEI provided the missing exhibit.

#### IV. THE PARTIES' WRITTEN SUBMISSIONS<sup>1</sup>

##### *i. The submissions of the Appellant*

- *Arguments concerning the FEI World Driving Championships for Ponies, 2023 Oirschot (entering twice the number of athletes as additional entries)*

22. The Appellant argued that it had the right to make twelve additional entries for Oirschot based on articles 927.4 and 927.6 of the DRs.

23. In particular, the Appellant stated that article 927.4 of the DRs unambiguously confirms that there is a second nominated entry date that applies to additional entries and covers not only teams but also additional entries. The Appellant supported its views based on an e-mail sent by the FEI Driving Director.

24. Moreover, since the heading of article 927 of the DRS is "Additional Entries for Championships and CAIOs", the entire article applies solely to additional entries. Therefore, all paragraphs of that article (including paragraph 6) must be read in a

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<sup>1</sup> The following sections contain a summary of the relevant facts, allegations and arguments based on the Parties' written submissions. Although the Panel has fully considered all the facts, allegations, legal arguments and evidence presented in these proceedings, the Panel will only refer to the submissions and evidence it considers necessary to explain its reasoning in this Decision.

way that they apply to additional entries and national federations must therefore be able to enter twice the number of additional entries by way of a nominated entry.

25. The Appellant also stated that there was no conflict between article 116.2.2 of the GRs and article 927 of the DRs. Article 116.2.2 of the GRs refers to two phases in which entries must be made (nominated entries and definite entries). There is no room for further interpretation and regulation by the sports rules of each discipline.
26. The Appellant claimed to agree with the FEI that article 927.5 of the DRs referred to definite entries, as this could be derived from:
  - (i) a comparison with articles 927.4 and 927.6 of the DRs which expressly refer to nominated entries, and
  - (ii) the list of drivers enumerated in the FEI Approved Schedule for Oirschot (the "Oirschot Schedule") which indicated:

#### *"4. CAIO/Championships*

<i>Number of home drivers (Team)</i>	<i>1 or 2 singles 1 or 2 pairs 1 or 2 four-in-hand</i>
<i>Number of foreign drivers (Team)</i>	<i>1 or 2 singles 1 or 2 pairs 1 or 2 four-in-hand</i>
<i>Number of horses/ponies per driver + one reserve horse per Team</i>	<i>1 per single 3 per pair 5 per four-in-hand</i>

#### *4.2. Additional Entries for CAIO/Championships*

<b><i>Additional Individual Entries</i></b> (article 927)– to be confirmed after the Nominated entries	<i>July 31, 2023</i>
<i>Number of foreign individual additional drivers (Max 6 as per Art 927.3.1)</i>	<i>2 (single) 2 (pair) 2 (four-in-hand) for those who have entered a national team</i>
<i>Number of home individual additional drivers (Max 6 as per Art 927.3.1)</i>	<i>2 (single) 2 (pair) 2 (four-in-hand) for those who have entered a national team"</i>

27. The Appellant claimed that the second nominated entry date mentioned in article 927.4 of the DRs allows for nominated entries relating to additional entries.
28. The wording of the Oirschot Schedule (i.e., "*Additional Individual Entries (article 927)– to be confirmed after the Nominated entries*") does not alter the nature of the additional entries. No clause from the Oirschot Schedule may abrogate binding provisions of the DRs.
29. Therefore, article 927.6 of the DRs must apply to additional entries. Since article 927.5 of the DRs provides for six additional definite entries, the Appellant must be allowed to make twelve additional nominated entries.
30. Article 927 of the DRs is clear, logical and coherent. The DRs were adopted by the FEI General Assembly and they are binding on athletes, FEI members and on the FEI.
31. If the wording of article 927 of the DRs is poor or misleading, this must not be detrimental to the FEI members or athletes that have been complying with –and relying on– them. Instead, the FEI should be the one bearing the consequences of any shortcomings.
32. The Appellant's interpretation of the DRs does not create an imbalance on the level playing field for athletes or national federations. If the DRs are applied correctly, all national federations may enter a higher number of entries with the second nominated entry date.
33. If the FEI has been applying its regulations unlawfully, this practice should stop and should be restored to align with the proper reading of the DRs.
  - *Arguments concerning the FEI European Championships, Four in Hand 2023 Exloo (entering additional athletes not qualified by the nominated entry date)*
34. The Appellant wanted to include three drivers for Exloo as additional entries. Two of the drivers had not fulfilled the qualifying criteria by the date for the nominated entries and they had only managed to do so during the period between the nominated entry date and the additional entry date (the "Drivers").

