

DECISION of the FEI TRIBUNAL

20 August 2024

(Ref. no. FEI Tribunal: C24-0007 IEOC v FEI)

In the matter of

International Eventing Officials Club (the "IEOC" or the "Claimant")

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the "FEI" or the "Respondent")

together the "Parties"

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr José A. Rodríguez Álvarez (MEX), Chair

I. INTRODUCTION

- 1) The Claimant submitted a claim (the “Claim”) to the FEI Tribunal (the “Tribunal”) based on an alleged breach by the FEI of the Memorandum of Understanding initially entered between the Parties on 5 June 2018 (the “MoU”).

Applicable Rule Provisions:

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

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

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

II. FACTUAL BACKGROUND

- 2) The IEOC is an organisation which objective is to *“give a voice to Eventing Officials, providing a vital link between them and the FEI”*.
- 3) On 30 January 2014, the Parties entered into a Memorandum of Understanding (the “2014 MoU”) for a period of four years to regulate their relationship which was based on their mutual commitment to equestrian sport and foster its growth.
- 4) On 5 June 2018, the Parties entered into a new Memorandum of Understanding (the “MoU”) for another four-year term.
- 5) During 2020, the FEI started to discuss and develop a new FEI Education System for all equestrian disciplines, including Eventing.
- 6) On 5 June 2022, the MoU expired.
- 7) On 26 August 2022, the FEI published the new Eventing Officials Education System (the “Education System”), which would come into force on 1 January 2023.
- 8) On 6 October 2022, the IEOC Chairman wrote to the FEI asking about the procedure to sign a new MoU.

- 9) On 7 October 2022, the IEOC Chairman sent a list of questions and concerns to the FEI about the Education System.
- 10) On 21 October 2022, the FEI replied to the IEOC Chairman informing him that many queries had been addressed in an online webinar and other material prepared by the FEI.
- 11) On 8 November 2022, the IEOC Chairman sent a revised document to the FEI, indicating the questions that the IEOC considered remained unanswered.
- 12) On 9 December 2022, the FEI invited the IEOC to an in-person meeting to discuss the queries raised.
- 13) On 1 January 2023, the Education System came into force.
- 14) On 23 May 2023, the IEOC Chairman asked for an update on the new MoU.
- 15) On 30 May 2023, the FEI replied to explain the reason for the delay in the MoU.
- 16) On 21 June 2023, the FEI and IEOC had an in-person meeting at the FEI Headquarters.
- 17) On 11 August 2023, the IEOC sent a list of questions and requests to the FEI.
- 18) On 19 September 2023, the IEOC Chairman wrote to the FEI to outline the IEOC's concerns about the 2023 Level 4 Education Programme.
- 19) On 28 September 2023, the IEOC Chairman informed the FEI that certain officials would be appealing the FEI's decisions to not promote them to Level 4.
- 20) On 11 October 2023, the IEOC Chairman wrote to the FEI to set out the IEOC's concerns regarding a potential breach of clause 5 of the MoU and requested to attempt a mediation under clause 12 of the MoU.
- 21) On 12 October 2023, the FEI President sent an email stating that he understood that the MoU was expired and consequently not applicable anymore.
- 22) On 17 October 2023, the FEI Legal Director replied to the IEOC's letter of 11 October 2023 stating that although the MoU had expired, the FEI had engaged with the IEOC to answer its queries.

III. PROCEDURAL BACKGROUND

- 23) On 27 December 2023, the Claimant sent a Notification Letter to the FEI.
- 24) On 6 January 2024, the FEI replied to the Notification Letter, denying the allegations contained therein.
- 25) The Claimant filed its Claim on 26 January 2024.
- 26) On 9 February 2024, the FEI Tribunal confirmed receipt of the Claim. The FEI Tribunal Chair informed the Claimant that a one-member panel was appointed composed of Mr José A. Rodríguez Álvarez (MEX) and informed the Parties that they had until 14 February 2024 to object to his nomination. None of the Parties objected to the one-member panel's nomination.
- 27) Furthermore, the FEI Tribunal Chair requested the FEI to present its Answer by 29 February 2024 and requested the Parties to indicate whether they request a hearing by 6 March 2024.
- 28) On the same day, the Claimant requested clarification on the deadline set for the FEI, which the FEI Tribunal clarified on 15 February 2024.
- 29) On 29 February 2024, the FEI filed its Answer.
- 30) On 6 and 19 March 2024, the Claimant requested a second round of submissions.
- 31) On 21 March 2024, the FEI Chair acknowledged receipt of the different communications sent by the Parties and decided to grant the opportunity for both Parties to exchange another round of written submissions according to the following calendar:
 - The IEOC was invited to file its second submission by 1 April 2024;
 - The FEI was invited to file its second submission by 12 April 2024;
 - Both parties were invited to confirm by 16 April 2024 whether they requested a hearing to be held in this matter.
- 32) On 22 March 2024, the Claimant requested a deadline extension to submit its second submission by 12 April 2024.

