

**Summary of NF comments on the Equine Anti-Doping and
Controlled Medication Regulations (“EADCMRs”) and other
proposed changes in the Final Draft of the EADCMRs**

24 October 2017

Dear National Federations,

Please find below a summary of all comments received from the National Federations on the first draft of the revised EADCMRs that was sent to you on 6 July 2017. Specifically, the FEI received comments from the Deutsche Reiterliche Vereinigung (GER NF). The feedback of the FEI on those comments is also set out below.

In addition to the proposed changes already shared with the NFs, it is proposed to include one further change to update the definition of a “Minor” so that anyone who is under the age of 18 on the date the alleged violation of the EADCMRs took place will be considered a “Minor” for the purpose of the EADCMRs.

A mark-up of the proposed final version of the EADCMRs showing the changes from the current version of the EADCMRs is available upon request.

The proposed changes to the EADCMRs will be discussed at the Rules Session for National Federations to be held during the FEI General Assembly in Montevideo, Uruguay on 18 – 21 November 2017.

Sincerely,



Mikael Rentsch
Legal Director

PROPOSED EADCMR CHANGES

(A) Minor Athletes (i.e. under 18 years old)

I – EAD Rules (i.e. Banned Substances) – New Special Procedure for Minors

The current EAD Rules give the FEI Tribunal very little flexibility when sanctioning minor athletes and can result in the imposition of very harsh sanctions, for example a 1 or 2 years' suspension for athletes as young as 12/13, even though they usually have very little control over how the Horse is cared for/treated.

To address this issue, it is proposed to introduce a **new "Special Procedure for Minors"** for **Banned Substances** cases involving **Minors**. This would operate in a similar way to how the current Administrative/FastTrack Procedure operates for Controlled Medication cases.

The Special Procedure for Minors would only be available:

- to Minor Athletes (i.e. those under 18 at the time of the alleged violation);
- if the Minor is a first time offender (no prior EAD/ECM violation in the last four (4) years);
- if there is one (1) or more Banned Substance detected in the Sample; and
- if the alleged violation did not occur at the Olympic Games, Paralympic Games of FEI World Equestrian Games™.

The main features of the Special Procedure for Minors are:

- no automatic provisional suspension for Minor Athletes at the time of the notification of the violation;
- the two (2) month provisional suspension of the Minor's Horse would remain;
- if the Minor chooses to accept the Special Procedure for Minors, the consequences are:
 - o Two (2) month suspension; and
 - o Fine of CHF1'500; and
 - o Costs of CHF1'000.

These consequences are imposed as soon as the Minor accepts the Special Procedure for Minors.

If the Minor chooses not to have their case processed under the Special Procedure for Minors, the case will be dealt with under the regular EAD Rules (i.e. potential for a 2 year suspension if found guilty or the possibility to eliminate the sanctions entirely if the FEI Tribunal finds No Fault or Negligence).

Regardless of whether the Minor chooses to have their case processed under the Special Procedure for Minors or not, the Minor's results at the Event at which Event where the Sample was taken will still be disqualified.

PROPOSED WORDING:

Definitions

"Minor" A natural Person who has not reached the age of **eighteen (18)** at the date of the alleged EAD/ECM Rule violation. ~~majority as established by the applicable laws of his or her country of residence~~

8.3 Special Procedure for Minors

8.3.1 For *Adverse Analytical Findings* involving one or more *Banned Substances*, where the *Person Responsible* is a *Minor*, the *Minor* may elect to have their case processed under the "*Special Procedure for Minors*" provided that:

a. The *Minor* and the *Horse* are first-time offenders (namely, no record of any *EAD* or *ECM Rule* violations, or violations of any predecessor rules) without any pending or concluded cases within the last four (4) years preceding the *Sample* which caused the *Adverse Analytical Finding*; and

b. The *Event* during which the *Sample* was taken from the *Horse* is not part of the *Olympic Games*, *Paralympic Games* or *World Equestrian Games*.

8.3.2 If the *Minor* requests a hearing before the FEI Tribunal, Article 10 below shall apply at the discretion of the Hearing Panel.

8.3.3 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* 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);

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

e. 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.

8.3.5 In order to apply this *Special Procedure for Minors*, the *Minor* (and/or his/her legal guardian) must execute an Acceptance Form within fourteen (14) calendar days following the date of the *Notice* in which the *FEI* offers this *Special Procedure for Minors* to the *Minor* alleged to have committed the *EAD Rule* violation. The *FEI* may reasonably extend such deadline provided the file has not yet been circulated to the *FEI Tribunal* or any of its members.

8.3.6 If the *Minor* does not elect to avail of the *Special Procedure for Minors* within the fixed time limit, the *Special Procedure for Minors* shall be considered declined and the case shall be submitted to the *FEI Tribunal* for final *Decision*. The *FEI Tribunal* may impose Sanctions and costs which may be more or less severe than the ones provided under Article 8.3.3 above.