35. The Drivers were unable to qualify by the nominated entry date because many events had been cancelled. Since it is the responsibility of international federations to ensure that athletes have realistic chances to qualify, the FEI should have reacted to the cancellation of several events either by postponing the entry dates or lowering the qualification standards. The FEI did not do so because the national federations have the possibility to include additional entries in accordance with article 927.4 of the DRs which foresees a second nominated entry date.
36. The DRs do not specify that the qualification criteria have to be met by the first nominated entry date. The 2023 Championships Qualification Criteria stipulates that “the qualification period starts on 1 January 2022 and ends on the nominated entries date of the relevant Championship.” This document does not mention either that the only the first nominated entry date shall be taken as the deadline for the qualification period.
37. The Appellant sustains that it should be sufficient if an athlete fulfils the qualification criteria on the date that he is nominated for the event (i.e., in this case, the date for the additional entries).

– *The Appellant's prayers for relief*

38. The Appellant therefore requested “the FEI Tribunal to order the FEI to accept definite entries of those athletes whose nominated entries have unlawfully rejected by the FEI.”

*ii. The submissions of the FEI*

– *Arguments concerning the FEI World Driving Championships for Ponies, 2023 Oirschot (entering twice the number of athletes as additional entries)*

39. The FEI defends that there is only one Nominated Entry List according to the DRs as explained in its email to the Appellant. The concept of *nominated entry* is different from the one of *additional entries*. The Appellants incorrectly claim that the *additional entries* should be considered as a “second” Nominated Entry List, however:



- *Additional entries* are only open to NFs that have submitted a *nominated entry* for a team where as *nominated entries* are open to all NFs.
  - *Additional entries* are not mandatory for every Championship.
40. The Oirschot Schedule confirms that there is only one *nominated entry* date on 24 July 2023 and that *additional entries* is a separate concept with a different deadline.
41. Similarly, the Qualification Criteria Document for the FEI Driving Championships 2023 (the “Qualification Criteria Document”) only refers to “the *nominated entry date*” (i.e. in the singular).
42. The FEI has consistently communicated this same interpretation to other NFs. Therefore, the Appellant is requesting the FEI to deviate from its consistent interpretation of the Rules and interpret the rule in a way that was not foreseeable by the other NFs.
43. Article 927.5 of the DRs refers separately to Nominated Entry (in singular) and to Additional Entries, thereby showing that they are different categories. Moreover, it only refers to one Nominated Entry list to be submitted by the Nominated Entries deadline.
44. Likewise, there is a fixed maximum number of entries that can be made by way of Additional Entries as established in the Oirschot Schedule. Article 110.2.3 of the GRs establishes that “[t]he Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations”. Hence, the FEI Tribunal does not have jurisdiction to overrule the provisions of the regulations.
45. As a general rule, the GRs (which are hierarchically superior) prevail over the sports rules such as the DRs. Article 116.2 of the GRs set a clear deadline for *nominated entries*.
46. The sports rules will only exceptionally prevail over the GRs whenever the GRs explicitly allow it such as in its articles 103.2, 116.7, 121.3 and 140.1. Article 116.2 of the GRs does not contain such exception.