- 33) On 25 March 2024, the FEI Chair requested the FEI to comment on the deadline extension. On the same day, the FEI opposed to the deadline extension request of the Claimant.
- 34) On 27 March 2024, the FEI Chair decided to partially grant the Claimant's extension request and announced a new procedural calendar as follows:
- The IEOC was invited to file its second submission by 8 April 2024;
 - The FEI was invited to file its second submission by 26 April 2024;
 - Both parties were invited confirm by 2 May 2024 whether they requested a hearing to be held in this matter.
- 35) On 8 April 2024, the Claimant filed its second submission.
- 36) On 26 April 2024, the FEI submitted its second submission.
- 37) On 2 May 2024, both Parties confirmed that they did not require that a hearing be held.
- 38) On 3 May 2024, the Panel acknowledged receipt of said communications.

IV. THE PARTIES' SUBMISSIONS

- 39) 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 Panel has fully considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

A. Submissions by and on behalf of the Claimant:

- 40) The Claimant submitted the following in his written submission:

a) Validity and enforceability of the MoU

- i. As confirmed by Professor Thomas Probst (a contract law professor at the University of Fribourg) in his legal opinions dated 8 November 2023 and 4 April 2024, the MoU

is valid and enforceable beyond the initial four-year term referenced in clause 9 of the MoU.

- ii. Clause 9 of the MoU indicates that (i) the MoU was intended to remain in effect for a (fixed) period of four years, namely from 5 June 2018 to 5 June 2022, (ii) “*where appropriate*”, the terms of the MoU may be modified upon the Parties’ mutual written agreement; (iii) if a party breaches the MoU, the other party is entitled to terminate the contract unilaterally and with immediate effect and (iv) “*in the absence of a breach*”, a party can terminate the contract unilaterally upon a six months’ prior notice in writing.
- iii. However, the combination in clause 9 of the MoU of a four-year fixed term contract with the right of either party to terminate the MoU upon six months’ prior written notice is self-contradictory and unfeasible.
- iv. Under the principle of bona fides (Art. 2 of the Swiss Civil Code (“SCC")), the MoU was extended by the Parties’ conclusive conduct for another term of four years, i.e. until 5 June 2026, as no termination notice was given before 5 June 2022.

b) *Invalidity of the purported termination*

- v. As confirmed by Prof. Probst, the provisions governing mandates (Art. 394 et seq. of the Swiss Code of Obligations (“SCO”)) do not apply to any kind of contracts that are not employment contracts or contracts for work and services. These provisions apply exclusively to agency-like innominate contracts, which is not the nature of the MoU.
- vi. As the FEI fails to demonstrate that the MoU qualifies as an agency-like contract, Art. 404 SCO does not apply to its termination.
- vii. Therefore, the purported termination of the MoU dated 29 February 2024 (the “Purported Termination”) is invalid and the MoU remains valid and enforceable.

c) *Breaches of the MoU by the FEI*

- viii. Under clause 5 of the MoU, the Parties are required to consult with each other in good faith before making any decision that materially affects the other Party.

Additionally, the FEI has a duty to provide the Claimant with sufficient time and opportunity to be heard on matters generally affecting Eventing officials.

