

**PROPOSALS FOR 2020 MODIFICATIONS TO THE
EQUINE ANTI-DOPING & CONTROLLED MEDICATIONS REGULATIONS**

26 October 2020

Dear National Federations,

Please find below a summary of the proposed changes to the Equine Anti-Doping & Controlled Medications Regulations (**EADCMR**) together with the corresponding explanations, the comments received as well as the reasoning for accepting or not accepting each proposal.

In the following document you will find 2 sections as follows:

A. [Proposed Rules changes to be voted on at the FEI General Assembly 2020](#);

As you know, the EADCMR are undergoing a full revision, so for ease of reference, the changes shown in section A of this Memo only refer to those provisions on which the FEI received comments from the NFs and Stakeholders and which have been incorporated into the proposed final version. Those additional changes are highlighted in yellow in this memo. The full draft of the 2021 EADCMR that will be voted on during the General Assembly is also provided (clean and mark-up version).

B. [Proposed Rules changes that have been rejected](#).

The following documents have also been published:

- A mark-up of the proposed final draft of the 2021 EADCMR showing the changes from the 2020 EADCMRs with the additional changes that have been made further to the comments received from the stakeholders highlighted in yellow;
- A clean version of the proposed final draft of the 2021 EADCMR;
- Atypical Findings Policy (as approved by the FEI Board on 20 October 2020) (this Policy will only take effect if the new EADCMR are approved at the General Assembly). See also the Schedule to the Policy where the Prohibited Substances that will be treated as Atypical Findings (ATFs) are identified (as approved by the FEI Board upon the recommendation of the FEI List Group).

Thank you to all NFs who provided feedback on the EADCMR either as part of the rules revision process or the FEI Sports Forum 2020 consultation process.

Sincerely,



Áine Power
Deputy Legal Director

23 November 2020

A. PROPOSED RULES CHANGES TO BE VOTED ON AT THE FEI GENERAL ASSEMBLY 2020

Proposal from (National Federation, Stakeholder or FEI)
FEI
Article Number – Article Name
Art. 6.9 EAD and ECM Rules - <i>FEI's Right to Take Possession of Samples and Data</i>
Explanation for Proposed Change
Giving the FEI the right to take possession of Samples in FEI approved laboratories.
Proposed Wording on 13 July 2020
<u>6.9 <i>FEI's Right to Take Possession of Samples and Data</i></u>
<u>The FEI may, in its sole discretion at any time, with or without prior notice, take physical possession of any Sample and related analytical data or information in the possession of a FEI approved Laboratory or Anti-Doping Organization. Upon request by the FEI, the FEI approved Laboratory or Anti-Doping Organization in possession of the Sample or data shall immediately grant access to and enable the FEI to take physical possession of the Sample or data. If the FEI has not provided prior notice to the FEI approved Laboratory or Anti-Doping Organization before taking possession of a Sample or data, it shall provide such notice to the FEI Approved Laboratory and each Anti-Doping Organization whose Samples or data have been taken by the FEI within a reasonable time after taking possession. After analysis and any investigation of a seized Sample or data, the FEI may direct another Anti-Doping Organization with authority to test the Horse to assume Results Management responsibility for the Sample or data if a potential EAD Rule violation is discovered.</u>
Comments received by 31 August 2020
<u>Comments from EEF, BEL NF, GER NF, IRL NF, ITA NF, USA NF, CAN NF</u>
The wording of the rule suggests that the FEI can also claim possession of samples that have been collected by National Federations on national level. According to information by the FEI Headquarters, the FEI will not be able to bypass National Federations with regard to claiming possession of the samples. This restriction should be set out in the rules.
<u>CAN NF</u>
This article should include a statement that evidence or suspicion of evidence was needed for this process to be undertaken and cannot happen arbitrarily.
The samples, results, analytical data and Standard Operating Procedures (SOPs) of laboratories not approved by FEI and of other Anti-doping Organizations are proprietary and cannot be released to FEI if not in a contract situation with FEI (ie laboratories that

23 November 2020

are not FEI approved). This article should not include the terms "Anti Doping Organization".

FEI feedback

We proposed to amend the wording to make it clear that it only applies to FEI Samples in FEI laboratories; see the changes highlighted in yellow below. However, we do not agree to incorporate the proposal that this power can be only exercised where there is evidence of suspicion of evidence to warrant the FEI taking possession.

Proposed Final Wording to be voted at the FEI General Assembly 2020

6.9 FEI's Right to Take Possession of Samples and Data

The FEI may, in its sole discretion at any time, with or without prior notice, take physical possession of any FEI Sample and related analytical data or information in the possession of a FEI approved Laboratory or Anti-Doping Organization. Upon request by the FEI, the FEI approved Laboratory or Anti-Doping Organization in possession of the FEI Sample or data shall immediately grant access to and enable the FEI to take physical possession of the Sample or data. If the FEI has not provided prior notice to the FEI approved Laboratory or Anti-Doping Organization before taking possession of a FEI Sample or data as soon as possible, it shall provide such notice to the FEI Approved Laboratory and each Anti-Doping Organization whose FEI Samples or data have been taken by the FEI within a reasonable time after taking possession. After analysis and any investigation of a seized FEI Sample or data, the FEI may direct another Anti-Doping Organization with authority to test the Horse to assume Results Management responsibility for the FEI Sample or data if a potential EAD Rule violation is discovered.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Art. 7.2 EAD and ECM Rules - Atypical Findings

Explanation for Proposed Change

Atypical Findings (ATFs) occur when the laboratory provides the results of their testing of a Sample to the FEI and more investigation/review is needed before it can be treated as an Adverse Analytical Finding ("AAF" i.e. a positive case). Currently: only a very limited category of substances – those that are produced endogenously (e.g. testosterone) can be reported as ATFs. New WADA Code expands this concept.

Proposal: to expand the scope of substances that would be reported as ATFs to include those substances that we know are quite likely to be in a Sample because of contamination e.g. Specified Substances.

Samples with this category of substances would initially be treated as Atypical Findings (instead of Adverse Analytical Findings).

