

TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/9284 Österreichischer Pferdesportverband v. Fédération Equestre Internationale (FEI)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms. Olga Hamama, Arbitrator, Special Counsel in Frankfurt am Main, Germany

Arbitrators: Prof Dr Stephan Breidenbach, Professor of Law in Berlin, Germany
Ms. Judith Levine, Independent Arbitrator in Sydney, Australia

in the arbitration between

Österreichischer Pferdesportverband, Laxenburg, Austria

Represented by Dr Gerhard Jöchel and Dr. Gustav Teicht, Attorneys-at-law at Teicht Jöchel Rechtsanwälte in Vienna, Austria

- Appellant -

and

Fédération Equestre Internationale (FEI), Lausanne, Switzerland

Represented by Ms. Áine Power, FEI Deputy Legal Director

- Respondent -

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I. PARTIES

1. The Österreichischer Pferdesportverband (the “**Appellant**”), with its registered seat in Laxenburg, Austria, is the national governing body of equestrian sports in Austria, which is affiliated with the FEI.
2. The Fédération Equestre Internationale (the “**FEI**” or the “**Respondent**”), with its registered office in Lausanne, Switzerland, is the international governing body for equestrian sports worldwide.
3. The Appellant and the Respondent (jointly referred to as the “**Parties**”) are in dispute about the validity of the guidelines which the FEI has introduced.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced during these proceedings. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 1 January 2022, the WBFSH Dressage World Breeding Championship for Young Horses Guidelines issued by the FEI (the “**Guidelines**”) entered into force. These Guidelines, together with the FEI rules and regulations, regulated the horses’ participation in the annual FEI WBFSH Dressage World Breeding Championships for Young Horses, of which the 2022 championships were to be held in The Netherlands from 8 to 11 September 2022 (the “**2022 Championships**”).
6. On 15 March 2022, the FEI updated the Guidelines (the “**Updated Guidelines**”). The Updated Guidelines were notified the same day to its members through a publication on the FEI website and by communication in the newsletter via email. The newsletter was addressed to the National Federations (the “**NFs**”), copying the FEI Board, MoU signatories and FEI headquarters, inter alia, stating:

FEI WBFSH Dressage World Breeding Championship for Young Horses Guidelines

The guidelines, effective 1 January 2022, have been updated in March 2022, to reflect necessary changes in the quota allocation per NF, approved by the WBFSH and the FEI. The new Guidelines are available on Inside.FEI.org in the [Dressage Rules](#) section.

Kind regards,

FEI Communications Department

7. Under the Guidelines that applied to previous editions of the Championships, the quota for certain NFs (like the Appellant) were set at two (2) quota places per age category. However, for the 2022 Championships, and pursuant to the Updated Guidelines, the Appellant (and other national federations in the same category) only received one (1) quota place per age category.
8. On 1 April 2022, the Appellant notified the FEI that it only acquired knowledge of the Updated Guidelines by a routine inspection of the FEI website on 31 March 2022. The Appellant expressed its surprise about the changes in the criteria for the respective year and informed the FEI that as early as January 2022, it had informed its membership of its criteria and would now have to change the letter. The Appellant inquired whether changes would come into force as of 1 January 2023 and suggested that the Updated Guidelines would favor those countries with several studbooks in their home countries and could even be discriminatory. The Appellant assumed that "those responsible for the FEI are aware of these facts and have included them in the decision-making process."
9. On 9 April 2022, the Director for Dressage, Para Dressage and Vaulting of the FEI replied to the Appellant as follows:

Thank you for your email. The 2022 FEI WBFSH Dressage World Breeding Championship for Young Horses guidelines were reviewed in close collaboration with the WBFSH according to our Memorandum of Understanding (MOU). The allocation of slots per studbook is agreed to by the WBFSH based on criteria they have established, such as number of foals per year to mention one example.