- ix. In the present case, the FEI did not consult with the Claimant on the Education System between 2020 and 26 August 2022, or before 1 January 2023 (the “First Breach”). Consulting with individuals who may or may not be IEOC members does not fulfill this requirement.
- x. The FEI failed to respond substantively to certain communications of the IEOC (the “Second Breach”).
- xi. Under clause 8 of the MoU, the Claimant is to be granted an opportunity to provide feedback on issues affecting Eventing officials which will be submitted to the Eventing Committee for discussion at the next potential meeting. However, the FEI did not routinely provide the IEOC with the agendas of the meetings of the Eventing Committee (the “Third Breach”).
- xii. In addition, the FEI did not provide the Claimant with the minutes or formal record of Eventing Committee meetings, with only some records of meetings having been made available since June 2022 (the “Fourth Breach”).
- xiii. The FEI committed to addressing issues raised by the Claimant respectfully and without unnecessary delay. Contrary to this commitment, the FEI Eventing Department has been disrespectful towards the Claimant on two occasions (the “Fifth Breach”).
- xiv. According to clause 14 of the MoU, the parties agreed to communicate regularly to comply with the terms of the MoU. However, the FEI misled the Claimant about its intentions related to the signing of a new MoU and refused to comply with its terms (the “Sixth Breach”).
- xv. Even if the Panel finds the Purported Termination valid, the MoU was enforceable at least until 29 February 2024. Therefore, the FEI is accountable for any breaches that occurred until that date.
- xvi. Since the Purported Termination is invalid, the removal of the Claimant’s rights under the MoU constitutes a breach of the MoU (the “Seventh Breach”).

- xvii. On 1 March 2024, the FEI publicly announced the Purported Termination on its website, alleging wrongdoing by the Claimant. The announcement is a breach of clauses 5 and 13 of the MoU (the “Eighth Breach”).
- xviii. To ensure compliance with the reliefs sought, the IEOC requests the Panel to issue private sanctions for non-compliance in the form of an *astreinte* (i.e. a penalty charged for each day of delay in implementing the order) of CHF 5,000 per day of non-compliance.

41) The Claimant finally requested the Panel to:

“(a) Recognise the validity of the MoU until at least 5 June 2026;

(b) Order the FEI to fully comply with all obligations arising from the MoU at least until 5 June 2026;

(c) Order the FEI to take such action as is necessary and appropriate to ensure all FEI representatives comply with the MoU in future;

(d) Order the FEI to provide written acknowledgement that there were problems with the Education System due to their failure to consult with the IEOC on it;

(e) Order the FEI to consult with the IEOC on the Education System in future, by holding:

(i) an online session with IEOC members in early 2024 (with Catrin Norinder, Frank Spadinger, David O’Connor);

(ii) a meeting with the IEOC Board in early 2024 after the members’ session;

(f) Order the FEI to provide a substantive written response to the following communications:

(i) questions and concerns sent on 7 October 2022 (and revised on 8 November 2022);

(ii) action points sent on 11 August 2023 following the in-person meeting between the FEI and IEOC in June 2023;

(iii) concerns about the Education System sent on 19 September 2023 (followed up on 28 September 2023);

(g) Order the FEI to respond promptly and substantively in future;

(h) Order the FEI to provide the agendas for all Eventing Committee meetings (at least the part relevant to Eventing Officials) since 5 June 2018;

(i) Order the FEI to provide the agenda for all Eventing Committee meetings (at least the part relevant to Eventing Officials) at least three weeks prior to each meeting in future.”

(j) Order the FEI to provide all Eventing Committee meeting minutes (at least the part relevant to Eventing Officials) since 5 June 2018.

(k) Order the FEI to provide the Eventing Committee meeting minutes (at least the part relevant to Eventing Officials) within three weeks of the meeting occurring in future.

(l) Order the FEI to pay penalties (astreinte) of CHF 5,000 per day to the IEOC should the FEI not timely comply with the award/order to be issued by the FEI Tribunal.

(m) Order the FEI to:

(i) reimburse the IEOC its legal costs and any other expenses pertaining to this Claim; and

(ii) bear any and all costs pertaining to the Claim.

(n) Order any such other relief as the FEI Tribunal deems fit and appropriate.”

42) Additionally, in light of the FEI’s Purported Termination of the MoU, the Claimant requested the Panel to:

(a) Declare the Purported Termination of the MoU on 29 February 2024 to be invalid;

(b) Order the FEI to fully restore the IEOC’s rights under the MoU at least until 5 June 2026;

(c) Order the FEI to:

(i) remove the Website Announcement from its website; and

(ii) issue a retraction notice – on its website and by email to the same people who were sent the Email Announcement – apologising for any harm caused to the IEOC.”