In practice this would allow the FEI to carry out a review/investigation before they are reported as a real positive (Adverse Analytical Finding) and before any proceedings are officially commenced.

Proposed Wording on 13 July 2020**7.2 Review of Atypical Findings**

7.2.1 In some circumstances Laboratories ~~are directed to report~~ may report the presence of *Banned Substances* which require further investigation as provided by the FEI Atypical Findings Policy and such reports shall be treated by the FEI, which may also be produced ~~endogenously~~, as *Atypical Findings* subject to further investigation. Upon receipt of an *A Sample Atypical Finding*, the FEI shall conduct a review to determine whether there is any apparent departure from ~~the Testing procedures, the FEI Standard for Laboratories or another FEI standard, FEI Rule or Regulation, FEI Manual or policy~~ any provision of the EAD Rules that caused the *Atypical Finding*. If that review does not reveal any departure that caused the *Atypical Finding*, the FEI ~~and/or the Equestrian Community Integrity Unit~~ shall conduct the required investigation in accordance with the FEI Atypical Findings Policy.

~~After the investigation is completed, the Person Responsible, and the Owner of the Horse (if applicable) and his or her National Federation, shall be Notified whether or not the Atypical Finding will be brought forward as an Adverse Analytical Finding. The Person Responsible's National Federation shall be Notified as provided in Article 7.1 EAD Rules.~~

7.2.2 The FEI ~~will need~~ not provide Nnotice of an *Atypical Finding* until it has completed the investigation ~~is completed~~ and ~~it has Decided~~ decided whether it will bring the *Atypical Finding* forward as an *Adverse Analytical Finding* unless one of the following circumstances exists:

(a) If the FEI determines that the "B" Sample should be analysed prior to the conclusion of its investigation, ~~However, if the FEI determines that the B Sample should be analysed prior to the conclusion of the investigation under Article 7.2,~~ the FEI may conduct the B Sample analysis after supplying-notifying the *Person Responsible* and the *Owner* of the *Horse* (if applicable) with such *Notice* to include ~~ing~~ a description of the *Atypical Finding* and the information described in Article 7.1.4 (c)-(e) and 7.1.5 above;

(b) If the FEI receives a request, either from a Major Event Organization shortly before one of its International Events or from a sport organization responsible for meeting an imminent deadline for selecting team members (or Horses) for an International Event, to disclose whether any Person Responsible or Horse identified on a list provided by the Major Event Organization or sport organization has a pending Atypical Finding, the FEI shall identify any Person Responsible or Horse after first providing notice of the Atypical Finding to the Person Responsible or and the Owner of the Horse (if applicable);

(c) If the Atypical Finding is likely to be connected to a serious pathology that requires urgent veterinary attention. If after the investigation is completed, the FEI decides to pursue the Atypical Finding as an Adverse Analytical Finding, then the procedure shall follow the provisions of Clause 7.1.4 mutatis mutandi. The *Person Responsible's National Federation* shall be *Notified* as provided in Article 7.1 EAD Rules.

Comments received by 31 August 2020

Comment from EEF NF, BEL NF, GER NF, IRL NF, ITA NF, NED NF

23 November 2020

The FEI Policy on the review of Atypical Findings and the List of Substances that lead to an ATF needs to be enacted and published before a decision on the Rule Changes in the EADCMR can be made. Since the extension of the scope of atypical findings does not only offer more flexibility but has also huge effects on the members of the FEI and their athletes, this policy should be decided upon by the General Assembly. This is also necessary to provide a sufficiently broad political basis in order to prevent allegations of arbitrariness.

In order to ensure horse welfare at the same level as human athletes are protected with regard to the corresponding rules in the ADRHA and the WADA Code it is important that reasonable thresholds are implemented.

FEI feedback

The FEI agrees that the ATF Policy (and the list of substances that can be treated as ATF) must be published so that it is clear and unequivocal when and how Atypical Findings can be dealt with. Similar to the Equine Prohibited Substance List, the FEI suggests that the ATF Policy be under the responsibility of the FEI Board. The ATF Policy was approved by the FEI Board on 20 October 2020 and is published together with this Rules Memo.

It sets out in detail the processes that must be followed for Atypical Findings case. One additional clarification has been made - the decision of the ATF Panel to drop the case or to proceed with the case is final. This is to avoid unnecessary legal proceedings. If the FEI goes ahead with a case (i.e. treats the finding as Adverse Analytical Finding), the PR will have a full opportunity to make all their legal arguments as part of the full case before the FEI Tribunal.

See also, the revised definition of the definition of FEI Atypical Findings Policy below reflecting the fact that the Policy must be approved by the FEI Board.

Proposed Final Wording to be voted at the FEI General Assembly 2020

As above but with the following additional change, as highlighted in yellow, in the final paragraph:

(c) If the Atypical Finding is likely to be connected to a serious pathology that requires urgent veterinary attention. If after the investigation is completed, the FEI decides to pursue the Atypical Finding as an Adverse Analytical Finding, then the procedure shall follow the provisions of Clause 7.1.4 mutatis mutandi. The Person Responsible's National Federation shall be Notified as provided in Article 7.1 EAD Rules. **The decision of the FEI to pursue or not pursue an Atypical Finding as an Adverse Analytical Finding is final and is not subject to appeal.**

Definition:

FEI Atypical Findings Policy. The policy **established by the FEI Headquarters** approved by the FEI Board in consultation with the FEI Headquarters, ~~and~~ **the FEI List Group and the FEI Approved Laboratories** setting out (i) the process for determining those Prohibited Substances to which the provisions of these EADCMRs relating to Atypical Findings will apply; and (ii) the process that will apply to the investigation of Atypical Findings. The **FEI Atypical Findings Policy and the list of Prohibited Substances to which the FEI Atypical Findings Policy will apply, as approved by the FEI Board, will** be published on the FEI website.