47. The Exloo Schedule sets a date for the Nominated Entry (i.e., 30 July 2023) and another one for the Additional Entries (i.e., on 2 August 2023). Should both concepts be the same, the FEI would not (and could not) have approved the Schedule with such deadline for Additional Entries as it falls within the 4 weeks stipulated in article 116.2 of the GRs.
- Arguments concerning the FEI European Championships, Four in Hand 2023 Exloo (entering additional athletes not qualified by the nominated entry date)
48. The Appellant intends to have two different qualification deadlines: one on the deadline for the Nominated Entries and a second one on the deadline for the Additional Entries.
49. The FEI cannot accept such an interpretation as it would create a two-tier system that would be at odds with the FEI's duty to ensure fair and equal conditions for all Athletes and Horses, which is a fundamental principle enshrined in article 100.1 of the GRs.
50. The Qualification Criteria Document clearly establishes that "[t]he qualification period for all 2023 Championships starts on 1 January 2022 and ends on the Nominated Entries date of the relevant Championship".
51. The Appellant has not provided any example of where the FEI has used the deadline for Additional Entries as the qualification criteria deadline.
52. The Appellant's interpretation would be unfair for Athletes/Horses who were entered by the Nominated Entry Date, and therefore had a shorter period of time to obtain the required qualifications than those Athletes/Horses who are entered as Additional Entries.
53. The Nominated Entry date for Exloo fell on 26 July 2023. Therefore, any Athlete/Horse wishing to participate in that Championships should have satisfied the qualification criteria by that date. The two German athletes referenced in the Appellant's Appeal Brief, Mr Reith and Mr Sandmann, had not met the criteria for the Championship by that date and were, therefore, ineligible.
54. The FEI considered that the qualification criteria are not unduly onerous and no other NF has complained about the cancelations of events. Moreover, the FEI is

not an event organizer, unlike the NFs, such as the Appellant which was free to put on additional events.

55. The FEI has maintained a consistent interpretation and application of the rules and therefore there is no room to suspend the execution of its decision, as requested by the GER-NF.

56. The FEI fully acknowledges and respects the jurisdiction of the FEI Tribunal to consider this appeal and issue a decision. The FEI is facilitating a swift issuance of a decision by agreeing to have the appeal processed on an expedited basis.

– *The FEI's prayers for relief*

57. The FEI therefore requested the Tribunal to:

- *"Dismiss the Appeal in its entirety; and*
- *Order that each party be responsible for their own costs.*
- *In the alternative, if the FEI Tribunal decides that National Federations are permitted to exceed the maximum number of Additional Entries provided for in the FEI DRs and the Schedules, the FEI respectfully asks the FEI Tribunal to:*
  - o *Confirm that the deadline for Athletes/Horses to achieve the qualification criteria for the respective Championships is the Nominated Entry date as specified in the respective Schedules (i.e. 24 July 2023 for the FEI World Driving Championships for Ponies, 2023 Oirschot (NED) and 26 July 2023 for the FEI Driving European Championships, Four-in-Hand, 2023, Exloo (NED)).*
  - o *Order that each party be responsible for their own costs."*

## V. JURISDICTION

58. The Tribunal has jurisdiction to hear the Appeal pursuant to article 38.1 of the FEI Statutes, article 18.1 and 30 of the IRs, article 162.1 of the GRs, and article 6 of the Policy.
59. The FEI has argued that *"the FEI Tribunal does not have the jurisdiction to overrule either the provisions of the FEI DRs (Article 927.5), the FEI GRs or the approved and legally binding Schedules of the Championships."*
60. Despite this, the FEI has not requested in its prayers for relief that the FEI Tribunal does not have jurisdiction to decide on this case. Therefore, the Panel deems that it is unnecessary to delve into such argument.
61. As a result, the Panel confirms that it has jurisdiction to adjudicate this appeal.

## VI. LEGAL DISCUSSION

62. Although the Panel has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

### *i. General considerations*

#### *– The Burden of Proof*

63. In line with article 32.1 of the IRs, the Appellant shall have the burden of proving that the Respondent committed the infringement alleged in its Appeal Brief.