B. Submissions by and on behalf of the FEI

43) The FEI submitted the following in its written submission:

a) Non-renewal of the MoU

- i. The Claimant's assertions regarding the renewal and termination of the MoU are unsubstantiated under Swiss contract law and established legal principles.
- ii. The MoU, being a fixed-term innominate contract of four years, does not include explicit provisions for its renewal.
- iii. Clause 9 of the MoU clearly states its fixed-term nature, rendering any interpretation for renewal unnecessary under Swiss law. Prof. Probst's interpretation lacks legal grounding and disregards corporate practices regarding early termination rights in fixed-term agreements.
- iv. Under Swiss contract law, when a fixed-term contract expires and the parties continue their collaboration, the agreement converts into an indefinite term contract. Therefore, upon the MoU's expiration, it has been effectively renewed for an indefinite period.

b) Validity of the Purported Termination

- v. Innominate contracts are subject to the mandatory rules and principles outlined in the SCO, including those developed through case law regarding contract termination.
- vi. The MoU, possessing elements of a mandate, allows the FEI to terminate the contract with immediate effect under Art. 404 SCO.
- vii. The clarification in the purported termination was not a condition but highlighted the obvious for clarity. Thus, the FEI validly exercised its right to terminate the MoU with immediate effect.

c) Responses to alleged breaches of the MoU

- viii. The FEI did not commit any of the six breaches of the MoU alleged by the Claimant. In any event, according to clause 9 of the MoU, the only remedy for breach of the MoU is termination. This contravenes the Claimant's position regarding requests for

relief.

- ix. The FEI no longer has any relationship with the Claimant, and the MoU has been terminated, negating the relevance of the alleged breaches.
- x. Concerning the alleged First Breach, the FEI did consult with the Claimant on the Education System. In particular, since the new Education System concerned all disciplines (and not just Eventing), a working group was created. One member of that working group was endorsed by the IEOC's board. Several Eventing officials were included in the consultation process, and the FEI Eventing Committee ultimately approved the new FEI Eventing Education System. The IEOC refused to confirm if any of those people are their members. Consequently, the FEI did not commit any breach of the MoU.
- xi. Regarding the alleged Second Breach, the FEI provided extensive information to all Eventing Officials, as it (i) held two webinars (that are still accessible online), (ii) produced a detailed document addressing concerns and questions about the Education System and (iii) held an in-person meeting with the IEOC at the FEI Headquarters in June 2023, where all questions were answered. The new questions asked by the IEOC were posed at a time in which other appeal proceedings funded by the IEOC against the Education System were being dealt with before the FEI Tribunal, therefore the FEI decided not to engage in any further discussions on that matter. The FEI will continue to assess the Education System and to communicate with Eventing Officials. The FEI therefore did not commit the alleged Second Breach.
- xii. Concerning the alleged Third and Fourth Breaches, the FEI has no issue providing past agendas and minutes since 5 June 2018 but will not provide future documents as the MoU no longer applies.
- xiii. The FEI has implemented a new system where the agendas, minutes, or summaries of Technical Committee meetings are uploaded to a password-protected area of its website. This allows relevant persons and stakeholders, such as the Claimant to access the documents directly online.
- xiv. As to the alleged Fifth Breach, the FEI denies having ignored the Claimant's concerns as from October 2022. All queries were addressed, including during an in-person

meeting held in June 2023 at the FEI's Headquarters. The subsequent alleged episode of disrespect was also denied. Although the IEOC had posed new questions about the Education System, due to pending FEI Tribunal proceedings related to the non-promotion of certain FEI Eventing Officials in the context of the Education System and funded by the IEOC, the FEI communicated in October 2023 that they would pause further responses until the FEI Tribunal's decision.

- xv. Concerning the alleged Sixth Breach, the FEI initially intended to renew the MoU with the Claimant before deciding to formally terminate it. The IEOC is no longer an Official Stakeholder recognised by the FEI.
- xvi. With respect to the alleged Seventh Breach, the FEI considered that it was entitled to remove the Claimant's rights because the termination of the MoU was valid.
- xvii. Finally, regarding the alleged Eighth Breach, the FEI had a duty to inform the equestrian community of the termination of the MoU, and therefore there is no contractual breach.

d) FEI's position on the IEOC's request for an *astreinte*

- xviii. The Panel does not have the power to impose an *astreinte* against the FEI, according to the FEI Statutes, FEI General Regulations or FEI Internal Regulations.
- xix. The alleged justifications to impose an *astreinte* are misinterpreted by the Claimant, as such measures can only be imposed as provisional or interim measures.