8.3.7 The principles contained at Article 13.3.5 shall be applied in cases dealt with under the *Special Procedure for Minors*.

In addition to the introduction of the new Article 8.3 above into the EAD Rules, the proposed introduction of the Special Procedure for Minors requires some knock-on changes to the EAD Rules on Provisional Suspensions to clarify that the mandatory provisional suspension where a Sample contains a Banned Substance does not apply to Minors (proposed new wording in red text below).

Proposed Wording:

7.4 Provisional Suspensions

7.4.1 The *FEI* shall provisionally suspend a *Person Responsible*, member of the *Support Personnel*, and/or the *Person Responsible's Horse* prior to the opportunity for a full hearing based on: (a) an admission that an *EAD Rule* violation has taken place (for the avoidance of doubt, an admission by any *Person* can only be used to provisionally suspend that *Person*); or (b) all of the following elements: (i) an *Adverse Analytical Finding* for a *Banned Substance* that is not a *Specified Substance* from the *A Sample* or *A and B Samples*; (ii) the review described in Article 7.1.2 above; and (iii) the *Notification* described in Article 7.1.4 above. Notwithstanding the foregoing, the *FEI* shall not provisionally suspend a *Person Responsible* who is a *Minor* and to whom Article 8.3 below (*Special Procedure for Minors*) applies but the *FEI* shall provisionally suspend the relevant *Horse*.

7.4.2 The *FEI* may provisionally suspend a *Person Responsible*, member of the *Support Personnel*, and/or the *Person Responsible's Horse* prior to the opportunity for a full hearing based on (a) evidence that a violation of these EAD Rules is highly likely to have been committed by the respective *Person* or (b) all of the following elements (i) an *Adverse Analytical Finding* for a *Banned Substance* that is a *Specified Substance* from the *A Sample* or *A and B Samples*; (ii) the review described in Article 7.1.2 above; and (iii) the *Notification* described in Article 7.1.4 above.

In addition, the FEI may provisionally suspend a *Person Responsible* who is a *Minor* to whom Article 8.3 below (*Special Procedure for Minors*) does not apply but the FEI shall provisionally suspend the relevant *Horse*.

II – ECM Rules (i.e. Controlled Medication Substances)

The Special Procedure for Minors will not apply to Minors where a Sample contains a Controlled Medication because the Minors can already use the existing Administrative/FastTrack Procedure.

However, it is proposed to adjust the ECM Rules on Provisional Suspensions to make the imposition of a Provisional Suspension on a Minor non-mandatory where the Administrative/FastTrack Procedure would not be available. This is in order to have a common approach towards provisional suspensions for Minor Athletes under both the EAD Rules and the ECM Rules.

The general rule under both the EAD and ECM Rules, if the proposed changes are accepted, will be that Minor Athletes will not be provisionally suspended. The situation in relation to the provisional suspension of the Horse will remain unchanged (proposed new wording in red text below).

Proposed Wording:

7.4 *Provisional Suspensions*

7.4.1 The FEI shall provisionally suspend a *Person Responsible*, member of the *Support Personnel*, and/or the *Person Responsible's Horse* prior to the opportunity for a full hearing based on: (a) an admission that an *ECM Rule* violation has taken place (for the avoidance of doubt, an admission by any *Person* can only be used to provisionally suspend that *Person*); or (b) all of the following elements: (i) an *Adverse Analytical Finding* for two *Controlled Medication Substances* from the *A Sample* or *A and B Samples* provided that neither of the *Controlled Medication Substances* is a *Specified Substance*; (ii) the review described in Article 7.1.2; and (iii) the *Notification* described in Article 7.1.4 above. If a *Provisional Suspension* is imposed, either the hearing in accordance with Article 8 shall be advanced to a date which avoids substantial prejudice to the *Person Responsible* alleged to have committed the *ECM Rule* violation, or such *Person Responsible* shall be given an opportunity for a *Preliminary Hearing* either on a timely basis after imposition of the *Provisional Suspension* or before imposition of the *Provisional Suspension* in order to show cause why the *Provisional Suspension* should not be imposed (or should be lifted). Where a *Horse* is provisionally suspended, the *Owner* shall also have the right to request a *Preliminary Hearing*. Notwithstanding the foregoing, the FEI may provisionally suspend a *Person Responsible* pursuant to this Article 7.4.1 if that *Person Responsible* is a *Minor* but the FEI shall provisionally suspend the relevant *Horse*.

GER NF Comments:

The sanctioning of EACDMR offences committed by minors is a major problem for national federations as well. It is very laudable that the FEI is setting a good example by addressing this matter.

In German Law, it is not possible for Minors to submit legally binding declarations of will without the consent of their legal representatives. They will therefore not be able to effectively elect the special procedure.

Also, the selection of the special procedure has significant legal consequences. Minors should not be exposed to this question. One coherent procedure for all minors without any selection options would be preferable.