#### *– The Standard of Proof*

64. Pursuant to article 32.2 of the IRs, the standard of proof shall be the comfortable satisfaction of the Panel.

*ii. Standing to appeal of the German Olympic Committee for Equestrian ("OCE")*

65. The present appeal has been filed by two entities: the German Equestrian Federation and the German Olympic Committee for Equestrian.
66. According to article 162.1 of the GRs "[a]n Appeal may be lodged by any person or body with a legitimate interest [...]".
67. According to Swiss law (which applies to this procedure according to article 38.3 of the FEI Statutes<sup>2</sup>) the issue of standing to appeal must be analysed "ex officio" by the adjudicating body.<sup>3</sup> Furthermore, the party asserting that it has a personal, direct and tangible legal interest – and therefore that it bears standing to appeal –, bears the burden of proving it (in line with article 32.1 of the IRs).
68. Also in line with Swiss law, it has been established by the constant case law of the Court of Arbitration for Sport that "*standing to sue belongs to the person who can avail himself of a right of which he himself is the holder in his own name*".<sup>4</sup>
69. Similarly, "[t]he case-law of the CAS reaffirms this principle, underlining at the same time that the notion of "*directly affected*" when applied to third parties who are not the addressees of a measure must be interpreted in a restrictive manner (CAS 2015/A/4343, para. 114 and cases cited)".<sup>5</sup>
70. It is clear to the Panel that the GER-NF has standing to challenge the Appealed Decisions as it is directly affected by them in its capacity as the direct member of the FEI in charge of entering and registering German athletes for the competitions organised by the FEI. In other words, it is clear to the Panel that the GER-NF has a legitimate interest as required by article 162.1 of the GRs.
71. On the other hand, the Panel has not been provided with any explanation concerning the legitimate interest that the OCE would have in the present matter.

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<sup>2</sup> "All disputes shall be settled in accordance with Swiss law."

<sup>3</sup> Commentaire Romand CPC, 2018, Bohnet, article 59, n° 97 & article 60, n° 2-3.

<sup>4</sup> TAS 2012/A/3027, Jacques Anouma c. Confédération Africaine de Football (CAF).

<sup>5</sup> CAS 2018/A/5746, Trabzonspor Sportif Yatirim ve Futbol Isletmeciligi A.S., Trabzonspor Sportif Yatirim Futbol Isletmeciligi A.S. & Trabzonspor Kulübü Dernegi v. Turkish Football Federation (TFF), Fenerbahçe Futbol A.S., Fenerbahçe Spor Kulübü & FIFA, para. 179.

Aside from an indirect interest – via the GER-NF –, it is unclear whether the OCE is directly affected by the Appealed Decisions.

72. In the absence of any argument from the GER-NF or OCE, the Panel considers that the latter does not have standing to appeal in the present matter.
73. For this reason, the present decision only lists the GER-NF as the only appellant.

*iii. FEI World Driving Championships for Ponies, 2023 Oirschot (First Appealed Decision)*

74. The Appellant presents an interpretation of the DRs and GRs – in particular of the concept of *additional entry* – according to which all NFs should be allowed to make 12 *additional entries* (i.e., twice the number permitted for definite entries). On the other hand, the FEI considers that the concepts of *nominated entry* and *additionally entry* are different and they cannot be mixed. Consequently, the NFs can only make the number of *additional entries* mentioned in the Oirschot Schedule
75. The crux of the matter is how to interpret article 927 of the DRs together with the remaining provisions and documents – such as the schedules of each competition – that refer to *nominated entries* and *additional entries*.
76. The Panel recalls that, as per Swiss law, the statutes of big associations, such as the FEI, shall be interpreted according to the criteria for the interpretation of laws. This has been confirmed by CAS panels and the Swiss Federal Tribunal.<sup>6</sup>
77. For instance, a CAS panel summarized this as follows:

*"As regards the methods of interpretation and the hierarchy among the different forms of interpretation applicable to statutes and articles of by-laws of legal entities, the starting point for interpreting is indeed the wording of the provision (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely*

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<sup>6</sup> E.g., SFT 4A\_600/2016, SFT 4A\_462/2019, SFT 4A\_314/2017.

*clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation). When called upon to interpret a law, the Swiss Federal Tribunal (SFT) adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation. The method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith, which is also applicable to contracts. As FIFA is a very large legal entity, its regulations therefore be subject to the more objective interpretation principles."*<sup>7</sup>

78. The Panel considers that the FEI's regulations applicable to this case (such as the GRs, the DRs and the Oirschoot Schedule) shall therefore be interpreted according to this method.

– Literal interpretation

79. When looking at the wording of article 116.2.2.(i) of the GRs, the Panel notes that:

79.1. The concept of *nominated entry* constitutes the preliminary list of athletes and horses that any NF intends to send to a particular event.

79.2. All events must necessarily establish a date for Nominated Entries to be made by the participating NFs.

80. Secondly, according to article 927.3 of the DRs, it becomes clear to the Panel that:

80.1. Only those NFs that have already entered a Nominated Entry may add Additional Entries.

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<sup>7</sup> CAS 2017/O/5264, 5265 & 5266 Miami FC & Kingston Stockade FC v. FIFA, CONCACAF & United States Soccer Federation

80.2. Additional Entries are not mandatory (unlike Nominated Entries). Instead the organising committee ("OC") of each event has the discretion to allow Additional Entries.