23 November 2020

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name**10.1 Disqualification of Results in the Event during which an EAD Rule Violation Occurs – EAD Rules****Explanation for Proposed Change**

The application of the disqualification rule has caused a lot of confusion and debate in recent years and the changes proposed to the EADCMRs aim to clarify this:

A positive test in the Olympic or Paralympic Games shall lead to Disqualification of all of the Person Responsible's results obtained in that Event, with any and all Horses with which the Person Responsible competed.

At all other Events where the EADCMR apply, a violation shall lead to Disqualification of all of the Person Responsible's obtained in that Event, unless the Horse(s) tested negative in another Competition(s) prior to the Competition in which the EAD Rules were violated, in which case the result(s) obtained by the Person Responsible in that Competition(s) will not be Disqualified.

Proposed Wording on 13 July 2020

10.1.1 At the Olympic Games ~~, Paralympic and Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games:~~

An EAD Rule violation occurring during or in connection with an Event shall lead to Disqualification of all of the Person Responsible's ~~individual~~ results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, ~~except as provided in Article 10.1.4.~~

Comments received by 31 August 2020**Comment from USA NF:**

Clarify applicability of rule.

Proposed Wording:

10.1.1 At the Olympic Games , Paralympic and Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games:

An EAD Rule violation occurring during or in connection with an **Olympic Games or Paralympic Games** Event shall lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.4.

FEI feedback

See the additional change made below (as highlighted in yellow). "The Event" refers to the Olympic Games (or Paralympic Games).

Proposed Final Wording to be voted at the FEI General Assembly 2020

10.1.1 At the Olympic Games, ~~Paralympic and Paralympic Games, FEI World Equestrian Games, FEI Championships for Seniors, and Regional Games:~~

An EAD Rule violation occurring during or in connection with **an the** Event shall lead to Disqualification of all of the Person Responsible's ~~individual~~ results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Art. 10.1.2 EAD & ECM – Disqualification of Results in the Event during which an EAD Rule Violation Occurs

Explanation for Proposed Change

Clarification of impact of positive test on the PR's results at the entire Event.

Proposed Wording on 13 July 2020

10.1.2 At all other Events at which these EAD Rules apply, an EAD Rule violation occurring during or in connection with an Event shall, upon the decision of the FEI Tribunal, lead to Disqualification of all of the Person Responsible's obtained in that Event, with any and all Horses, with all Consequences, including forfeiture of all medals, points and prizes, unless the Horse(s) tested negative in another Competition(s) prior to the Competition in which the EAD Rules were violated, in which case the result(s) obtained by the Person Responsible in that Competition(s) will not be Disqualified.

~~At Events other than those listed above: an EAD Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.4. Where applicable, consequences to teams will take place shall be as provided in Article 11.~~

Comments received by 31 August 2020

Comment from EEF NF, BEL NF, GER NF, IRL NF, ITA NF, NED NF, USA NF, CAN NF:

We welcome the clarification and suggest to also explicitly clarify the disqualification rule with regard to the Administrative Procedure.

FEI feedback

23 November 2020

Omission of word "results" now corrected

Proposed Final Wording to be voted at the FEI General Assembly 2020

10.1.2 At all other Events at which these EAD Rules apply, an EAD Rule violation occurring during or in connection with an Event shall, upon the decision of the FEI Tribunal, lead to Disqualification of all of the Person Responsible's results obtained in that Event, with any and all Horses, with all Consequences, including forfeiture of all medals, points and prizes, unless the Horse(s) tested negative in another Competition(s) prior to the Competition in which the EAD Rules were violated, in which case the result(s) obtained by the Person Responsible in that Competition(s) will not be Disqualified.

~~At Events other than those listed above: an EAD Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.4. Where applicable, consequences to teams will take place shall be as provided in Article 11).~~

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Article 17.2 EAD Rules (corresponding provision in Art. 16.2 ECM Rules) – **Additional Roles of National Federations**

Explanation for Proposed Change

There is not any particular change here but the provision showed up in mark-up as it had been moved around to a new location within the rules. For the ECM provision, the wording in the 2020 EADCMRs allows an exception to Article 4 for NFs.

Proposed Wording on 13 July 2020

17.2 For FEI Disciplines only, all National Federations shall specifically incorporate Articles 2, 3, 4, and 8.2 of these EAD Rules into their anti-doping regulations without substantive change by January 1, 2021 and enforce them against their members, unless doing so would contravene any applicable national law. With regards to the other Articles of these EAD Rules, National Federations, to the extent they do not wish to incorporate them, shall adopt corresponding provisions which embody similar concepts and principles, especially with respect to Article 10. Nothing in these EAD Rules shall be interpreted to prevent a National Federation from conducting out-of-competition testing on national Horses as part of its national Doping Control.

Comments received by 31 August 2020

23 November 2020

Comment from USA NF

Strict compliance with 16.2 is not possible for the U.S. due to the exception to Article 4 that the FEI provided when this regulatory scheme was first promulgated. The exception permits the USA NF to allow certain therapeutic substances to be administered to horses competing in national events, subject to US Equestrian's national rules.

The initial regulations included a provision for NF's having their own anti-doping rules in effect for at least five (5) years. USEF has successfully maintained its own Equine Drugs and Medications Program for much longer than the FEI. The USEF is currently in their 50th year of regulating Equine Drugs in sport. The USEF governs and regulates 29 different Breeds and Disciplines, of which, only 8 are those considered to be International Disciplines of the FEI. The ability to manage the use of Controlled Medications that apply to a much wider population than that of International competition is essential to the USEF. It is understood that this Article is only applicable to the FEI Disciplines, it creates confusion and division to have separate rules by discipline; an issue FEI has experienced with Endurance. The USEF does recognize and use the list of Controlled Medications, but utilizes its own screening limits for specific substances, and has done so for more than 30 years.