44) The FEI finally requested the Panel to:

“(a) Dismiss the Claim in its entirety¹;

“(b) Determine that the Claimant shall bear the costs of the Claim proceedings and make a contribution towards the FEI's legal costs.”

¹ Except that the FEI agreed to provide the IEOC with the Eventing Committee meetings' agendas and minutes (or summaries, as appropriate) since 5 June 2018.

V. LEGAL DISCUSSION

45) 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.

A. *The renewal of the MoU*

46) From the outset, the Panel notes that both Parties agree that the MoU is an innominate contract that was extended beyond its initial four-year term that ended on 4 June 2022.

47) However, the Parties disagree on the conditions under which the MoU was renewed. In particular, the IEOC contends that the MoU was extended for an equivalent period of four years (i.e., until 5 June 2026). On the other hand, the FEI primarily defends that it was renewed for an indefinite period of time or, alternatively, for successive periods of six months.

48) The MoU needs to be interpreted in accordance with the general principles of contractual interpretation under Swiss law, since Swiss law is the law governing the MoU (cf. Art. 11 of the MoU). In this respect, pursuant to Art. 18 of the SCO, when assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.

49) In interpreting the contract, the Judge must in principle analyse the respective intention of each party, at the time of the signing of the contract (*ex tunc*), and not how it could be interpreted at a later stage, at the moment of the litigation (*ex nunc*). However, it may depart from the *ex tunc* interpretation in case the contract creates a durable contractual link (*Dauerschuldverhältnis*) which includes possible modifications of the interpretation of the parties' intentions, or when one party accepts modifications of the contract induced by the other, for instance by way of conclusive actions.²

50) When signing a contract, the parties came to a contractual agreement, which means that they had a common intention, which the judge should look at when interpreting the contract.³

² CR CO I-WINIGER, art. 18 CO N 16-17.

³ CR CO I-WINIGER, art. 18 CO N 18-20.

- 51) There are different means of determining, or at least helping to clarify the parties' intentions, which have been developed under Swiss case law and doctrine. One may refer to the parties' behaviour, as well as their actions, both prior to the signature of the contract, but also after said signature, as well as exchanges of correspondences thereof.⁴ Similarly, Swiss doctrine has also provided means of resolving a dispute in case the parties' intentions cannot be determined.
- 52) In the present matter, the MoU does not contain any provision governing its renewal. Similarly, aside from e-mails in which the Parties discussed about the possibility of initiating conversations to renew the MoU, there were no exchanges between the Parties regarding how such renewal would be carried out. Although both Parties now agree that the MoU has been tacitly renewed (as mentioned above), the contemporaneous evidence reveals that (i) on 6 October 2022 (i.e., 4 months after the MoU's expiry) the Chairman of the IEOC understood that a new MoU was "*due to be re-signed*" and (ii) the FEI's view in October 2023 was that the MoU had expired in June 2022 and was never extended. Therefore, neither the text of the MoU, nor the behaviour of the Parties before or after the expiry of the initial term of the MoU allow the Panel to determine for how long did they intend to tacitly extend their contractual relationship.
- 53) Similarly, the Parties' behaviour concerning past agreements does not shed any light concerning the duration of a tacit extension. In fact, the previous MoU signed in 2014 between the Parties was not tacitly extended. Instead, as explained by the IEOC, a first MoU was signed on 30 January 2014 for a four-year period, therefore coming to an end on 30 January 2018. Instead of (tacitly) extending their initial agreement as from that moment onwards, the Parties decided to enter into a new MoU (the one currently under dispute) on 5 June 2018, i.e., more than four months after the 2014 MoU had expired. Therefore, no common intention on tacit renewals of the MoU can be derived either from the past behaviour of the Parties.
- 54) Bearing these elements in mind, the Panel considers that it would be artificial to reach a conclusion on the duration of the renewal based on the interpretation of the wording of the MoU (and in particular clause 9). For this reason, the Panel does not agree with the IEOC's position (based on an interpretation of clause 9 of the MoU) or with the FEI's alternative position concerning the renewal of the MoU for successive periods of six months. As stated by the IEOC, there is no proper basis for such assertion.

⁴ CR CO I-WINIGER, art. 18 CO N 32-34.

