

## **TERMS OF REFERENCE FOR THE IBU EXTERNAL REVIEW COMMISSION**

### **WHEREAS:**

- A. In late 2017, the Intelligence & Investigations Department of the World Anti-Doping Agency (**WADA**) issued a confidential report, outlining allegations of corruption within the International Biathlon Union (the **IBU**), including that the then IBU President had covered up anti-doping rule violations by Russian biathletes, with the assistance of the then IBU Secretary General, and that delegates of IBU member federations at the 2016 IBU Congress had been bribed to vote in favour of the 2021 World Championships being held in Tyumen, Russia.
- B. The criminal authorities in Austria and Norway subsequently opened formal criminal investigations into potential doping fraud, corruption, and/or financial crimes. They conducted surveillance of communications by the then IBU President and Secretary General, and in April 2018 they searched their private residences, as well as the IBU's offices.
- C. The investigations of WADA and the criminal authorities in Austria and Norway are continuing. In the meantime, the IBU President and Secretary General have both stepped down from their respective positions at the IBU, and they have since been replaced as IBU President and Secretary General respectively and no longer hold any positions with the IBU.
- D. The new IBU President and Executive Board elected at the 2018 IBU Congress are committed to the proper investigation of any and all alleged wrongdoing, in accordance with the IBU's obligations as a signatory to the World Anti-Doping Code (the **Code**), and in cooperation with WADA and the criminal authorities, to ensure that any and all past wrongdoing is uncovered and properly sanctioned. They are also committed to updating and strengthening the constitution of the IBU (the **IBU Constitution**) and the IBU's governance practices moving forward in line with international best practice, to minimise the chances of recurrence.
- E. On 12 June 2018, the Executive Board of the International Olympic Committee (**IOC**) suspended all direct financial payments from the IOC to the IBU pending election of a new IBU President and confirmation of improvements in the IBU's Code of Ethics and Ethics Commission, and in the IBU's anti-doping operations, and an update on the work done by the IBU to follow up on evidence of Russian doping provided by WADA to the IBU. On 4 October 2018, the IOC Executive Board 'noted the positive steps taken by the IBU to address the actions required by the IOC earlier this year, but also highlighted the importance of the further assurances for implementation in order to take biathlon into an era of greater transparency and good governance [...]'. On 2 November 2018, the IOC Executive Board decided that financial payments should be resumed after receiving 'a strong undertaking from the new IBU President to see those reforms through to implementation'.

**THEREFORE**, at its meeting in Lausanne on 3/4 November 2018, the new IBU Executive Board decided as follows:

### **1. Appointment and mandate of the Commission**

- 1.1 An independent external commission (the **External Review Commission**, or **Commission**) shall be constituted, consisting of English lawyer Jonathan Taylor QC (the **Chair**), Austrian lawyer Dr Christian Dorda, German lawyer Dr Anja Martin, and (at the discretion of the IBU Athletes Committee) a former biathlete nominated by the IBU Athletes Committee, to carry out the following mandate on the basis set out in these Terms of Reference:

- 1.1.1 a internal IBU Constitution Working group is conducting, in a first step a comprehensive review of the IBU Constitution, the IBU's rules of conduct (ethical, anti-doping and otherwise) and related disciplinary rules and regulations. In a second step, the External Review Commission examines the working group proposal, taking into account the IBU's governance structures, practices, policies and procedures, by making recommendations as to any reforms or amendments that the Commission considers necessary or appropriate to ensure that these legal instruments, structures, practices, policies and procedures reflect the highest standards of integrity and transparency, and that the IBU is operating in accordance with international best practice in this area, and has a strengthened ability to prevent and to respond robustly to any future breaches of its rules; and
- 1.1.2 to that end, as well as to ensure that the IBU fulfils its investigatory obligations under Article 20.3.10 of the World Anti-Doping Code, and its commitment to cooperation with WADA under Article 4.2 of the IBU Constitution, to conduct a full and unfettered investigation into all anti-doping, compliance, ethical and other disciplinary matters arising from the ongoing investigation by WADA and various national and international criminal authorities, as well as into any further issues of concern that arise in relation to IBU governance or ethical matters within the IBU and/or otherwise in the sport of biathlon that are identified in the course of the investigation (together, the **Matters**), in order:
- (a) to establish all of the relevant facts in relation to the Matters;
  - (b) to determine whether any person or member or other body that is subject to the jurisdiction of the IBU has a case to answer for breach of their obligations to the IBU in relation to any of the Matters, whether by contract, under the IBU rules and regulations, or otherwise, including but not limited to:
    - (i) determining whether the IBU anti-doping rules and disciplinary rules, as well as all applicable World Anti-Doping Code provisions, have been properly applied, leading to appropriate adjudication and subsequent consequences, or alternatively whether any anti-doping rule violations have been covered up or otherwise improperly handled (by the IBU and/or others);
    - (ii) determining whether any breaches of the IBU code of ethics and/or other rules of conduct have occurred; and
    - (iii) determining whether the Russian Biathlon Union was given any preferential treatment by the IBU with respect to the hosting of events, either generally or in particular in relation to the vote for Tyumen to host the 2021 World Championships, and whether the voting for Tyumen was tainted by corruption; and
- 1.1.3 to cooperate fully with all relevant external authorities (including, without limitation, WADA and the criminal authorities in Austria and Norway) with jurisdiction over some or all of the Matters, including facilitating the provision to such authorities of information under IBU control that they need in order to conduct and complete their

respective investigations, while ensuring there is no interference with their respective ongoing investigations; and

- 1.1.4 to advise the IBU whether any person or member or other body has a case to answer for breach of their obligations to the IBU in relation to any of the Matters.
- 1.2 The External Review Commission is authorised and empowered to take any and all such steps as it deems necessary or appropriate to carry out this mandate, including (without limitation):
  - 1.2.1 gathering relevant documentation and other information in the possession, custody or control of the IBU, including from current and former IBU Executive Board members, officers, committee members, commission members, working party members, legal and other representatives, employees, agents, and suppliers, contractors and partners;
  - 1.2.2 waiving any legal or other privilege and/or confidentiality and/or any other potential objection(s) that the IBU might otherwise have to the disclosure of information under its control that is relevant to the external investigations, so as to ensure that all such information – whether in the hands of its current or former Executive Board members, officers, committee members, commission members, working party members, legal and other representatives, employees, agents, suppliers, contractors or partners, or otherwise – is provided on a timely basis to the relevant external authorities;
  - 1.2.3 gathering relevant information from the external authorities that are investigating the Matters and from any other third parties who may have information relating to the Matters (such as RUSADA, the Russian Biathlon Union, Grigory Rodchenkov, Professor Richard McLaren, the Oswald Commission, the Schmid Commission, etc.); and
  - 1.2.4 obtaining legal and/or other professional advice and assistance (e.g., anti-doping laboratory experts; experts on Athlete Biological Passports; forensic accountants) and/or other external resources as necessary to support it in its work.
- 1.3 For the avoidance of doubt, the Commission shall have the right to report any information that it obtains to other relevant authorities, including the criminal authorities in relation to any potential criminal activities, and WADA in relation to the compliance or otherwise by the IBU with its obligations under the World Anti-Doping Code.

## **2. Independence of the Commission**

- 2.1 The IBU will provide the financial resources and any administrative resources required by the Commission to carry out its work. However, the Commission shall be entirely independent of the IBU.
- 2.2 To ensure such independence, without limitation:
  - 2.2.1 The IBU Executive Board will instruct the IBU's officers, committee members, commission members, working party members, legal and other representatives, employees, agents, and suppliers, contractors and partners to cooperate fully with the Commission, including (1) providing any documents or other information (including information stored on telephones, computers and/or other devices) that the Commission requests in full and without delay; (2) answering any and all Commission questions, whether in formal interview or otherwise; and (3) where requested by the

Commission, keeping communications between themselves and the Commission confidential.