Proposed Wording:

16.2 *For FEI Disciplines only, all National Federations shall specifically incorporate Articles 2, 3, 4, and 8.2 of these ECM Rules into their anti-doping regulations without substantive change by January 1, 2021 and enforce them against their members, unless doing so would contravene any applicable national law or **FEI approval has been obtained**. With regards to the other Articles of these ECM Rules, National Federations, to the extent they do not wish to incorporate them, shall adopt corresponding provisions which embody similar concepts and principles, especially with respect to Article 10. Nothing in these ECM Rules shall be interpreted to prevent a National Federation from conducting out-of- competition testing on national Horses as part of its national Doping Control.*

Comment from CAN NF:

The sentence "If any National Federations that has had its own anti-doping rules in effect for at least five (5) years) is opposed to incorporating Article 4 by January 1, 2018, such National Federation may delay such implementation beyond January 1, 2018 and instead coordinate and agree with the FEI on an individual basis the appropriate implementation, if any, of Article 4 going forward." has been removed but no explanation has been provided.

This article acknowledges the long standing existence (since 1970's), efficacy and quality of Canada's EMCC program which applies to every Equestrian Canada sanctioned national level competitions in Canada and gives opportunity to align its objectives with those of FEI EADMC.

FEI feedback

The intention was not to deviate from the current arrangement, so an additional clarification, as highlighted in yellow has been made to deal with the specific point raised by the USA NF and CAN NF. The corresponding change has been made to 16.2 of the ECM Rules.

Proposed Final Wording to be voted at the FEI General Assembly 2020

17.2 For FEI Disciplines only, all National Federations shall specifically incorporate Articles 2, 3, 4, and 8.2 of these EAD Rules into their anti-doping regulations without substantive change by January 1, 2021 and enforce them against their members, unless doing so would contravene any applicable national law and/or FEI approval has been obtained. With regards to the other Articles of these EAD Rules, National Federations, to the extent they do not wish to incorporate them, shall adopt corresponding provisions which embody similar concepts and principles, especially with respect to Article 10. Nothing in these EAD Rules shall be interpreted to prevent a National Federation from conducting out-of-competition testing on national Horses as part of its national Doping Control.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name**Art. 8.3.3. ECM – Administrative Procedure****Explanation for Proposed Change**

Clarification that cases processed under the Administrative Procedure do not count as prior violations for the purposes of the Multiple Violations rules.

Proposed Wording on 13 July 2020

8.3.3 Where the *Administrative Procedure* is applied by the *FEI*, the following consequences shall be imposed and no other consequences, including those set forth in Article 10 below or elsewhere in these *ECM Rules*, shall be applicable to any *Person* who has elected this *Administrative Procedure*:

a. *Disqualification* of the *Person Responsible* and/or member of the *Support Personnel* (where applicable) and the *Horse* from the whole *Event* and forfeiture of all prizes and prize money won at the *Event*;

b. A *Fine* of CHF 1,500; and

c. Costs of CHF 1,000. However, if a *B Sample* analysis is requested and the *Administrative Sanction* accepted after the *B Sample Analysis*, the costs shall be increased to CHF 2,000.

Where the *Administrative Procedure* is applied by the *FEI* for an *ECM Rule* violation, that *ECM Rule* violation shall not count as a prior violation for the purposes of Article 10.9 (*Multiple Violations*) of these *ECM Rules*.

Comments received by 31 August 2020**Comments from EEF NF, BEL NF, GER NF, ITA NF, NED NF**

We welcome the clarification and suggest to also explicitly clarify the disqualification rule with regard to the *Administrative Procedure*.

8.3.3 Where the Administrative Procedure is applied by the FEI, the following consequences shall be imposed and no other consequences, including those set forth in Article 10 below or elsewhere in these ECM Rules, shall be applicable to any Person who has elected this Administrative Procedure:

a. Disqualification of the Person Responsible and/or member of the Support Personnel (where applicable) and ~~the~~ **Horse Combination** from the whole Event and forfeiture of all prizes and prize money won at the Event;

FEI feedback

This has been clarified in the final version (see below). The corresponding change was also made to the Special Procedure for Minors where a similar concept applies.

Proposed Final Wording to be voted at the FEI General Assembly 2020

8.3 – ECM Rules - Administrative Procedure

8.3.3 Where the *Administrative Procedure* is applied by the FEI, the following consequences shall be imposed and no other consequences, including those set forth in Article 10 below or elsewhere in these *ECM Rules*, shall be applicable to any *Person* who has elected this *Administrative Procedure*:

a. *Disqualification* of the *Person Responsible* and/or member of the *Support Personnel* (where applicable) and **the Horse combination** from the whole *Event* and forfeiture of all prizes and prize money won at the *Event*;

b. A *Fine* of CHF 1,500; and

c. Costs of CHF 1,000. However, if a *B Sample* analysis is requested and the *Administrative Sanction* accepted after the *B Sample Analysis*, the costs shall be increased to CHF 2,000.

Where the Administrative Procedure is applied by the FEI for an ECM Rule violation, that ECM Rule violation shall not count as a prior violation for the purposes of Article 10.9 (Multiple Violations) of these ECM Rules.

Article 8.3.3 – EAD Rules - Special Procedure for Minors

Where the *Special Procedure for Minors* is applied by the FEI, the following consequences shall be imposed and no other consequences, including those set forth in Article 10 below or elsewhere in these *EAD Rules*, shall be applicable to any *Minor* who has elected to avail of this *Special Procedure for Minors*:

a. *Disqualification* of the *Minor* and **the Horse combination** from the whole *Event* and forfeiture of all prizes and prize money won at the *Event*;

b. Two month period of *Ineligibility* for the *Minor*, such period of *Ineligibility* to commence on the date that the *Acceptance Form* referred to in Article 8.3.5 below is received by the FEI;

c. Two month period of suspension for the *Horse*, such period of suspension to commence as of the date of *Notification* (i.e. the date the provisional suspension of the *Horse* commenced);

c. A *Fine* of CHF 1,500; and

d. Costs of CHF 1,000. However, if a *B Sample* analysis is requested and the *Special Procedure for Minors* is accepted after the *B Sample Analysis*, the costs payable shall be increased to CHF 2,000.