The updated guidelines published on the FEI Website do come into force this year and will apply to the Championships in September.
10. On 30 June 2022, the Appellant's representatives wrote a letter to the FEI requesting to declare the Updated Guidelines invalid.
11. On 4 July 2022, the FEI responded to the Appellant's representatives that the Appellant pointed out that the FEI communicated the Updated Guidelines to the NFs via email and by publishing the update on its website on 15 March 2022. The FEI further indicated that the Appellant should have filed its appeal with the FEI Tribunal within 21 days of the FEI decision according to Article 162.5 of the FEI General Regulations. The FEI indicated that the deadline for the challenge of the validity of the Guidelines lapsed on 5 April 2022. The FEI also indicated that the Appellant could still file an appeal with the FEI Tribunal.
12. On 7 July 2022, the Appellant's representatives replied to the FEI, stating that the Updated Guidelines lacked any legal basis and did not amount to a "decision." The Appellant further argued that there was, therefore, no deadline to file an appeal and challenge the validity of the Guidelines.
13. On 19 July 2022, the Appellant formally filed an appeal with the FEI Tribunal.

14. On 31 August 2022, the FEI Tribunal issued and notified the findings of its decision (the “**Appealed Decision**”), declaring the appeal inadmissible and dismissing all other requests.
15. On 28 October 2022, the FEI Tribunal notified the Appellant of the reasons for the Appealed Decision, which can be summarised as follows:
 - The FEI Tribunal considered Article 162.5 of the FEI General Regulations (2022 edition) (the “**FEI General Regulations**”) regarding the basis for an appeal, which read: “*Appeals to the FEI Tribunal against other FEI Decisions (i.e., other than an Appeal against a Decision arising from a Protest) must be dispatched to the FEI Tribunal (fei.tribunal@fei.org) and signed by the appellant or their authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and 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 FEI Tribunal considered (1) whether the Decision was indeed a formal decision within the meaning of Article 162.5 of the FEI General Regulations and (2) whether the appeal was filed on time.
 - The FEI Tribunal noted that it had the power to adjudicate appeals provided notably that an actual decision has been issued. It was, therefore, necessary to analyse the features that communication must generally have to be deemed a decision. According to the established general principles identified by CAS panels (e.g., CAS 2008/4/1633), which this FEI Tribunal agreed and considered applicable to the present case:
 - (i) *"the form of the communication has no relevance to determining whether there exists a decision or not."*
 - (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 sports 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 the association to decide on a matter. [...] A simple information, which does not contain any ruling, cannot be considered a decision."*
 - In this regard the FEI Tribunal found that it was undeniable that by modifying the Guidelines and notifying the NFs at their addresses, the NF News Circular constituted a unilateral act intending to produce legal effects, specifically the change to the allocation of quotas. 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 revealed the presence of a decision in this case. The FEI Tribunal further indicated that this conclusion was in line with

this FEI Tribunal's case law on the previous classification of a *decision* (e.g., Ms. Linda Eketoft v Fédération Equestre Internationale (FEI) 2020.)

- Having established this, the FEI Tribunal moved on to decide whether the appeal was filed within the appropriate time limit. The FEI Tribunal considered the legal arguments put forward by the FEI and the jurisprudence of the Swiss Federal Tribunal (the "**SFT**") (e.g., 4A_413/2019, WADA v FINA), wherein the question of compliance with an appeal deadline was a question of admissibility rather than jurisdiction. The FEI Tribunal concurred with this conclusion of the SFT and further supported this viewpoint with reference to the FEI Tribunal appeal case A20-0001 Eketoft v. FEI, 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 the FEI Tribunal declared the appeal inadmissible;
- As demonstrated by the FEI, the Decision, in this case, 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 an NF News Circular sent by email on 15 March 2022 to all FEI National Federations. Accordingly, and contrary to the Appellant's submissions, the FEI Tribunal was satisfied with the FEI's evidence and concluded that the Decision was properly and duly notified to the Appellant on 15 March 2022. On this basis, the FEI Tribunal considered that any appeal against the Decision should have been filed by 5 April 2022.
- 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,*" was rejected by the FEI Tribunal. Not only did such an argument, in its view, lacked any legal basis, but were it to be upheld, it would cause unwarranted legal uncertainty amongst the whole equestrian community. Furthermore, and for the sake of completeness only, the FEI Tribunal was also cognisant that by the Appellant's admission, the Appellant became aware of the Updated Guidelines on 31 March 2022. In this regard, even if 31 March 2022 were deemed the date of "notification", the Appellant's deadline to lodge an appeal against the Decision would have been 21 April 2022. As a result, the FEI Tribunal confirmed the time limit contained in art. 162.5 FEI General Regulations was not complied with under any of the two potential scenarios. Accordingly, the FEI Tribunal declared the appeal inadmissible.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 18 November 2022, pursuant to Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "**CAS Code**"), the Appellant filed a Statement of Appeal with the CAS directed against the Respondent concerning the Appealed Decision. The Appellant nominated Ms Martina Spreitzer-Kropiunik as an arbitrator in its Statement of Appeal.