81. Thirdly, article 927.5 of the DRs also indicates that Additional Entries only concern individual athletes.

82. While the regulations refer to the concept of *nominated entry* in different formats (singular, plural, capitalized and not capitalized), the Panel does not consider that these minor inconsistencies change the literal meaning of those two concepts.

83. In other words, the plain wording used in those provisions already indicates that both terms refer to different concepts.

– Systematic interpretation

84. Regarding the relationship with other legal provisions and their context, the Panel underlines that the concept of *nominated entry* is regulated primarily in:

84.1. Article 116.2.2.(i) of the GRs. The GRs do not refer to the concept of *additional entries*;

84.2. Articles 914.4, 916.2.4, 916.2.5, 920.1 and 927 of the DRs.

85. In addition, the Oirschoot Schedule establishes the date for the *nominated entries* in section "VII. Entries": 24 July 2023.

86. On the other hand, the concept of *additional entry* is only regulated in article 927 of the DRs.

87. In addition, the Oirschoot Schedule establishes the date for the *additional entries* in section "VI. Invitations": 31 July 2023. The Oirschoot Schedule also states that there is a maximum number of permitted additional entries.

88. In other words, (i) the Oirschoot Schedule provides different dates for each type of entry and (ii) the only provision in which both concepts interplay is article 927 of the DRs.



89. These elements also indicate that these are two different and separate concepts.
90. The Panel acknowledges that article 927 of the GRs is entitled "*Additional Entries for Championships and CAIOs*". According to the Appellant, this would indicate that this provision exclusively regulates *additional entries* and therefore article 927.6 must necessarily allow doubling the number of athletes permitted for definite entries.
91. However, the Panel considers that the reference to article 116.2.2 of the GRs<sup>8</sup> – which only regulates *nominated entries* – in article 927.6 of the DRs indicates that this provision is referring exclusively to *nominated entries*.
92. The Panel agrees with the FEI that the sports rules, such as the DRs, will only exceptionally prevail over the GRs (which are hierarchically higher) whenever the GRs explicitly provide for it. However, since the GRs do not regulate the concrete concept of *additional entries*, there is no conflict on this point between the GRs and the DRs. In fact, article 110.2.3 of the GRs establishes that "[t]he Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations". Therefore, the Panel shall focus on the references to *additional entries* in the DRs and the Schedules.
93. In this respect, the Panel is comforted by the fact that the *additional entries* do not have to comply with the deadline of 4 weeks that is foreseen for the *nominated entries*. The Exloo Schedule proves this, as the *additional entries* date falls 25 days before the start of the event – i.e., less than 4 weeks –. This reinforces the conclusion that these are two distinct concepts.

– Teleological interpretation

94. The Panel also considers important to refer to the goal pursued by the existence of two different concepts.
95. In view of the different references throughout the regulations to both concepts, the Panel understands that:

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<sup>8</sup> The Panel points out that article 927.6 of the DRs contains a typo when it refers to article "116.4.2" which does not exist. Instead, it is clear for the Panel that such reference intends to mention article 116.2.2.

- 95.1. *Nominated entries* set a concrete deadline for each NF that intends to participate in an event to provide a preliminary list of athletes and horses it wishes to register.
- 95.2. Each OC may, afterwards allow those NFs to supplement once their preliminary list with a maximum number of *additional* athletes. This maximum number is predefined in the concrete schedule of each event. This second list grants some leeway for the NFs that have registered their teams in case last minute issues arise with respect to the preliminary list of athletes registered as *nominated entries*.
96. This type of system is not unheard of in other sports events in which the participants are also allowed to amend the initial or preliminary list of athletes in advance of the start of the competition.
97. Consequently, the Panel considers that the purpose behind each type of entry (i.e., *nominated* and *additional*) is different, thereby confirming that these are two distinct concepts.
- *Historical interpretation*
98. None of the Parties have relied on any previous edition of the GRs or DRs. Therefore, no evidence has been provided to defend that the drafting history of any of these two sets of regulations would shed light on how to properly understand these concepts.
99. However, the FEI has produced one communication of 2018 in which it was explicitly communicated to certain NFs (including the Appellant) that “[...] *the Additional Entries for Individuals are NOT doubled, as the Nominated Entries are. Therefore, 3 Additional Entries per category will be 9 in total.*”
100. As a result, the limited information available to the Panel on the historical interpretation of these concepts indicates that the FEI has consistently applied the rules as it did through the First Appealed Decision and that the Appellant was aware of this interpretation.