Proposal from (National Federation, Stakeholder or FEI)

23 November 2020

FEI
Article Number – Article Name
Various Articles
Explanation for Proposed Change
N/A
Proposed Wording on 13 July 2020
See below.
Comments received by 31 August 2020
<p>Comments from Various NFs</p> <p>Various minor drafting errors (typos, omitted words etc.) were identified by various stakeholders as part of the rules revision process:</p> <ul style="list-style-type: none"> - Article 2.8 EAD (duplication of “by a” in the heading title) - Article 6.8 EAD/ECM (omission of “shall be followed”) at the end of the last sentence) - Article 7.1.4(g) EAD & 7.1.4(h) ECM (omission of “to” in “...the opportunity provide [to] <i>Substantial Assistance</i>”) - Art 7.3.1 (e) EAD/ECM (word ‘to’ missing in “opportunity [to] provide”) - Art 7.5. 1 (g) EAD/ECM (words ‘they provide Substantial Assistance under Article 10.6.1, may admit the’ missing in ‘may be able to obtain a suspension of <i>Consequences</i> if [they provide Substantial Assistance under Article 10.6.1, may admit the] EAD violation’) - 10.1.1 ECM (words “except as provided in Article 10.1.1.” unnecessary at end of the sentence “.....with all consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, [except as provided in Article 10.1.1.]”) - 10.8.1 EAD/ECM (word “FEI” missing from “....after being notified by the [FEI] of a potential”) - 10.8.2 EAD/ECM (word ‘the’ missing from ‘(a) [the] Person Responsible and/or - 10.8.2 EAD/ECM (should say ‘will <u>be</u> published’ instead of ‘will <u>and</u> published’) - 14.4.2(a) (words “legal ground” missing in the sentence “(a) Only process personal information in accordance with a valid [legal ground]”; - 14.4.2(c) (word “FEI” missing in “.....with whom the [FEI] shares the personal information”) - Deletion of definition of “Elective Testing” because the term is not used in the EADCMRs.
FEI feedback
We thank the stakeholders for picking up on these drafting/typographical errors and confirm they have been corrected in the proposed final draft.
Proposed Final Wording to be voted at the FEI General Assembly 2020
Please refer to Proposed Final Draft (mark-up version, additional changes/corrections made to the proposed Final Draft are highlighted in yellow)

23 November 2020

B. PROPOSED RULES CHANGES THAT HAVE BEEN REJECTED

Proposal from (National Federation, Stakeholder or FEI)
FEI
Article Number – Article Name
Art. 2.3 (Evading Sample Collection)
Explanation for Proposed Change
N/A. There was no change in this Article other than the re-positioning of the phrase “without compelling justification”.
Proposed Wording on 13 July 2020
<p>2.3.1 Evading <i>Sample</i> collection; or without compelling justification, or refusing or failing to submit to <i>Sample</i> collection <u>without compelling justification</u> after Notification (in accordance with the FEI Veterinary Regulations) or to comply with all <i>Sampling</i> procedure requirements including signing the Sampling form or otherwise evading Sample collection.</p>
Comments received by 31 August 2020
<p>Comments from IRF NF & NED NF</p> <p>Article 2.3 EAD <i>Compelling Justification</i> is referenced within this article.</p> <p>Compatibility with the Veterinary Regulations – Article 1068.7 which states: 7. Evading, refusing or failing to submit to sample collection is a violation of the EADCMRs Article 2.3.</p> <p>Consideration to be provided to ensure consistency between both Regulations.</p> <p>Article 1068.7 Veterinary Rules Evading, refusing or failing to submit to sample collection, or without compelling justification, is a violation of the EADCMRs Article 2.3.</p>
FEI feedback
As there is no real change to Article 2.3 of the EAD Rules, just a re-positioning of the phrase “without compelling justification” and the idea of this General Assembly is to only make essential changes, we do not propose to make the change to the Veterinary Regulations. Anyway, any evasion case would be dealt with under the EADCMRs (rather than the Veterinary Regulations) so the absence of “without compelling justification” from the VRs is not very significant.

Proposal from (National Federation, Stakeholder or FEI)
FEI

23 November 2020

Article Number – Article Name
<p>Art. 3.2.2 EAD - Methods of Establishing Facts and Presumptions Art 7.1.3 EAD – Results Management</p>
Explanation for Proposed Change
N/A
Proposed Wording on 13 July 2020
<p>3.2.2 Departures from another FEI standard, FEI Rule or Regulation, FEI Manual or policy any provision of these EAD Rules shall not invalidate analytical results which did not by a balance of probability cause an Adverse Analytical Finding or other evidence of an EAD Rule violation, and shall not invalidate such results constitute a defence to an EAD Rule violation; provided however, if, If the Person Responsible and/or member of the Support Personnel or other Person (where applicable) establishes, by a balance of probability, that a departure from another FEI standard, FEI Rule or Regulation, FEI Manual or policy a provision of these EAD Rules could reasonably have caused the EAD Rule violation based on the Adverse Analytical Finding or other EAD Rule violation, then the FEI shall have the burden to establish must prove that the such departure did not cause the Adverse Analytical Finding or the factual basis for the EAD Rule violation.</p> <p>7.1.3 If (i) the review under Article 7.1.2 reveals an apparent departure from any provision of these EAD Rules the Testing procedures of the FEI Veterinary Regulations, the FEI Standard for Laboratories or another FEI standard, FEI Rule or Regulation, FEI Manual or policy that caused the Adverse Analytical Finding, the entire test shall be considered negative, and/or (ii) upon the review, the FEI Decides not to bring forward the Adverse Analytical Finding as an EAD Rule violation, the FEI shall promptly Notify the Person Responsible and the Owner of the Horse.</p>
Comments received by 31 August 2020
<p><u>Comment from IRL NF:</u></p> <p>IRL NF are seeking clarification in relation to these 2 Articles and if there is a potential conflict of interest and propose the following change in the wording:</p> <p><i>Departures from any provision of these EAD Rules shall not invalidate analytical results or other evidence of an EAD Rule violation, and shall not invalidate such results constitute a defence to an EAD Rule violation; provided however, if that the Person Responsible and/or member of the Support Personnel or other Person (where applicable) establishes, that a departure from a provision of these EAD Rules could reasonably have caused the EAD Rule violation based on the Adverse Analytical Finding or other EAD Rule violation, then the FEI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the EAD Rule violation.</i></p> <p><u>Comment from NED NF:</u></p> <p>Omitted of the use of the word “Apparent” in Art. 3.2.2.</p>
FEI feedback

23 November 2020

We do not see any conflict between these two articles. 3.2.2 says that the mere fact of a departure from a EAD Rule provision does not automatically mean the PR has a defense to the alleged EAD violation unless they can show that the departure actually caused the violation to occur.