17. On 22 November 2022, the CAS Court Office informed the Appellant that Ms. Martina Spreitzer-Kropiunik was not listed as an arbitrator with the CAS and invited the Appellant to nominate a new arbitrator from the CAS list of arbitrators.
18. On 23 November 2022, the Appellant informed the CAS Court Office that it nominated Prof Dr Stephan Breidenbach, Professor of Law in Berlin, Germany as an arbitrator.
19. On 30 November 2022, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal and invited the Appellant to file its Appeal Brief.
20. On 1 December 2022, the Appellant informed the CAS Court Office that its Statement of Appeal was also to be considered its Appeal Brief.
21. On 2 December 2022, the CAS Court Office invited the Respondent to file its Answer.
22. On 12 December 2022, the Respondent informed the CAS Court Office that it nominated Ms Judith Levine, Independent Arbitrator in Sydney, Australia, as an arbitrator but suggested that the case be submitted to a Sole Arbitrator appointed by the President of the Appeals Arbitration Division.
23. On 14 December 2022, the Appellant informed the CAS Court Office that it did not agree with the Respondent's suggestion to submit the case to a Sole Arbitrator appointed by the President of the Appeals Arbitration Division.
24. On 19 December 2022, the CAS Court Office informed the Parties, on behalf of the President of the Appeals Arbitration Division, that the case would be submitted to a Panel composed of three arbitrators.
25. On 23 December 2022, the Respondent filed its Answer according to Article R55 of the CAS Code.
26. On 30 December 2022, the Respondent informed the CAS Court Office that it preferred the Panel to issue an Award based solely on the Parties' written submissions unless the Panel decided to hold a hearing.
27. On 4 January 2023, the Respondent also informed the CAS Court Office that it preferred the Panel to issue an Award based solely on the Parties' written submissions, unless the Panel decided to hold a hearing.
28. On 31 January 2023, the CAS Court Office informed the Parties, under Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows:

President: Ms. Olga Hamama, Arbitrator, Special Counsel at Clifford Chance Partnerschaft mbB in Frankfurt am Main, Germany

Arbitrators: Prof Dr Stephan Breidenbach, Professor of Law in Berlin, Germany

Ms. Judith Levine, Independent Arbitrator in Sydney, Australia

29. On 2 February 2023, the CAS Court Office informed the Parties that, according to Article R57 of the CAS Code and on behalf of the Panel, the Panel deemed itself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.
30. On 3 February 2023, the Appellant and the Respondent each returned a duly signed copy of the Order of Procedure to the CAS Court Office.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant's Submissions

31. The Appellant's submissions, in essence, may be summarised as follows:
 - The Appellant argued that the unilateral announcement of new dressage rules for young horses was not a legal act and needed to be properly implemented. The Appellant referred to CHAPTER IV- BOARD, Article 20 - Functions and Powers of the FEI Statutes providing that the Board should decide on all matters not otherwise reserved to another body of the FEI. The Appellant further indicated that the Board could only approve Sporting Rules if they "*cannot await the next General Assembly and are required by the IOC, the IPC and their Regional Organisations and Sport Rules for Series.*"
 - The Appellant added that the Board could also "*consider and, when appropriate, approve proposals of the Standing Committees, including but not limited to the grant of organisation rights to International FEI Events*" according to Article 20.1. vii. of the FEI Statutes.
 - The Appellant argued that the Board had not approved the change at issue, nor would the Board be competent to make such a change under the FEI Statutes. Moreover, the change was made during the current year (retrospective to 1 January 2022), which was generally inadmissible.
 - The Appellant argued that the entire regulation is in breach of Directive 90/428/EEC, which prohibited discrimination about participation in equestrian events; the exclusion of horses not registered in the Austrian Studbook constituted such discrimination; in particular, it was not reasonable that countries that did not have their studbook were in a better position than the FN Austria (OEPS) regarding the nomination of horses.
 - The Appellant indicated that the main argument of the appeal was that the FEI Statutes did not provide the Board or another body of the FEI with the power to approve the Updated Guidelines, only the General Assembly of the FEI had the right to update guidelines. The Appellant reiterated that there was no legal basis for the Updated Guidelines and, therefore they could not be legitimised by a notification;

an "*animus decidendi*" of a body which had no legal power did not change a Non-Decision into a Decision; and the sending of information did not constitute a "Decision."