- 55) Similarly, the Panel does not have enough elements to ascertain if the Parties had a common intent or even what was their respective true intent at that time. Lastly, the Panel considers that no party has demonstrated that their (current) position defended in this case represents their real and common intent at the time of the tacit renewal which therefore created a legitimate expectation of some sort.
- 56) After having confirmed that none of the methods of interpretation are applicable in this case, the Panel finds comfort in the specialized doctrine's view according to which "[w]here it is not possible to reach an agreement on the duration of the renewed contract, it should in principle be assumed that the contract will be transformed into a contract of indefinite duration, unless the circumstances of the specific case require a different solution. Both parties may therefore terminate the contract in accordance with the rules applicable to the termination of open-ended contracts, which vary according to the legal classification of the contract in dispute. This allows the parties, as a general rule, to terminate the contract within a suitable period established by law. This solution is inspired by the general tendency of the legislator to consider that a tacitly renewed fixed-term contract becomes a contract of indefinite duration."⁵
- 57) This rule of last resort appears to apply to nominated contracts with no renewal rules as well as to innominate contracts. Furthermore, when the parties did not expressly state the conditions of the tacit renewal, they should not be bound for an excessive period, against their will.⁶
- 58) Given the circumstances of this case, this solution seems to be the most preferable one, as it allows the Parties to continue their relationship without binding them to each other against their will for a long period. With this solution, the Parties are therefore entitled to reach an express agreement on the duration of their tacitly renewed relationship and they are also entitled to terminate the contract within a reasonable period of time.

⁵ Durante Daniel, Le renouvellement des contrats de durée, Solutions légales et contractuelles, Genève - Zurich - Bâle 2016, N 434 (free translation).

Original : « Lorsqu'il n'est pas possible de déterminer un accord sur la durée du contrat renouvelé, il convient en principe de présumer que le contrat se transforme en contrat de durée indéterminée, à moins que les circonstances du cas concret ne commandent l'application d'une autre solution. Les deux parties pourront donc mettre un terme au contrat selon les règles applicables à la fin des contrats de durée indéterminée qui varient en fonction de la qualification juridique du contrat objet du litige. Cela permet aux parties, en règle générale, de se départir du contrat dans un délai convenable⁹⁹établi par la loi. Cette solution s'inspire de la tendance générale du législateur de considérer qu'un contrat de durée déterminée tacitement renouvelé devient un contrat de durée indéterminée. »

⁶ Op cit, N 431.

B. The termination of the MoU

- 59) As the Panel has considered that the MoU was tacitly renewed for an indefinite period of time, it therefore means that the Parties were able to terminate the MoU within a reasonable timeframe.
- 60) Contrary to the question of the duration of the tacit renewal, the Panel considers that the wording of clause 9 of the MoU can shed light on what the Parties consider to be a reasonable notice period in which to terminate their contractual relationship: in case of breach of the contract an immediate termination was acceptable to the Parties, and if no breach occurred, a six-month written notice was agreed.
- 61) In this case, the IEOC claims that the FEI breached the MoU but it does not request that the relationship be terminated. On the other hand, the FEI has not claimed that the IEOC breached the MoU but it did communicate its intention to put an end to their contractual relationship. Therefore, based on these positions (and especially the one of the FEI), the Panel is satisfied that a six-month notice period should operate in order for the FEI to put an end to the tacitly renewed MoU.
- 62) The Panel therefore deems that the letter sent by the FEI on 29 February 2024 shall constitute the starting point of the reasonable six-month notice period. Consequently, the MoU will come to an end on 29 August 2024.

C. Did the FEI breach the MoU?

- 63) The IEOC claims that the FEI committed eight breaches of the MoU. On the other hand, the FEI rejects such allegations and has even offered to accept some of the remedies requested by the Claimant.
- 64) From the outset, the Panel recalls that the burden of proof lies with the party alleging a given fact.
- a) First and Second breaches*
- 65) The first two alleged breaches concern clause 5 of the MoU according to which “[t]he Parties will consult with each other in good faith prior to taking or acting upon any decision that

materially affects the other Party. Any issues raised by either Party to the other shall be dealt with respectfully and without unnecessary delay. The FEI shall make its best efforts to provide the IEOC with sufficient time and opportunity to be heard on matters generally affecting Eventing officials as the IEOC is an important sounding board for the FEI Eventing Committee."