2.2.2 Each of the members of the IBU Executive Board will provide the same cooperation to the Commission.

2.2.3 Any failure to provide the cooperation set out above to the Commission, and/or any attempt to hinder or delay the work of the Commission, including (without limitation) any attempt to withhold potentially relevant information, interfere with witnesses or tamper with or destroy potentially relevant information, will be treated as a serious breach of obligation to the IBU, for example (but without limitation) under Articles 18, 22 and/or 54 of the IBU Constitution, Article 1.2 of the IBU Code of Ethics, Articles 3.3(b), (c) and/or (d) of the IBU Disciplinary Rules, and/or Articles 2.5, 22.1.6/22.1.7 and/or 22.2.6/22.2.7 of the IBU Anti-Doping Rules, and sanctioned accordingly.

2.2.4 The IBU will indemnify each member of the Commission, and each firm or person engaged to assist the Commission in its work, against any and all claims to which they are subjected, and any and all expenses, costs, damages and other liabilities that they incur, as a result of any work conducted honestly and in good faith on or for the Commission.

2.3 The IBU will enter into written agreements with each of the Commission members in relation to their remuneration for time spent carrying out the Commission's mandate and the reimbursement of related expenses. The IBU will also pay the costs of the professionals instructed by the Commission in accordance with paragraph 1.2.4, above, although those professionals will be engaged on the basis that they take their instructions from the Commission alone.

### **3. Operations of the Commission**

3.1 The External Review Commission shall be free to organise its activities as it sees fit. It may meet as frequently as it sees fit, in person and/or via teleconference. It may appoint a suitably qualified person to act as its Legal Secretary.

3.2 All of the members of the External Review Commission, and the Legal Secretary, will be bound by and required to comply with the IBU Code of Ethics. For the avoidance of doubt, and to address the conflict of interest provisions in the IBU Code of Ethics, it is acknowledged and agreed that the legal members of the Commission may draw on legal support and assistance from their respective law firms (including but not limited to a person to act as Legal Secretary), on terms agreed by the IBU with those law firms, to assist the Commission in completing its mandate.

3.3 The Committee will seek to operate on the basis of consensus. Where necessary, however, the Commission will make decisions by majority vote, with each member having one vote. (The Legal Secretary will not have a vote). In the event of a deadlock (e.g., due to an absence or an abstention), the Chair will have the casting vote.

3.4 The IBU President and/or his delegate will be the first point of contact for the Commission with the IBU Executive Board. The Chair will be the first point of contact for the IBU Executive Board with the Commission.

### **4. Transparency of the Commission**

- 4.1 These Terms of Reference will be published on the IBU's website. Thereafter the External Review Commission may make any public statements as to its work when necessary, including comments to the media, through the Chair.
- 4.2 The Chair will provide periodic progress reports to the IBU President from time to time. The Chair will also provide progress reports in person at meetings of the IBU Executive Board, and to the IBU Congress. Such reports will include commentary on progress to date and also on any perceived obstacles to further progress. To the extent these reports are made in writing, they will be published on the IBU website (less any confidential and/or sensitive information that the Commission decides should be redacted prior to publication).
- 4.3 If and when the External Review Commission considers that its mandate has been completed, the Chair will submit a written report to that effect to the IBU Executive Board, addressing each of the points set out in paragraph 1.1, above (the **Final Report**). The Final Report will be published on the IBU website (less any confidential and/or sensitive information that the Commission decides should be redacted prior to publication).

## **5. Term of the Commission**

- 5.1 The External Review Commission will complete its mandate as quickly as is reasonably practicable, but in no circumstances is that objective to be allowed to compromise the integrity of its conclusions and recommendations.
- 5.2 The mandate of the External Review Commission will end when it has delivered the Final Report to the IBU Executive Board. If any member of the Commission resigns or otherwise becomes unavailable before that, the remaining Commission members and the IBU President will decide together whether to replace that member, and if so then by whom.

## **6. Choice of law and language**

- 6.1 These Terms of Reference are governed by, and shall be construed in accordance with, Austrian law.
- 6.2 These Terms of Reference will be published in English.

## **7. Amendments/matters not otherwise provided for**

- 7.1 These Terms of Reference may be amended by the IBU President, in agreement and on behalf of the IBU Executive Board, as necessary following consultation with the Chair. Any such amendments will be made public.
- 7.2 Any matter arising that is not addressed in these Terms of Reference will be determined by the IBU President, in agreement and on behalf of the IBU Executive Board, in consultation with the Chair.

6 November 2018



Olle Dahlin  
President  
For and on behalf of the IBU