

PROPOSALS FOR RULES CHANGES OF ANTI-DOPING RULES FOR HUMAN ATHLETES 2022

Introduction

Further to the approval of the FEI Periodical Rules Revision Policy at the 2019 General Assembly (available here: <https://inside.fei.org/fei/about-fei/governance/rules-revision-process>) the full revision of the Anti-Doping Rules for Human Athletes took place in 2020. Consequently, for this year's revision process NFs and MOU stakeholders were invited to propose only modifications that fulfilled the following criteria:

1. Urgent repairs, i.e., changes in the Rules that cannot await because of their impact on the welfare of the Horses or the safety of the Athletes;
2. Correction of inconsistencies, manifest errors, contradictions, etc.
3. New/recently introduced rule that has proven to be problematic in its implementation;
4. Implementation of new technology development(s) relevant to the specific set of Rules;
5. IOC, IPC, WADA, ASOIF and similar organisations' policies' implementation;
6. Other scenarios not foreseen by this Policy as considered and approved by the Board.

Neither NFs nor MOU Stakeholders proposed any modifications to the Anti-Doping Rules for Human Athletes this year.

However, the FEI Board and the FEI Headquarters recommend that the FEI joins the Court of Arbitration for Sport Anti-Doping Division (CAS ADD) and please see hereinafter the rationale for such recommendation.

As you may know, the CAS ADD, a separate Division of CAS, has been established to hear and decide anti-doping cases as a first-instance authority upon written delegation of powers from the International Olympic Committee, International Federations, International Testing Agency and any other signatories to the World Anti-Doping Code (WADC).

So far, the FEI had decided not to join the CAS ADD as it was felt that given the fact that the FEI also had jurisdiction over the equine anti-doping/medication control system (that cannot be dealt with by the CAS ADD), the FEI needed to continue to have all its cases (equine and human anti-doping) decided by the same body, the FEI Tribunal, in the first instance.

However, almost all human anti-doping cases decided by the FEI Tribunal have been appealed to CAS, meaning that ultimately the matters are being heard twice (in front of the FEI Tribunal first and then in front of CAS). This means that there are often duplication of the procedures, longer procedures (and final decisions being issued very late), and more costs (for both the FEI and the Athletes).

The FEI is a signatory of the World Anti-Doping Agency (WADA) and many National Federation, FEI Stakeholders and the Athletes do not always understand that the FEI is

“only” applying the WADA Code and has often little flexibility regarding the sanction(s), leading on some occasions to the FEI Tribunal imposing sanctions that are perceived by the community as being severe.

WADA and the International Olympic Committee have recommended to all International Federations to join the CAS ADD. It is also to be noted that it is already the case that any human anti-doping related matters that occur during the Olympic Games go directly to the CAS ADD as well, for all Olympic sports.

The FEI Board and FEI Headquarters are of the opinion that it would be better to be part of the CAS ADD for human anti-doping matters so that sanctions are imposed by a body that is specialised in human anti-doping, instead of the FEI Tribunal.

It is to be noted that the CAS ADD procedures are free for International Federations, but capped at 4 cases per year. Any additional case will be charged by the CAS ADD and the exact costs will depend on the complexity of the case, number of CAS Arbitrators (as a case can be heard by 1 Panel member or a 3 member Panel), if a hearing in-person takes place, etc. Kindly note that the FEI usually has between 1 and 6 human anti-doping cases per year, based on previous years' data.

For the avoidance of doubt, this new system (if approved at the 2022 FEI General Assembly) will only apply to cases related to samples taken on or after 1 January 2023.

In addition, the FEI recommends to delegate the prosecution/case management of the cases to the International Testing Agency (ITA). While the FEI is currently working with the ITA on many human anti-doping activities (such as testing, education, TUEs), the FEI has so far prosecuted all the human anti-doping cases internally (by the FEI Legal Department).

If the FEI decides to join the CAS ADD, it would also make sense to delegate the prosecution of the cases, so that there is a full independence in dealing with any human anti-doping cases. No rule changes are needed for such delegation to the ITA (nor any approval of National Federations), but we wanted to provide you with such information for your awareness.

Finally, please kindly note that any changes to the FEI Anti-Doping Rules for Human Athletes shall be approved by WADA (as the FEI is a signatory of WADA) and that the FEI is therefore liaising with WADA in parallel and that WADA might provide its comments to the proposed changes.

Should you have any comments, please ensure that you provide them in the FEI Rules Revision 2022 Platform by 24 August 2022 (for more information, please see <https://inside.fei.org/fei/about-fei/governance/rules-revision>).