32. The Appellant submitted in its Statement of Appeal, which is also to be considered its Appeal Brief, the following prayers for relief:

"The CAS is therefore requested to declare that the "FEI WBFSH Dressage World Breeding Championship for Young Horses Guidelines" announced in March have not been legally put into effect and are therefore invalid in relation to the OEPS".

B. The Respondent's Submissions

33. The Respondent's submissions, in essence, may be summarised as follows:

- The Respondent argued that it was questionable as to whether the CAS Panel had jurisdiction to hear this Appeal on the basis that the Appellant had not exhausted the legal remedies available to it by the FEI Rules and Regulations, given that the Appellant clearly failed to submit a valid appeal to the FEI Tribunal;
- The Respondent further stated that the Appellant missed the deadline to file its appeal against the Updated Guidelines with the FEI Tribunal, and as a consequence, the Appellant's appeal was inadmissible;
- The Respondent argued that the Appeal was moot and the Appellant lacked legal interest; the 2022 Championships to which the Updated Guidelines applied had already taken place and were run according to the Updated Guidelines;
- The Respondent argued that *de novo* nature of CAS proceedings could cure the fact that the Appellant missed the deadline to appeal at first instance. Even if the CAS Panel was to find that the Appealed Decision should not stand, the appropriate action would be to send the matter back to the FEI Tribunal for it to review the merits of the case.
- Finally, the Respondent argued that the FEI validly approved the Updated Guidelines.

34. The Respondent submitted in its Answer the following prayers for relief:

"7.2.1 Dismiss the Appeal in its entirety;

7.2.2 Order the Appellant to pay the costs of the arbitration (such costs to be determined by the CAS Court Office); and

7.2.3 Order the Appellants to contribute to the FEI's legal fees and other expenses incurred in connection with these proceedings".

V. JURISDICTION

51. Article R47 of the CAS Code provides the following:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it before the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

52. According to the Appellant, the jurisdiction of CAS follows from Article 39.1 of the FEI Statutes, which read as follows: *“The Court of Arbitration for Sport (CAS) shall judge all Appeals properly submitted to it against Decisions of the FEI Tribunal, as provided in the Statutes and General Regulations.”*

53. The Respondent also referred to Article 39.1 of the FEI Statutes. However, it also submitted that it is questionable as to whether the CAS has jurisdiction to hear this Appeal on the basis that the Appellant has not exhausted the internal legal remedies available to it in accordance with the FEI Rules and Regulations given that the Appellant failed to submit a proper appeal to the FEI Tribunal.

54. First, the Panel notes that the question of whether the Appellant had exhausted all internal legal remedies or not, is not an issue in relation to jurisdiction but rather in relation to the admissibility of the case (see D. Mavromati & M. Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials*, Kluwer Law International, 2015, Article R47 CAS Code, para. 8, p. 382; see also CAS 2019/A/6677, paras 44-56). For the sake of completeness, the Panel notes that in the present case, the Appellant challenged the validity of the Updated Guidelines at the FEI Tribunal and exhausted the legal remedies available according to FEI Rules and Regulations. The fact that the FEI Tribunal dismissed the appeal as inadmissible because of the delay does not mean that the legal remedies have not been exhausted.

55. Second, the Panel also notes that Article 162.1 of the FEI General Regulations reads, *inter alia*, as follows: *“An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sports Rules, provided it is admissible (see Article 162.2 below): (a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body. (b) With the CAS against Decisions by the FEI Tribunal. (...)”*

56. Based on the preceding and considering the FEI Statutes and Regulations, the Panel finds that the CAS has jurisdiction to decide this case.