7.1.3 sets out how to deal with a situation where a review reveals such a departure that caused the violation and confirms that the FEI must treat the test as being negative and to drop the case.

We do not agree with the proposed wording change. The idea is that “if” the PR establishes the departure, then the FEI has the burden to establish the departure didn’t cause the violation. The use of “that” would not work in this context.

The word “apparent” is not used in Article 3.2.2 of the 2021 WADA Model Code for International Federations (nor is it used in Art. 3.2.2 of the current EADCMRs) even though it is used in Art. 7.1.3 of the Model Code. Thus, we propose to stay in line with the WADA wording and keep the text of Article 3.2.2 as it was in the first draft of the 2021 EADCMRs.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article No.–Article Name

Article 6.1 EAD and ECM rules – Analysis of Samples

Comment and Rationale

The additional wording now included at Article 6.1 seeks to provide guidance on what is meant by “reliable means”. The specific reference to “reliable laboratory or other forensic testing conducted outside of FEI Approved Laboratories” is a major concern since it appears to then focus on the reliability of the laboratory. This could then lead to the use of laboratories with no accreditation or minimum standards and arguments as to whether the evidence produced by those labs is “reliable”. It also does not reference other reliable means. Further, we consider the wording would be better sitting in Article 3.2.

Proposed Wording on 13 July 2020

6.1 Use of Approved Laboratories

These *EAD Rules* incorporate the *FEI* List of Approved Laboratories which is published and revised by the *FEI* from time to time. The *FEI* shall send *Samples* for analysis only to these approved *Laboratories*, which are subject to the *FEI Standard for Laboratories*. The choice of *Laboratory* used for the *Sample* analysis of either or both the A and B *Sample* shall be determined exclusively by the *FEI*. However, the *Person Responsible* may elect to have the B *Sample* analysed at a different *Laboratory* than the one which performed the A *Sample* analysis. If such an election is made, the *FEI* shall select the B *Sample Laboratory* from the *FEI* List of Approved *Laboratories* and inform the *Person Responsible* accordingly.

23 November 2020

As provided for in Article 3.2, facts related to EAD Rule violations may be established by any reliable means. This would include, for example, reliable laboratory or other forensic testing conducted outside of FEI Approved Laboratories.

Comments received by 31 August 2020

Comment from GBR NF

The additional wording now included at Article 6.1 seeks to provide guidance on what is meant by "reliable means". The specific reference to "reliable laboratory or other forensic testing conducted outside of FEI Approved Laboratories" is a major concern since it appears to then focus on the reliability of the laboratory. This could then lead to the use of laboratories with no accreditation or minimum standards and arguments as to whether the evidence produced by those labs is "reliable". It also does not reference other reliable means. Further, we consider the wording would be better sitting in Article 3.2.

Proposed wording:

Art 6.1

~~As provided for in Article 3.2, facts related to EAD Rule violations may be established by any reliable means. This would include, for example, reliable laboratory or other forensic testing conducted outside of FEI Approved Laboratories.~~

Art 3.2 Facts related to EAD Rule violations may be established by any reliable means, including admissions. This would include but is not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, laboratory or other forensic testing conducted outside of FEI Approved Laboratories, conclusions drawn from other analytical information".

FEI feedback

The PR will always have an opportunity to challenge any evidence introduced by the FEI as part of the proceedings before the FEI Tribunal/CAS. The wording gives the FEI the opportunity to avail of potentially new technological developments that are not available in FEI approved laboratories (of which there are only 4).

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Art 6.7 EAD and ECM - Further Analysis of a *Sample* After it has been reported as negative or has otherwise not resulted in an anti-doping rule violation charge.

Explanation for Proposed Change

This is a concept from the new WADA Code.

Proposed Wording on 13 July 2020

23 November 2020

6.7 Further Analysis of a Sample After it has been Reported as Negative or has Otherwise not Resulted in an Anti-Doping Rule Violation Charge

After a laboratory has reported a Sample as negative, or the Sample has not otherwise resulted in an anti-doping rule violation charge, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time exclusively at the direction of either the Anti-Doping Organization that initiated and directed Sample collection or the FEI. Any other Anti-Doping Organization with authority to test the Horse that wishes to conduct further analysis on a stored Sample may do so with the permission of the Anti-Doping Organization that initiated and directed Sample collection or the FEI, and shall be responsible for any follow-up Results Management. Any Sample storage or further analysis initiated by the FEI or another Anti-Doping Organization shall be at the FEI's or that organization's expense. Further analysis of Samples shall conform with the requirements of the FEI Standard for Laboratories.

Comments received by 31 August 2020**Comment from GBR NF**

Compliance with equine anti-doping rules places certain challenges on riders that are not experienced by human athletes seeking to comply with the WADA Code. The potential retrospective prosecution of cases therefore has the potential to place unfair burdens on a PR where the cause of the presence of a substance may be due to inadvertent doping and/or contamination. In such cases, depending on the passage of time, a PR circumstances may find it impossible to identify the cause of the ingestion or provide reliable evidence of contamination. If the FEI are committed to including the potential for retrospective prosecutions, we would therefore request that athletes be provided with greater levels of support with stabling environments at international competitions since this is the main area of risk where their levels of control are reduced.

FEI feedback

Retrospective testing is an important tool in the fight against doping and may be very helpful if new technologies emerge that are able to identify the presence of substances that were previously undetectable. Regarding the contamination point, several significant changes are being introduced in these new EADCMRs to help mitigate the adverse effects of positive tests arising from contamination. Also, the FEI is working on a multidisciplinary project to improve stable security and introduce new stable security requirements.