– Conclusion concerning the First Appealed Decision

101. All in all, the Panel concludes that the overall interpretation of the different regulations at play indicate that the concepts of *nominated entry* and *additional entry* are different. In particular, the Panel is satisfied that the possibility to enter twice the number of athletes permitted for definite entries (as per article 927.6 of the DRS) is circumscribed to the concept of *nominated entries* and does not apply to *additional entries*.
102. Finally, the Appellant has also argued that any lack of clarity in the regulations should be construed against the FEI only. The Panel understands that the Appellant was implicitly making reference to the *contra proferentem* principle according to which, where there is doubt with regard to the meaning of a contract or a rule, the preferred meaning should be the one that works against the interests of the party who provided the wording such as the legislator (i.e., the FEI in this case).
103. Nonetheless, the Appellant's argument does not stand, as the *contra proferentem* principle only comes into play as a last resort. In other words, this principle can only be applied once a deciding body has been unable to interpret regulations after following the different methods of interpretation available to it.<sup>9</sup>
104. Since the Panel is comfortably satisfied about the correct interpretation of the regulations, the *contra proferentem* principle cannot be applied.
105. Consequently, the Panel concludes that the First Appealed Decision must be upheld because the Appellant was only able to enter up to 6 individual drivers as *additional entries* in line with the content of the Oirschoot Schedule.

*iv. FEI European Championships, Four in Hand 2023 Exloo (Second Appealed Decision)*

106. With respect to Exloo, the Appellant has requested, based on its interpretation of article 927.4 of the DRs, to be allowed to enter athletes as *additional entries* that had not met the qualification criteria by the time the deadline for *nominated entries* elapsed but managed to complete them by the deadline for the *additional*

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<sup>9</sup> CAS 2019/A/6337, para. 86, CAS 2017/A/5172, para. 84.

*entries*. On the other hand, the FEI argues that only the athletes that had complied with the qualification criteria by the *nominated entries* date can be eligible to participate in Exloo.

107. The Panel decides to follow the same method of interpretation applied before.

– *Literal interpretation*

108. First, the Panel notes that the Appellant relies on article 927.4 of the DRs which establishes:

*"A second nominated entry date shall be specified in the Schedule should the OC decide to invite NFs to submit Additional Entries."*

109. The Appellant also refers to the document *"2023 Championships Qualification Criteria"* that states:

*"The qualification period for all 2023 Championships starts on 1 January 2022 and ends on the nominated entries date of the relevant Championship."*

110. If one assumes that the concept of *nominated entry* and *additional entry* are equivalent terms (which would be incorrect as concluded above) and reads these two sentences in isolation, the Panel agrees that it might lead someone to (erroneously) understand that there are two possible qualification dates.

111. On the other hand, if one reads the *"2023 Championships Qualification Criteria"* on its own, it might also lead the reader to understand that each event has only one *"nominated entries date"* rather than two.

112. Moreover, article 927.4 of the DRs does not refer anywhere to the qualification criteria of a competition.

113. Therefore, the literal interpretation is insufficient to decipher by when exactly should the athletes comply with their qualification criteria.