As to Art. 8.3.2, does this mean, as soon as a hearing is requested, the special procedure is no longer available?

The request of a hearing would thus be punished. With regard to the aim of the special procedure, this is not desirable. In contrast to the administrative procedure regarding controlled medication, the purpose of the special procedure for minors is not a load relief of the FEI Tribunal. Our intent is in fact the introduction of a system that allows for an adequate treatment of EADCMR offences committed by minors. From a legal policy point of view there should be a major focus on the educational aspect and the prevention of further misconduct. An oral hearing serves this purpose very well, because athletes have to face the allegations and justify their actions. With regard to this objective an oral hearing is indispensable. This is especially true since the main sanction is a fine that will not be paid by minor athletes themselves but by their parents or other representatives.

A corrective method that has a stronger focus on education and schooling would be preferable to a fine.

FEI Bureau Recommendation:

To approve the proposed amendments (as set out in the draft circulated on 6 July 2017) except that, further to the comment from the GER NF regarding the legal capacity of a minor to sign the Acceptance Form for the Special Procedure for Minors, the wording has been slightly changed (as highlighted in yellow in the draft wording above) to confirm that the Acceptance Form should be signed by both the minor and his/her legal guardian.

The FEI Bureau noted that the FEI Legal Department had been in contact with the GER NF separately regarding their other comments in order to clarify that if a Minor chooses the Special Procedure for Minors, no hearing will be held. However, if a Minor still wants to have a hearing, they can choose not to select the Special Procedure for Minors and to choose the normal procedure instead. In the experience of the FEI, having a hearing for Minors is of limited value as many Minors do not understand the proceedings at a hearing either because of language issues and/or the complex legal terminology involved.

With the launch of FEI Campus, a stronger emphasis will be put on anti-doping education in the future.

(B) Other Amendments to EADCMRs (changes in red text)

1. Equine Prohibited Substances List

In 2016, the concept of “Specified Substances” was introduced into the EADCMRs to recognize that it is possible for a substance to enter a Horse’s system inadvertently, and therefore allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision.

It is proposed to update the wording of Articles 4.3 of both the EAD and ECM Rules to clarify that the discretion to determine what Prohibited Substances are categorized as Specified Substances rests solely with the FEI and the classification is final and cannot be challenged. This reflects the WADA approach.

Proposed Wording

4.3 Substances and Methods included on the List

The FEI’s categorization of a substance or method on the *List* as a *Banned Substance* or *Banned Method* (in particular, as opposed to a *Controlled Medication Substance* or *Method*) including any establishment of a threshold for a *Banned Substance* and/or the quantitative amount of such threshold and the classification of certain Prohibited Substances as Specified Substances shall be final and binding on all parties and shall not be subject to challenge by a *Person Responsible*, member of the *Support Personnel* or any other *Person* on any basis.

No NF Comments received

FEI Bureau Recommendation:

To approve the proposed amendments.

2. Retesting Samples

Under the current rules, only Samples taken at the Olympic Games, Paralympic Games and FEI World Equestrian Games™ can be retested. It is proposed to expand this to allow flexibility to retest any Sample, regardless of the Event at which the Sample was taken.

Proposed Wording:

6.5 A *Sample* may be reanalyzed for the purpose of Article 6.2 above at any time exclusively at the direction of the FEI. The circumstances and conditions for retesting *Samples* shall conform with the requirements of the *FEI Standard for Laboratories*. The retesting of *Samples* may lead to an *EAD Rule* violation ~~only if the Sample was taken at the Olympic, Paralympic or World Equestrian Games and~~ only if the *Banned Substance* or *Banned*

Method was prohibited at the time the *Sample* was taken, all subject to Article 14.

No NF Comments received

FEI Bureau Recommendation:

To approve the proposed amendments.

3. Waiver of Hearing

A small change is needed to Articles 7.6.3 of the EAD and ECM Rules because, as Article 7.6.1 already deals with the situation where the FEI and the PR have reached an agreement as to the sanctions applicable and that agreement is approved by the FEI Tribunal, there is no need to include a reference to Article 7.6.1 in Article 7.6.3.

Proposed Wording:

7.6.3 In cases where ~~Article 7.6.1~~ or Article 7.6.2 applies, a hearing before a hearing panel shall not be required. Instead the *FEI Tribunal* shall promptly issue a written decision confirming the commission of the EAD Rule violation and the *Consequences* imposed as a result, and setting out the full reasons for any period of *Ineligibility* imposed, including (if applicable) a justification for why the maximum potential period of *Ineligibility* was not imposed. The *FEI* shall send copies of that decision to other *Anti-Doping Organizations* with a right to appeal under Article 12.2.2, and shall *Publicly Disclose* that decision in accordance with Article 13.3.

No NF Comments received

FEI Bureau Recommendation:

To approve the proposed amendments.