- 66) In particular, for the first alleged breach, the IEOC claims that the FEI did not consult with it on the Education System between 2020 and 2022. The FEI explained that the Education System concerned all disciplines (not just Eventing) and that it did consult with the relevant groups of officials, including the IEOC and its members, on specific matters. In addition, the IEOC was consulted through the representative of the officials in the FEI Eventing Committee who was endorsed by the IEOC. This person was also a member of the FEI Education Working Group that drafted the FEI Eventing Education System. Moreover, although being asked to do so, the IEOC did not confirm if any other officials with whom the FEI consulted were its members or not.
- 67) In this case, the Panel is satisfied that the FEI did consult – albeit sometimes indirectly – with the IEOC during the development of the Education System. The Panel reaches this conclusion after taking into account that a representative of the officials that was endorsed by the IEOC was part of the Working Group. Therefore, it was reasonable that the channel of communication would be primarily done via this representative of the officials, especially since the project of developing the Education System concerned all disciplines and not only Eventing. The IEOC seemed to have accepted this method of consultation (at least until the last trimester of 2022), as there is no evidence of any contemporaneous communication sent to the FEI prior to October 2022 (i.e., when the Education System was already in place) questioning the method of consultation established for such project. In addition, once the IEOC started to send questions about the Education System, the FEI insisted to organize an in-person meeting to address the different queries. Moreover, the IEOC's refusal to confirm or deny if any of the other officials directly consulted by the FEI are their members can only be construed against it. For these reasons, the Panel does not consider that the FEI breached clause 5 of the MoU.
- 68) Concerning the second breach, the Panel deems that the FEI did address substantially most of the questions posed by the IEOC. It did so via the Q&A document that is available in the FEI's website and via an in-person meeting held at the FEI headquarters. The fact that the IEOC may not be satisfied with the content of some answers or with the follow-up of that meeting does not constitute, in the Panel's opinion, a breach of clause 5 of the MoU. Moreover, the FEI has stated clearly that it is assessing the functioning of the Education

System and will adapt it if necessary based on the feedback received from different stakeholders, including the IEOC.

b) Third and Fourth breaches

- 69) The third and fourth breaches refer to clause 8 of the MoU according to which *"The IEOC will be granted an opportunity to provide feedback on issues affecting Eventing officials which will be submitted to the Eventing Committee for discussion at the next possible meeting. Further, the IEOC will receive a copy or access to the published minutes for all official Eventing Committee meetings. Any appointment to an FEI ad-hoc Committee, where an Eventing official representative is required, will optimally be made following a consultation with the IEOC."*
- 70) The IEOC complains that the FEI had not always provided the agendas or minutes of meetings ahead of time. First, the Panel notes that clause 8 of the MoU does not oblige the FEI to share any agendas of the Eventing Committee meetings. Instead, it states that the *"IEOC will be granted an opportunity to provide feedback on issues affecting Eventing officials"*. Therefore, a simple email from the FEI informing about such upcoming issues would be enough to comply with this clause. In any case, the IEOC has not demonstrated that those agendas that were not provided before the meetings of the Eventing Committee concerned *"issues affecting Eventing officials"*. Therefore, in the absence of any evidence of that sort, the Panel cannot uphold the third breach claimed by the IEOC. Regardless of this conclusion, the FEI has already agreed to share the agendas of the meetings held since 5 June 2018. Therefore, IEOC's prayer for relief (h) has become moot.
- 71) Concerning the minutes (i.e., the fourth breach), the Panel notes that when the draft MoU was sent by the FEI to the IEOC on 5 April 2018, the FEI stated that the reference to the minutes *"shall be understood as a copy or access to the summary of the recommendations of the Eventing Committee meetings"*. In any case, the FEI appears to have confirmed that it did not comply with such obligation at all times. At the same time, it has explained that all minutes of the meetings held by the FEI Eventing Committee in 2023 and 2024 are already available and that it agrees to provide the requested documents since 5 June 2018 to the IEOC. Therefore, even if the fourth breach can be upheld, the FEI has already agreed to remedy it and the IEOC's prayer for relief (j) has become moot.

c) Fifth Breach

- 72) The fifth breach concerns the alleged disrespect shown by the FEI Eventing Department towards the IEOC. This would contravene the Preamble and clause 5 of the MoU.