– Systematic interpretation

114. Regarding the relationship with other legal provisions and their context, the Panel highlights that the document *"2023 Championships Qualification Criteria"* contains references to article 913.2 of the DRs.
115. Article 913 of the DRs is called *"Article 913 Minimum Eligibility Requirements / Qualification criteria"*. In addition, article 914 of the DRs is called *"Championships / Eligibility Procedure for Championships"*.
116. Therefore, the Panel understands that these two provisions are the ones primarily regulating the qualification criteria and not article 927 of the DRs.
117. The Panel understands that article 914.1 of the DRs refers to the document *"2023 Championships Qualification Criteria"* when it states that *"Championships are open to Athletes who meet the eligibility requirements as published on the FEI website in the Driving Championships section."*
118. Therefore, the qualification criteria must be determined according to articles 913 and 914 of the DRs together with the *"2023 Championships Qualification Criteria"* published on the FEI's website.
119. In this regard, 914.4 of the DRs establishes that *"[...] it is the responsibility of each NF to prove that their Entries meet the eligibility requirements. Certificates of capability and records of results must be sent by NFs to the OC with their nominated entries, for their entries to be considered valid. (See General Regulations)."*
120. Since the concept of nominated entry is a different one from additional entry (as concluded before), this article reinforces the idea that the eligibility requirements / qualification criteria must be met by the time the NF submits its *nominated entries* for each event. This is also in line with the wording used in the *"2023 Championships Qualification Criteria"*.
121. Therefore, when the relevant provisions at play are read together, there are strong reasons to understand that there is only one cut-off date per event by when the athletes must have met the qualification criteria.

– Teleological interpretation

122. When referring to the purpose of the provisions and documents governing the qualification criteria, the Appellant contends *"it is perfectly sufficient if any athlete fulfils the qualification criteria on the date that he or she is nominated for the event."*
123. The FEI, on the other hand, contends that *"it would be unfair for Athletes/Horses who will ultimately compete against each other at an FEI Championship if those Athletes/Horses who were entered by the Nominated Entry Date had a shorter period of time to obtain the required qualifications than those Athletes/Horses who are entered as Additional Entries."*
124. The Panel sees merit in the conclusion that each sporting event must have one single cut-off date for all participants as this ensures a level-playing field for all athletes.
125. Allowing athletes to qualify at two different moments in time for the same event when this is not (clearly) foreseen in the regulations would indeed create a *"two-tier system"* (as claimed by the FEI) that would go against the spirit of the FEI to ensure fair and equal conditions amongst its members as per article 100.1 of the GRs.

– Historical interpretation

126. None of the Parties have relied on any previous edition of the GRs or DRs. Therefore, no evidence has been provided to defend that the drafting history of any of these two sets of regulations would shed light on how to properly understand these concepts. Moreover, none of the Parties have proven that their respective interpretations were applied in the past.
127. As a result, this criterion has no impact on the interpretation of the Panel.

– Interim conclusion concerning the Second Appealed Decision

128. The Panel concludes that the overall interpretation of the different provisions at play indicate that only the date for *nominated entries* can be considered as the cut-off date for athletes to qualify for each event.

129. Concerning Exloo, this means that any athlete that an NF may have wanted to register should have met the eligibility criteria mentioned in article 913 of the DRs and in the document "*2023 Championships Qualification Criteria*" by 26 July 2023 (this being the date defined in the Exloo Schedule).
130. As the Appellant has recognised that none of the two athletes in question fulfilled the eligibility criteria by that date, the FEI correctly ruled that they could not be registered for Exloo.
131. The Panel does not consider that the cancellation of international events may allow to depart from this conclusion, especially since this factor applied equally to all athletes and NFs and, as pointed out by the FEI, NFs like the Appellant are capable of entering events in the FEI Calendar.
132. As was concluded for the First Appealed Decision, since the Panel is comfortably satisfied about the correct interpretation of the regulations, the *contra proferentem* principle cannot be applied.
133. Consequently, the Panel concludes that the Second Appealed Decision must be upheld because the Appellant was not entitled to register the two drivers as *additional entries* for Exloo.

*v. Conclusion*

134. The Panel has decided to dismiss the Appeal and confirm both Appealed Decisions in full.
135. No deposit will be returned to the Appellant and each party shall be required to cover their own legal costs.
136. All other prayers for relief are dismissed.

## VII. THE DECISION

1. The Tribunal decides as follows:

- (i) The Appeal is admissible.
- (ii) The Appeal is dismissed.
- (iii) The FEI Decisions are upheld.
- (iv) No Deposit shall be returned to the Appellant.
- (v) Each Party shall bear its own costs in these proceedings.

2. According to Article 165 of the FEI General Regulations, this Decision is effective from the date of its oral or written notification to the Respondent.

### DECISION TO BE FORWARDED TO:

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

FOR THE TRIBUNAL



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Mr José A. Rodríguez Álvarez (MEX), Sole Panel Member

### Notes relating to the decision:

According to Art. 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.