VI. ADMISSIBILITY

57. The Appellant filed its Statement of Appeal with the CAS Court Office on 18 November 2022, within 21 days of receipt of the grounds of the Appealed Decision, pursuant to Article R49 of the CAS Code. The Statement of Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee of CHF 1,000.
58. The Respondent does not dispute the admissibility of the appeal.
59. It follows that the appeal filed by the Appellant against the Appealed Decision is admissible.

VII. APPLICABLE LAW

60. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

61. In its written submissions, the Appellant remained silent on the issue of the law applicable to the present dispute. At the same time, the Appellant referred in its submissions to the FEI Statutes and Regulations.
62. The Respondent, on the other hand, stated that Swiss law applies to the proceedings and refers to the FEI Statutes and FEI General Regulations in its Answer.
63. Article 39.4 of the FEI Statutes states: *"The parties concerned acknowledge and agree that the seat of the CAS is in Lausanne, Switzerland, and that proceedings before the CAS are governed by Swiss Law."*
64. Based on the foregoing, the Panel finds that the dispute is primarily governed by the FEI Statutes and General Regulations and, subsidiarily, by Swiss law.

VIII. MERITS

A. Scope of the Panel's review

65. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law. It may issue a new decision that replaces the decision challenged or annul it and refer the case back to the previous instance.

66. The *de novo* powers of the Panel to review the facts and the law in accordance with the power bestowed on it pursuant to Article R57 of the CAS Code have also been explicitly confirmed by the Respondent.

B. Main Issues

67. The main issues to be resolved by the Panel are the following:
- (i) Whether the Updated Guidelines can be considered a formal FEI decision?
 - (ii) If so, was the appeal of the Appellant before the FEI Tribunal filed within the provided time limit?
 - (iii) If so, are the Updated Guidelines valid?

1. Do the Updated Guidelines amount to a formal FEI decision?

68. The first issue the Panel needs to resolve is whether the Updated Guidelines, which have been communicated to the NFs via email and published on the website of the FEI, qualify as a "formal decision" of the FEI, which can be appealed according to the FEI General Regulations.
69. According to Article 162.5 of the FEI General Regulations:
- "Appeals to the FEI Tribunal against other FEI Decisions (i.e. other than an Appeal against a Decision arising from a Protest) must be dispatched to the FEI Tribunal (fei.tribunal@fei.org) and signed by the appellant or their authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within twenty-one (21) days of the date on which the notification of the earlier Decision was sent."*
70. The FEI Statutes define "Decision" as an authoritative determination reached or pronounced after considering facts and law.
71. In the present case the Updated Guidelines changed quota allocations for NFs and were approved by the WBSFH and FEI, thus, amending existing Guidelines, specifically regarding quota for the FEI WBFSH Dressage World Breeding Championship for Young Horses.
72. The Appellant argues that the unilateral announcement of new dressage rules for young horses does not constitute a legal act, that a decision without any legal basis does not become legitimate by notifying the Decision, that an *animus decidendi* of a body which has no legal power does not change a Non-Decision into a Decision and that the mere sending of information is not a Decision.

73. The Respondent argues that a "decision" was taken to update the Guidelines, as confirmed by the FEI Tribunal, that analysed the features that communication must generally have to be deemed a decision. In this regard, the FEI Tribunal referred to the general principles identified by CAS panels (e.g., CAS 2008/4/1633), such as "*the form of the communication has no relevance to determining whether there exists a decision or not*" and "*in 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 sports 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 the association to decide on a matter. [...] A simple information, which does not contain any ruling, cannot be considered a decision*".
74. The FEI Tribunal further found that it is undeniable that by modifying the Guidelines and notifying 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. The FEI Tribunal indicated that the ruling to amend the Guidelines related to the FEI WBFSH Dressage World Breeding Championships for Young Horses contained an *animus decidendi* which therefore revealed the presence of a decision in this case. The FEI Tribunal also stressed that this conclusion was in line with the FEI Tribunal's case law on the previous classification of a *decision* (e.g., Ms. Linda Eketoft v Fédération Equestre Internationale (FEI) 2020.)
75. The Panel finds that the Updated Guidelines constitute a so-called FEI Decision in terms of Article 162.5 of the FEI General Regulations and this could be appealed to the FEI Tribunal. The Updated Guidelines envisaged amending eligibility criteria, more specifically introduced changes to quota allocation per NF and, thus, had immediate consequences for the NFs and their respective members concerned. The Updated Guidelines were communicated in a newsletter to the NFs and published on the FEI website. As indicated in the FEI correspondence, the Updated Guidelines have been approved by the FEI and the WBSFH based on a memorandum of understanding, and thus represented an authoritative determination of these organisations towards the NFs and the affected membership. It has been further indicated in the FEI correspondence that the WBFSH agreed to an allocation of slots per studbook based on the criteria established by the organisation, *inter alia*, number of foals per year. The FEI has also highlighted in its correspondence that the Updated Guidelines applied to the championships scheduled for September 2022 and had direct consequences. Thus, the Updated Guidelines also represented an authoritative determination to regulate an aspect of a sporting event and had been reached at least considering specific facts. As a result, the Updated Guidelines amount to an appealable FEI Decision in terms of Article 165.2 of the FEI General Regulations.
76. The Panel finds this conclusion is consistent with and supported by established CAS jurisprudence, for example, CAS 2020/A/6912, that summarises said jurisprudence as follows:

- “*The form of the communication has no relevance to determine whether a decision exists. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal*” (CAS 2005/A/899 para. 63; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94);
 - “*In 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 addressees of the decision or other parties*” (CAS 2004/A/748 para. 89; CAS 2005/A/899 para. 61; CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94);
 - “*A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*” (CAS 2004/A/659 para. 36; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31; CAS 2015/A/4213 para. 49; and CAS 2017/A/5200 para. 94); - “[A]n 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 the association to decide on a matter (...). A simple information, which does not contain any “ruling”, cannot be considered a decision” (BERNASCONI M., “When is a “decision” an appealable decision?”, in RIGOZZI/BERNASCONI (ed.), The Proceedings before the CAS, Bern 2007, p. 273; and CAS 2008/A/1633 para. 32; CAS/A/4213 para. 49; CAS 2015/A/5200 para. 94);
77. Thus, the Updated Guidelines which were communicated to NFs via newsletter and made available on the website of the FEI, constitute a decision which can be appealed according to Article 162.5 of the FEI General Regulations.

2. If so, was the appeal of the Appellant before the FEI Tribunal filed within the provided time limit?

78. Having established that the Updated Guidelines constitute an FEI decision that could be appealed to the FEI Tribunal, the Panel now turns to the question of whether the appeal was filed in time.
79. On 15 March 2022, the FEI Communication Department distributed its newsletter to the NFs, inter alia, indicating that the guidelines, effective 1 January 2022, had been amended in March 2022, to reflect necessary changes in the quote allocation per NF, approved by the WBSFH and the FEI. The FEI Communication Department further indicated that the new Guidelines were available on inside.fei.org in the Dressage Rules section. The website has been linked in the communication. The newsletter has been distributed via email copying FEI Board, MoU Signatories and FEI Headquarters.
80. The Appellant argues that it became aware of the Updated Guidelines following a routine inspection of the FEI Rules page on 31 March 2022. The Secretary General of the Appellant indicated in his email to the FEI that according to his information “*the national FNs was not informed*”. The Appellant further argues that the Updated

Guidelines have no legal effect as these have not been properly adopted as only the General Assembly of the FEI has the right to update guidelines. Consequently, the Appellant suggests that the time limit for filing of the appeal to the FEI Tribunal does not apply in the present case.