- i. The first alleged episode of disrespect was dated January 2023 when the IEOC apparently learned that the FEI did not intend to answer its questions sent in October 2022. However, this was proven to be incorrect, as the FEI held an in-person meeting with the IEOC in June 2023 to address such questions.
- ii. The second alleged episode refers to a conversation between the IEOC Chairman and the FEI Eventing Director where she apparently stated in September 2023 that she would not reply to any of the IEOC's questions. The FEI has explained that it indeed refrained from answering any more questions on the Education System given the (at the time) ongoing proceedings initiated by several officials – apparently funded by the IEOC – in which precisely the Education System was being challenged. Therefore, the Panel considers that under such circumstances, the FEI could reasonably refrain from communicating with the IEOC on a topic that was the subject matter of a dispute involving the FEI and which the IEOC was endorsing.

73) Therefore, the Panel dismisses the fifth breach.

d) Sixth Breach

74) The sixth breach relates to clause 14 of the MoU according to which *“The Parties agree to communicate on a regular basis to comply with the terms of this MOU.”* The IEOC considers that this clause was breached because it was led to believe by the FEI that a new MoU would be signed promptly and that the existing MoU was still in place. The Panel accepts that the FEI did change its position: first stating that it was in the process of reviewing the MoU, then defending that it was expired and now agreeing that it was tacitly extended. The Panel also notes that the IEOC also seems to have changed its views on the MoU: first requesting to have a new MoU signed (which indicates that there was no true understanding that it had been tacitly renewed) and now defending that the MoU was tacitly extended for a four-year period. Since both Parties appear to have changed their respective positions, the Panel does not agree that this factor can be used by one party – the IEOC – against the other – the FEI –.

75) In any case, and regardless of such conclusion, the Panel does not find that this clause could have been breached as alleged by the IEOC. Under clause 14, the Parties' obligation to communicate had the purpose of complying with the terms of the MoU. However, as already recalled, the renewal of the MoU was not regulated therein (in other words, the renewal was

not part of “the terms” of the MoU). Therefore, the FEI cannot be considered to have breached clause 14 of the MoU and the sixth breach must also be dismissed.

e) Seventh Breach

76) The IEOC claimed that the FEI breached the MoU when it terminated the MoU on 29 February 2024. However, the IEOC did not identify which clause of the MoU would have been infringed. For the reasons already explained concerning the termination of the MoU, the Panel considers that the FEI did not commit the breach claimed by the IEOC.

f) Eighth Breach

77) The IEOC argued that the FEI’s announcement of the termination of the MoU constitutes a breach of clauses 5 and 13 of the MoU. The Panel does not consider that clause 5 was breached, as this clause does not govern the termination of the contractual relationship. The arguments of the IEOC according to which the announcement was “clearly disparaging” – therefore leading to a breach of clause 13 – is not substantiated by any evidence. Moreover, the Panel does not consider that the FEI’s announcement of their decision to terminate the MoU constitutes “public disparagement”, as it described the reasons why the FEI decided to terminate the MoU.

D. Conclusions

78) To sum up, out of the eight breaches claimed by the IEOC, the Panel can only uphold the fourth one which the FEI has, in any case, offered to comply with already. The other five alleged breaches are dismissed.

79) In this same line, the Panel rejects the IEOC’s request for an *astreinte*, as, amongst other reasons, there is no legal basis for such measure in the GRs or IRs.

80) Given the above conclusions, the Panel has decided that:

- i. After 5 June 2022, the MoU was tacitly extended by the Parties for an indefinite period.
- ii. The Parties have the right to terminate the MoU at any time within a reasonable period of time.

- iii. In view of the FEI's letter of 29 February 2024, the MoU will be validly terminated on 29 August 2024.
- iv. The FEI shall restore the IEOC's rights under the MoU until 29 August 2024.
- v. The Parties are expected to comply with their obligations established in the MoU until 29 August 2024.

81) All other prayers for relief are rejected.

82) No deposit will be returned to the IEOC and each party shall be required to cover their own legal costs.

VI. DECISION

83) The Tribunal decides as follows:

1. The Claim is admissible.
2. The MoU was tacitly extended after 5 June 2022 for an indefinite period of time.
3. The FEI was entitled to communicate its intention to terminate the MoU on 29 February 2024.
4. The MoU is valid until 29 August 2024.
5. The Parties shall comply with all obligations arising from the MoU until 29 August 2024.
6. All other requests are dismissed.
7. No deposit shall be returned to the IEOC.
8. Each party shall pay their own costs in these proceedings.

84) According to Art. 165 of the FEI GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.

85) 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.

DECISION TO BE FORWARDED TO:

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

FOR THE TRIBUNAL

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