Proposal from (National Federation, Stakeholder or FEI)**FEI****Article Number – Article Name****Art. 6.10 – Equestrian Community Integrity Unit****Explanation for Proposed Change**

See FEI Feedback section below

Proposed Wording on 13 July 2020

23 November 2020

6.106 — Equestrian Community Integrity Unit

The *Equestrian Community Integrity Unit* (ECIU) shall have the power to conduct investigations arising from or related to these *EAD Rules* in order to protect the integrity of the FEI and equestrian sport, as set forth in the *FEI Statutes*. The refusal of a *Person Responsible* or member of the *Support Personnel* or other Person to cooperate with the ECIU may result in an adverse inference being drawn against that *Person* in any related *FEI Tribunal* proceeding. If the *Equestrian Community Integrity Unit* determines that it has a good faith basis to pose questions relating to any investigation to a *Person Responsible* or member of the *Support Personnel* or other Person and such *Person* refuses to answer such questions, he may be prohibited from participating in any *FEI* activities until such questions are answered to the satisfaction of the ECIU. ~~Any Person Responsible or member of the Support Personnel may file a Protest to the FEI Tribunal under Article 163 of the FEI General Regulations arguing that he has a good faith basis to refuse answering such questions to the satisfaction of the ECIU.~~

Comments received by 31 August 2020**Comments from GER NF, NED NF**

ECIU is not a body whose members are elected by the FEI members. Currently this job is allocated to the service provider Quest.

There is no way of control except for the FEI Headquarters that could terminate the contract with Quest. The staff of Quest are not known to FEI members. How can we trust this service provider? How can FEI members be legally bound to a service provider of the FEI?

At the very least, the right of PR and members of Support Personnel to contest the power of the ECIU to request cooperation before the FEI Tribunal must not be removed. This right needs to be extended to Other Persons as well.

FEI feedback

We proposed to keep the wording as per the first draft for the following reasons:

- WADA has put an increased emphasis on investigations so it is crucial that PRs etc. cooperate fully with an investigation by or on behalf of the FEI
- In order for the FEI to “prosecute” someone for not cooperating with an investigation, the FEI would need to open separate disciplinary proceedings with the FEI Tribunal pursuant to Articles 164.12 (f) of the FEI General Regulations (164.12 *In addition to breaches of specific provisions of the FEI Rules and regulations, the following is a list of other offences that the FEI may sanction: (...) (f) Failure to cooperate with an investigation undertaken by, or on behalf of, the FEI;*). As part of those proceedings, the PR can raise any argument he/she wants regarding why they did not/could not cooperate with the investigation and this would be a much “cleaner” way of doing so instead of having to file a “Protest” with the FEI Tribunal (such a process actually no longer exists).

23 November 2020

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Art. 7.5 (f) EAD and ECM Rules - Charge
Art. 8.5.2 EAD and ECM Rules – Waiver of Hearing

Explanation for Proposed Change

Rewording of the provisions to reflect the new two-step results management process mandated by WADA (step 1: Notification, step 2: Charge

Proposed Wording on 13 July 2020

7.5.1 If, after receipt of the *Person Responsible*, or other *Person's* explanation or expiry of the deadline to provide such explanation, the FEI is (still) satisfied that the *Person Responsible*, member of the *Support Personnel* or other *Person's* has committed (an) *EAD Rule violation(s)*, the FEI shall promptly charge the *Person Responsible*, member of the *Support Personnel* or other *Person's* with the *EAD Rule violation(s)* they are asserted to have breached. In this letter of charge, the FEI:

(...)

(f) Shall indicate that if the *Person Responsible*, member of the *Support Personnel* or other *Person* does not challenge the FEI's assertion of an *EAD Rule violation* or proposed *Consequences* nor request a hearing within the prescribed deadline, the FEI shall be entitled to deem that the *Person Responsible*, member of the *Support Personnel* or other *Person* has waived their right to a hearing and admitted the *EAD Rule violation* as well as accepted the *Consequences* set out by the FEI in the letter of charge;

Comments received by 31 August 2020**Comments from EEF, BEL NF, GER NF, IRL NF, ITA NF, NED NF**

We do not support a rule according to which a lack of reaction by the PR, member of support Personnel or other Person within 20 days upon receipt of the notification of charges, entitles the FEI to deem that they have admitted the ECM Rule violation as well as accepted the Consequences set out by the FEI. This rule runs risk of leading to a violation of the right to a fair trial.

A person can only receive a sanction if he/she is found guilty of a rule violation. It is for the FEI to prove such violation. Anti-Doping Codes already include a very strict allocation of the burden of proof to the detriment of the PR. The new rules stipulate a loss of rights if the PR, Member of Support Personnel or Other Person is not actively challenging the charges within a rather short period of time. Even if this loss of rights is not an automatism, but the FEI must and may decide upon it, this rule change contains another impairment of

23 November 2020

the procedural status of a PR. Since the PR is a legal lay person in most cases, these obligations are too rigid and the consequences too severe. The rules lead to a procedural imbalance between the parties. This is especially true, because the rule does not only provide for an acceptance of the consequences but also construes an admission of the charges out of the mere lack of a reaction.

We respectfully request that the FEI reconsider the clause as drafted, to include more clarity on the demonstrable efforts to be made by the FEI on contacting the PR to effect service. While we note that the clause will be relied upon as a last resort mechanism, the interpretation and application of same suggests otherwise. Given the significant consequences arising for a PR, we believe a reconsideration is very much warranted. Furthermore, we would suggest that the procedure relating to service of the AAF notification be updated, wherein the PR is contacted directly, with the NF Secretary General, in copy.

FEI feedback

The wording incorporated in the draft EADCMR mirrors the wording from the corresponding provisions of the WADA Code. WADA obtained a legal opinion from John Paul Costa, the former President of the European Court of Human Rights as to the compliance of the new Code with the European Convention on Human Rights. Therefore, we are comfortable relying on his opinion as to the legality of the provisions.