81. The Panel further observes from the exhibits that in a letter to the FEI Legal Department dated 7 July 2022, the Appellant disagreed with the FEI's position (as communicated to the Appellant by email on 4 July 2022) that the deadline to file the Appeal was 5 April 2022 and instead argued that *"It does not matter that the updates were announced on 15 March 2022. 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"*.
82. The Respondent argues that in light of the precise wording of Article 162.5 of the FEI General Regulations, the Appellant's contention that there is no deadline to file an appeal to challenge the Updated Guidelines does not make sense. The Respondent refers to Article 162.5 of the FEI General Regulations, indicating that it clearly states that the deadline starts to run from the date on which the Decision was notified. Accordingly, the Decision was properly and duly notified to the Appellant on 15 March 2022, so on this basis, any appeal against the Decision should have been filed by 5 April 2022. In addition, the Respondent argues that, even if 31 March 2022 were deemed the date of notification, the Appellant's deadline to lodge an appeal against the Decision would have been 21 April 2022. Finally, the Respondent argues that in CAS jurisprudence on the interpretation on the CAS Code concerning rules on deadlines, it has been clearly held that strict enforcement of deadlines does not contravene the prohibition on excessive formalism. This line of arguments has also been adopted and confirmed by the FEI Tribunal. The Respondent further refers to the established CAS jurisprudence on the interpretation of the CAS rules on deadlines ensuring that a strict enforcement of deadlines does not contravene the prohibition on excessive formalism.
83. In this context, the Respondent referred to CAS case law, arguing that enforcement of deadlines *"serves the protection of the legal interests of predictability of legal decisions and the equality of the parties. The enforcement of the rule, therefore, does not violate the prohibition of excessive formalism but is by all means justified"* (CAS 2014/A/3482 with further references to FTA case law).
84. The Panel notes that the language of Article 162.5 of the FEI General Regulations is clear and demands an appeal *"must reach the FEI Tribunal within twenty one (21) days of the date on which the notification of the earlier Decision was sent"*. Article 48.1 of the FEI Statutes addressing "Official Communication" regulates that *"Decisions rendered or notices given by a body of the FEI or its members may be communicated by any appropriate mode of communication, including but not limited to the use of electronic networks, and shall be binding upon delivery."*
85. Thus, considering the above, one could conclude that the communication of the Updated Guidelines constituted an Official Communication and the chosen means of communication, i.e., electronic communication via email and or publication of the

Updated Guidelines on the website were appropriate and the Updated Guidelines became binding upon delivery, i.e., upon receipt of the email on 15 March 2022 or, at the latest, on 31 March 2022, the date the Appellant noticed the Updated Guidelines on the website of the FEI according to the information provided by the Secretary General of the Appellant on 1 April 2022. These means of communications are often deployed by other sports federations and are common for the notification of guidelines and other regulations.

86. The Appellant, however, argued that the Updated Guidelines could not be effectively adopted by any other FEI body except for General Assembly and, therefore a subsequent communication of an amendment to guidelines via email would not be sufficient and thus, the time limit stipulated in Article 162.5 of the FEI General Regulations does not apply.
87. The Panel does not follow the argument that adoption of the guidelines at hand lied in the exclusive competence of the General Assembly and therefore would have required different procedure. First of all, there is no indication that adaptation of the Updated Guidelines at hand would fall within the exclusive competence of the General Assembly. Article 10 (14-18) of the FEI Statutes stipulates that the General Assembly has, *inter alia*, the functions and powers to (i) approve the Statutes and any amendment to it; (ii) to approve the General Regulations and any amendment thereto; (iii) to approve the Internal Regulations of the FEI and any amendment to it; (iv) to approve the Procedural Regulations of a General Assembly and any amendment thereto; (v) to approve the Sport Rules and any amendment to it, subject to Article 20.1 (vii) of the FEI Statutes.
88. Article 20.1 (vii) of the FEI Statutes in its turn, regulates that the Board has the power to approve the Sport Rules (a) that cannot await the next General Assembly and are required by the IOC, the IPC and/or their Regional Organisations and (b) Sport Rules for Series. The Sport Rules are defined by the FEI Statute as Sport Rules: Principles and set of norms, including but not limited to Rules for the Equestrian Disciplines, Veterinary Regulations, Equine Anti-Doping and Controlled Medication Regulations, Anti-Doping Rules for Human Athletes, and Olympic Regulations.
89. In the case at hand, the Parties are in dispute about the validity of guidelines, which *inter alia*, regulate quota allocation per NF, which have been reviewed in close collaboration with WBFSH and approved by the WBSFH and the FEI in accordance with a Memorandum of Understanding. At least the mere denomination as guidelines does not suggest that these fall within the exclusive competence of the General Assembly and/or constitute Sport Rules.
90. This is also supported by the uncontested position of the Respondent arguing that due to the unique nature of the FEI WBFSH Championship, the applicable quotas are not considered as "rules" within the meaning of Sports Rules as defined by the FEI Statutes. The Respondent further argues that it is a common practice for the equestrian events for organisers to limit the number of participants at their event, whereas the cap of participants usually depends on the stabling facilities at the organiser's venue. The

Respondent further suggests that the information on how many entries will be accepted by the organiser is usually included in the event's "Schedules" rather than guidelines. This representation has not been contested by the Appellant.