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Rules Proposals put forward by the FEI

Article No.–Article Name

Article 7.2 (Review and Notification Regarding Potential Anti-Doping Rule Violations)
 Article 7.4 (Provisional Suspensions)
 Article 8 (Result Management: Right to a Fair Hearing and Notice of Hearing Decision)
 Article 10 (Sanctions on Individuals)
 Article 26 (Transitory Provisions)

Explanation for Proposed Change

As mentioned in the cover page, the FEI Board recommends that the FEI joins the Court of Arbitration for Sport Anti-Doping Division (CAS ADD), meaning that any references to the FEI Tribunal shall be changed to CAS ADD. Thus, the CAS ADD shall be responsible to lift a Provisional Suspension, to impose an ineligibility period (if any) and to disqualify the results.

Proposed Wording

7.2 Review and Notification Regarding Potential Anti-Doping Rule Violations

The *FEI* shall carry out the review and notification with respect to any potential anti-doping rule violation in accordance with the *International Standard for Results Management*.

In circumstances where an Athlete is informed of an Adverse Analytical Finding in accordance with this Article and

- (i) the B Sample analysis confirms the A Sample analysis (or the right to request the analysis of the B Sample is not exercised); and
- (ii) where requested by the *FEI* and/or the Athlete, the matter will be submitted to the ~~FEI Tribunal~~ CAS Anti-Doping Division (CAS ADD) who shall decide upon the Application of Article 9.

7.4. Provisional Suspensions

7.4.1 Mandatory *Provisional Suspension* after an *Adverse Analytical Finding* or *Adverse Passport Finding*

If the *FEI* receives an *Adverse Analytical Finding* or an *Adverse Passport Finding* (upon completion of the *Adverse Passport Finding* review process) for a *Prohibited Substance* or a *Prohibited Method* that is not a *Specified Substance* or a *Specified Method*, the *FEI* shall impose a *Provisional Suspension* on the *Athlete* promptly upon or after the review and notification required by Article 7.2.

A mandatory *Provisional Suspension* may be eliminated if: (i) the *Athlete* demonstrates to the ~~FEI Tribunal~~ CAS ADD that the violation is likely to have involved a *Contaminated Product*, or (ii) the violation involves a

Substance of Abuse and the *Athlete* establishes entitlement to a reduced period of *Ineligibility* under Article 10.2.4.1.

The ~~FEI Tribunal~~ CAS ADD's decision not to eliminate a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

7.4.2 Optional *Provisional Suspension* Based on an *Adverse Analytical Finding* for *Specified Substances, Specified Methods, Contaminated Products, or Other Anti-Doping Rule Violations*

The *FEI* may impose a *Provisional Suspension* for anti-doping rule violations not covered by Article 7.4.1 prior to the analysis of the *Athlete's B Sample* or final hearing as described in Article 8.

An optional *Provisional Suspension* may be lifted at the discretion of the *FEI* at any time prior to the ~~FEI Tribunal~~ CAS ADD's decision under Article 8, unless provided otherwise in the *International Standard for Results Management*.

7.4.3 Opportunity for Hearing or Appeal

Notwithstanding Articles 7.4.1 and 7.4.2, a *Provisional Suspension* may not be imposed unless the *Athlete* or other *Person* is given: (a) an opportunity for a *Provisional Hearing*, either before or on a timely basis after imposition of the *Provisional Suspension*; or (b) an opportunity for an expedited hearing in accordance with Article 8 on a timely basis after imposition of the *Provisional Suspension*.

Subject to Article 7.4.1 above, the *Provisional Suspension* shall be imposed (or shall not be lifted) unless the *Athlete* or other *Person* establishes that:

(a) the assertion of an anti-doping rule violation has no reasonable prospect of being upheld, e.g., because of a patent flaw in the case against the *Athlete* or other *Person*; or

(b) the *Athletes* or other *Persons* have a strong arguable case that they bear No Fault or Negligence for the anti-doping rule violation(s) asserted, so that any period of *Ineligibility* that might otherwise be imposed for such a violation is likely to be completely eliminated by application of Article 10.5 or that Article 10.6 applies and the *Athletes* can demonstrate that the evidence will show that they bear No Significant Fault or Negligence and that they have already been Provisionally Suspended for a period of time that warrants the lifting of the *Provisional Suspension* pending a final decision of the ~~FEI Tribunal~~ CAS ADD; or (...)