In practice, the FEI gives PRs (and their NFs) every opportunity to respond to charges and never automatically submits the case to the Tribunal immediately after the deadline has elapsed. In certain cases, however, even after multiple reminders where a PR does simply not respond the FEI needs to be able to move on with the case. Otherwise, PRs could ignore proceedings in order to delay the imposition of a potential suspension.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

Art. 10.8 – Case Resolution Agreement

Explanation for Proposed Change

Updating of provisions to align with new WADA Code

Proposed Wording on 13 July 2020

23 November 2020

10.8.2 Case Resolution Agreement

Where the Person Responsible and/or member of the Support Personnel and/or other Person admits an EAD Rule violation after being confronted with the EAD Rule violation by the FEI and agrees to Consequences acceptable to the FEI, at its sole discretion, then: (a) Person Responsible and/or member of the Support Personnel and/or other Person may receive a reduction in the period of Ineligibility based on an assessment by the FEI of the application of Articles 10.1 through 10.7 to the asserted EAD Rule violation, the seriousness of the violation, the Person Responsible and/or member of the Support Personnel's and/or other Person's degree of Fault and how promptly the Person Responsible and/or member of the Support Personnel and/or other Person admitted the violation; and (b) the period of Ineligibility may start as early as the date of Sample collection or the date on which another EAD Rule violation last occurred. In each case, however, where this Article is applied, the Person Responsible and/or member of the Support Personnel and/or other Person shall serve at least one-half of the agreed-upon period of Ineligibility going forward from the earlier of the date the Person Responsible and/or member of the Support Personnel and/or other Person accepted the imposition of a sanction or a Provisional Suspension which was subsequently respected by the Person Responsible and/or member of the Support Personnel and/or other Person.

Comments received by 31 August 2020**Comments from EEF NF, BEL NF, GER NF, IRL NF, ITA NF, NED NF**

Art. 10.8 does not include the same level of publication, (14.3 EADR/13.3 ECMR Public Disclosure) that is included in Art 10.8.2. It is important that stakeholders know the level and frequency of such agreements occurring so that an informed decision can be made. According to Information provided by the FEI Headquarters these Agreements will be published. Relying on this information, we have no general objection to the clauses.

With regard to Case Resolution Agreements, FEI Headquarters have advised that half of the sanction must be served from the date that agreement was reached. We suggest to phrase the clause in simpler way, stating exactly that. See proposed change below:

In each case, however, where this Article is applied, the *Person Responsible* and/or member of the *Support Personnel* and/or other *Person* shall serve at least one-half of the agreed-upon period of *Ineligibility* going forward from the **date that the agreement was reached** ~~the earlier of the date the Person Responsible and/or member of the Support Personnel and/or other Person accepted the imposition of a sanction or a Provisional Suspension which was subsequently respected by the Person Responsible and/or member of the Support Personnel and/or other Person.~~

FEI feedback

We proposed to keep the wording as per the version in the first draft. This would keep the FEI in line with WADA's wording and we can then benefit directly from any jurisprudence on this article in human cases that might come before the Court of Arbitration for Sport.

Also, the proposed EEF wording would not give credit for a scenario where the PR has already been serving a provisional suspension at the time the agreement was reached.

23 November 2020

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name**Art. 19.5, 20.4, 21.2 EADR****Art. 18.5, 19.4, 20.2 ECMR**

- **Cooperation with Investigations**

Explanation for Proposed Change

Changes introduced in order to be in line with the provisions of the 2021 WADA Code stating that failure to cooperate with investigations may result in a misconduct charge under the FEI's disciplinary rules.

Proposed Wording on 13 July 2020

Various similar articles – refer to draft EADCMRs. For an example, see Art. 19.5:

19.5 To cooperate with the FEI investigating EAD Rule violations.
Failure by any Person Responsible and/or member of the Support Personnel to cooperate in full with Anti-Doping Organizations investigating EAD Rules violations may result in a charge of misconduct under the FEI's disciplinary rules.

Comments received by 31 August 2020**Comments from EEF NF, BEL NF, GER NF, IRL NF, ITA NF, NED NF**

We do not support the rule as a possible violation of the nemo tenetur principle/right to remain silent/right to a fair trial.

FEI feedback

Failure to cooperate with an FEI investigation has already been an offence under the FEI General Regulations for several years (see FEI GRs, Article 164.12(f) and 164.14).

WADA has stressed the importance of International Federations prioritising investigations of anti-doping rule breaches, hence the reason that they introduced the possibility of sanctions where the relevant parties do not cooperate. We are not concerned about violation of the principle of "nemo tenetur" principle given that the proceedings are not criminal in nature and the comfort given by the aforementioned legal opinion issued by John Paul Costa, former President of the European Court of Human Rights regarding the compatibility of the WADA Code with human rights legislation.

Proposal from (National Federation, Stakeholder or FEI)

FEI

Article Number – Article Name

23 November 2020

EAD - Article 20 – Additional Roles and Responsibilities of Support Personnel**Explanation for Proposed Change**

To reflect the change in the WADA Code that puts more emphasis on the responsibilities of the athlete entourage to be aware of their obligations under the Code and to comply as well.

Proposed Wording on 13 July 2020

20.5 Support Personnel shall not Use or Possess any Banned Substance or Banned Method.

Comments received by 31 August 2020**Comment from USA NF**

Veterinarians are considered Support Personnel. Under the addition to the rule below, there would be a prohibition on veterinarians having in their possession such substances that may be considered Banned by the FEI, but could have therapeutic purposes for horses not competing in international competition.

Proposed wording change:

Any such Use or Possession on competition grounds for any non-therapeutic purpose may result in a charge of misconduct under the FEI's disciplinary rules.

FEI feedback

We do not agree with this wording change. Banned Substances are prohibited at all times, not just on competition grounds. The wording deliberately says "Banned Substances" and not "Prohibited Substances" to acknowledge that veterinarians do need to have Controlled Medication Substances with them (even on site) in case they need to be administered to Horses for valid therapeutic reasons.