91. The Panel does not find any supporting evidence in the present case suggesting that adoption of the Updated Guidelines at hand would have fallen within the exclusive decision-making power of the General Assembly or the FEI Board. As a result, the Panel finds that there is no basis to deviate from the communication procedure as described in Article 48.1 of the FEI Statutes. Furthermore, the Panel finds that all challenges regarding the validity of the Updated Guidelines and the decision-making process should have been raised within the strictly prescribed time-period of 21 days of the date of notification to ensure legal certainty and reliance on the established procedures.
92. In summary, the Panel finds that the Appellant was properly notified of the Updated Guidelines on 15 March 2022 per newsletter or, at the latest, on 31 March 2022, as it has become aware of the Updated Guidelines following the revision of the FEI website. In both cases, the appeal to the FEI Tribunal has been lodged following the expiry of the time limit of twenty-one days and was, therefore inadmissible. Consequently, the decision of the FEI Tribunal was correct and is herewith upheld.

3. Were the Updated Guidelines validly rendered by the FEI?

93. Given the above, the Appellant lodged its appeal before the FEI Tribunal after the lapse of the time-period. Consequently, the request was inadmissible at that stage and the FEI decision was correct. The Panel therefore has no power to review the question on the merits, i.e. the question of the validity of the Updated Guidelines.

C. Conclusion

94. The Updated Guidelines qualify as a FEI Decision in terms of the FEI General Regulations which can be appealed to the FEI Tribunal within twenty-one days of the date the notification of the earlier Decision was sent. The Updated Guidelines were properly notified to the Appellant using electronic communication, i.e. newsletter and by publication of the Updated Guidelines on the FEI website. Even if the Panel were to consider that the time-limit for the filing of the appeal starts running as of the date of the notice of the Updated Guidelines on the FEI website instead of the communication of the Updated Guidelines in the newsletter, the appeal to the FEI Tribunal was in any event inadmissible as the time limit for launching the appeal had lapsed before the time of filing.
95. The Panel therefore upholds the decision of the FEI Tribunal.

IX. COSTS

96. Article R64.4 of the CAS Code provides as follows:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated per the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts, and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. It shall contain a detailed breakdown of each arbitrator's costs and fees and of the administrative costs and shall be notified to the parties within a reasonable period. The advance of costs already paid by the parties is not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

97. Article R64.5 of the CAS Code provides as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

98. Having considered the outcome of the arbitration procedure, the Panel hereby orders that the costs of arbitration, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by the Appellant.

99. Considering the outcome of the proceedings, the Appellant shall contribute to the Respondent's legal and other costs. Arriving at this conclusion, the Panel has considered the fact that the Appellant was the unsuccessful party, but also that the Respondent's objection to CAS jurisdiction was rejected. The Tribunal acknowledges that by agreeing to the Panel resolving the dispute based on written submissions without a need for a hearing, and by limiting their written submissions to one round, the Parties achieved some cost efficiencies. In the circumstances, the Tribunal considers it appropriate for the Appellant to contribute to the Respondent's legal and other costs, in the reduced amount of CHF 3,000 (three thousand Swiss Francs).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

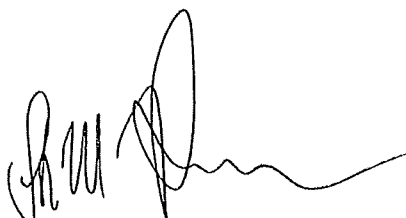
1. The appeal filed on 18 November 2022 by the Österreichischer Pferdesportverband against the decision issued by the FEI Tribunal on 31 August 2022, of which the grounds were notified on 28 October 2022, is dismissed.
2. The decision issued by the FEI Tribunal on 31 August 2022, of which the grounds were notified on 28 October 2022, is confirmed in full.
3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne by the Österreichischer Pferdesportverband.
4. Österreichischer Pferdesportverband is ordered to pay contribution in the amount of CHF 3'000 (three thousand Swiss Francs) to the Fédération Equestre Internationale's legal costs and other costs.
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 2 June 2023

THE COURT OF ARBITRATION FOR SPORT



Olga Hamama
President of the Panel



Stephan Breidenbach
Arbitrator



Judith Levine
Arbitrator