8.1 Fair Hearings

8.1.1 Fair, Impartial and *Operationally Independent* Hearing Panel

- ~~8.1.1.1~~—The *FEI* has established the *FEI Tribunal* which will act as the Hearing Panel and which has jurisdiction to hear and determine whether an *Athlete* or other *Person*, subject to these Anti-Doping Rules, has committed an anti-doping rule violation and, if applicable, to impose relevant *Consequences*. ~~delegated its Article 8 responsibilities (first instance hearings, waiver of hearings and decisions) to the CAS ADD. The procedural rules of the CAS ADD pertaining to the hearing of first instance shall apply. The CAS ADD will always ensure that the Athlete or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management.~~
- ~~8.1.1.2~~—The *FEI* shall ensure that the *FEI Tribunal* is free of conflict of interest and that its composition, term of office, professional experience, *Operational Independence* and adequate financing comply with the requirements of the *International Standard for Results Management*.
- ~~8.1.1.3~~—Board members, staff members, commission members, consultants and officials of the *FEI* or its affiliates (e.g. *National Federations* or confederation), as well as any *Person* involved in the investigation and pre-adjudication of the matter, cannot be appointed as members and/or clerks (to the extent that such clerk is involved in the deliberation process and/or drafting of any decision) of the *FEI Tribunal*. In particular, no member shall have previously considered any *TUE* application, *Results Management* decision, or appeals in the same given case.
- ~~8.1.1.4~~—The *FEI Tribunal* shall consist of an independent Chair and at least six (6) other independent members.
- ~~8.1.1.5~~—Each member shall be elected by taking into consideration their requisite anti-doping experience including their legal, sports, medical and/or scientific expertise. Each member shall be appointed for a once renewable term of four (4) years.
- ~~8.1.1.6~~—The *FEI Tribunal* shall be in a position to conduct the hearing and decision-making process without interference from the *FEI* or any third party.

8.1.2 Hearing Process

- 8.1.2.1** When the *FEI* sends a notice to an *Athlete* or other *Person* notifying them of a potential anti-doping rule violation, and the *Athlete* or other *Person* does not waive a hearing in accordance with Article 8.3.1 or Article 8.3.2, then the case shall be referred to the ~~*FEI Tribunal CAS ADD*~~ for hearing and adjudication, which shall be conducted in accordance with the principles described in Articles 8 and 9 of the *International Standard for Results Management*.
- 8.1.2.2** The Chair shall appoint either one (1) member or three (3) members (which may include the Chair) to hear that case.
- 8.1.2.3** Upon appointment by the Chair as a member of the ~~*FEI Tribunal CAS ADD*~~, each member must also sign a declaration that there are no facts or circumstances known to them which might call into question their impartiality in the eyes of any of the parties, other than those circumstances disclosed in the declaration.
- 8.1.2.4** Hearings held in connection with *Events* in respect to *Athletes* and other *Persons* who are subject to these Anti-Doping Rules may be conducted by an expedited process where permitted by the ~~*FEI Tribunal CAS ADD*~~.³⁶
- 8.1.2.5** *WADA*, the *National Federation* and the *National Anti-Doping Organization* of the *Athlete* or other *Person* may attend the hearing as observers. In any event, the *FEI* shall keep them fully apprised as to the status of pending cases and the result of all hearings.

8.2 Notice of Decisions

- 8.2.1** At the end of the hearing, or promptly thereafter, the ~~*FEI Tribunal CAS ADD*~~ shall issue a written decision that conforms with Article 9 of the *International Standard for Results Management* and which includes the full reasons for the decision, the period of *Ineligibility* imposed, the *Disqualification* of results under Article 10.10 and, if applicable, a justification for why the greatest potential *Consequences* were not imposed.

(...)

- 8.3.3** In cases where Article 8.3.1 or 8.3.2 applies, a hearing before the ~~*FEI Tribunal CAS ADD*~~ shall not be required. Instead the *FEI* shall promptly issue a written decision that conforms with Article 9 of the *International Standard for Results Management* and which includes the full reasons for the decision, the period of *Ineligibility* imposed, the *Disqualification* of results under Article 10.10 and, if applicable, a justification for why the greatest potential *Consequences* were not imposed.

(...)

ARTICLE 10 SANCTIONS ON INDIVIDUALS

10.1 *Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs*

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ~~*FEI Tribunal CAS ADD*~~, lead to *Disqualification*

of all of the *Athlete's* results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2.

(...)

10.12 Financial Consequences

10.12.1 Where an *Athlete* or other *Person* commits an anti-doping rule violation, the ~~FEI Tribunal~~CAS ADD may, in its discretion and subject to the principle of proportionality, elect to (a) have the *FEI* recover from the *Athlete* or other *Person* costs associated with the anti-doping rule violation and/or (b) fine the *Athlete* or other *Person* in an amount up to 15'000 Swiss Francs, and in accordance with the *FEI* Guidelines for Fines and Contributions towards Legal Costs.

(...)

10.13.1 Delays Not Attributable to the *Athlete* or other *Person*

Where there have been substantial delays in the hearing process or other aspects of *Doping Control*, and the *Athlete* or other *Person* can establish that such delays are not attributable to the *Athlete* or other *Person*, the *FEI* or the ~~FEI Tribunal~~ CAS ADD, if applicable, may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of *Ineligibility*, including retroactive *Ineligibility*, shall be *Disqualified*.

SECTION 2: FEI DEFINITIONS

(...)

~~*FEI Tribunal*: The judicial body with jurisdiction under the *FEI* Statutes to issue decisions under the *Anti-Doping Rules* and in accordance with the Internal Regulations of the *FEI Tribunal*.~~

26. Transitory Provisions

Any case related to a *Sample* collected prior to 1 January 2023 and/or any violation of these *Anti-Doping Rules* occurring prior to 1 January 2023 shall be dealt with by the 2021 *Anti-Doping Rules*.