

## **INTERIM REPORT NO.8 OF THE EXTERNAL REVIEW COMMISSION**

1. This eighth interim report sets out the progress the IBU External Review Commission has made since the last report provided for the IBU Executive Board meeting on 31 August 2019.
2. This report is a supplement to the detailed report made by the Commission to the IBU Congress for its extraordinary meeting on 19 October 2019 (copy enclosed).

### **Constitutional reform**

3. The Commission is pleased with the positive feedback on the proposed constitutional reforms received through the NF member consultation process. Following circulation of the revised draft rules to NF members on 5 September 2019, seven motions were received from four NF members. While each of these motions will be addressed in detail at Congress, it is important to underline that there have been no objections to the vast majority of the proposed reforms. In particular, there have been no objections to (i) the new Integrity Code; (ii) the Biathlon Integrity Unit; or (iii) the new Eligibility requirements.
4. As mentioned in our previous interim report, the Commission members will attend the Congress, and we will make ourselves available to answer any questions about the detail of the rules in the afternoon on 18 October 2019, and during a panel session on the morning of 19 October 2019.
5. Given that no objections have been raised in relation to the establishment of a Biathlon Integrity Unit (BIU) or to the three candidates proposed as independent members of the inaugural BIU Board, the Commission has arranged for a first meeting of the inaugural BIU Board to take place on 20 October 2019, after the Executive Board's meeting following the Congress session that day. This meeting will provide an opportunity to take the necessary steps to get the BIU operational without delay. The Commission has also drafted terms of appointment for the independent members of the BIU Board and a job description/advertisement for the Head of the BIU.

### **Investigation of allegations of past wrongdoing**

6. The Commission continues to work through the significant information and data gathered to date, including emails and other documents from the IBU's server, materials available from the criminal investigation file, materials provided by WADA, and evidence from witness interviews. It is also continuing to liaise as necessary with WADA and the criminal authorities, and to carry out further witness interviews.
7. The Commission has also reviewed and processed reports received through the confidential whistleblower web portal, and made progress in following up on those reports. I will provide further detail on this topic during the Executive Board meeting.

Jonathan Taylor QC  
Chair, IBU External Review Commission  
10 October 2019

## **IBU EXTERNAL REVIEW COMMISSION**

### **REPORT TO THE EXTRAORDINARY MEETING OF THE IBU CONGRESS IN OCTOBER 2019**

On behalf of the independent IBU External Review Commission (myself, Dr Christian Dorda, Dr Anja Martin, and Mr Vincent Defrasne), I am pleased to present this report to the IBU Congress on the progress that the Commission has made in carrying out the mandate set out in its terms of reference (available at: <https://www.biathlonworld.com/about-ibu/inside-ibu/committees>).

As a reminder, in late 2017, the Intelligence & Investigations Department of the World Anti-Doping Agency (**WADA**) issued a report outlining allegations 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. The criminal authorities in Austria subsequently opened a formal criminal investigation into potential doping fraud, corruption, and/or financial crimes. Working with the Norwegian criminal authorities, they conducted surveillance of communications by the then IBU President and Secretary General, and in April 2018 they searched their respective private residences, as well as the IBU's offices in Salzburg.

In light of the above, the IBU Executive Board that was elected at the 2018 IBU Congress established the Commission on 6 November 2018, to carry out the following three-fold mandate:

- (1) Assist WADA and the criminal authorities** with their investigations, including by facilitating the provision of relevant information under IBU control to those investigators.
- (2) Conduct an investigation on behalf of the IBU** into the matters being considered in the WADA and criminal investigations, as well as into any further issues of concern in relation to governance or ethical matters within the IBU and/or biathlon generally that are identified in the course of the investigation, such investigation to establish the relevant facts and determine whether any person or body has a case to answer for breach of the IBU rules and regulations in force at the relevant time.
- (3) Assist with the reform of the IBU Constitution and supporting rules** to bring the IBU into line with international best practice in sports governance, thereby ensuring that the IBU has a strengthened ability to prevent and to respond robustly to any future breaches of its integrity rules.

The Commission has provided regular updates on its work to the IBU Executive Board in the form of interim reports, copies of which are available via the link above. I also set out below a summary of its progress to date.

#### **1. SUPPORTING THE EXTERNAL INVESTIGATIONS BY THE CRIMINAL AUTHORITIES AND WADA**

##### **1A. Criminal authorities**

1.1 In November 2018, shortly after the Commission was formally established, we made formal contact with the heads of the Austrian and Norwegian criminal authorities, to advise them that the Commission stood ready to assist them by all possible means with their respective investigations.

1.2 In January 2019, we had a meeting with the Austrian criminal authorities in Vienna, also attended by representatives of the Norwegian criminal authorities, to discuss concretely how the

Commission might assist them. Since then, we have been in continuous communication with the Austrian criminal authorities, developing a strong cooperative relationship, providing assistance and information where requested, and obtaining regular updates on the progress of their investigation.

1.3 In March 2019, the Austrian and German criminal authorities announced that they were investigating allegations of blood doping involving 21 athletes from five sports and eight countries, initiated following an ARD report relating to Austrian cross-country skier Johannes Dürr. The investigation is called 'Operation Aderlass'. The Commission quickly established a dialogue with the criminal authorities and national anti-doping agencies involved in Operation Aderlass, with a view to sharing relevant information.

1.4 In early July 2019, we had a further in-person meeting with the Austrian criminal authorities in relation to both the biathlon investigation and Operation Aderlass. IBU President Olle Dahlin attended part of the meeting to confirm to the Austrian prosecutor the IBU's commitment to assist the criminal authorities.

1.5 At the end of July 2019, the Austrian criminal authorities formally requested to refer the part of their investigation relating to former IBU President Anders Besseberg to the Norwegian criminal authorities (Mr Besseberg is a Norwegian citizen and resident).

1.6 In September 2019, the Austrian authorities confirmed that they had closed the part of their investigation relating to potential anti-doping rule violations at the IBU Biathlon World Championships in Hochfilzen in February 2017.

1.7 The Commission's understanding is that the Austrian authorities hope to conclude the remainder of their investigation, and determine whether any criminal charges should be brought, by the end of 2019, although there are a number of factors that might extend that timeline. In the meantime, the Commission remains ready to help both the Austrian and the Norwegian criminal authorities as necessary.

## **1B. WADA**

1.8 In November 2018, we made contact with Gunter Younger, Director of WADA's Intelligence & Investigations Department, who supervised WADA's investigation of IBU-related matters, to confirm that the Commission had been mandated to provide WADA with any information or other assistance that it required to pursue its investigation. Once again, a strong and mutually cooperative relationship was quickly established.

1.9 In early 2019, WADA decided to refer the investigation over to the Commission, so that WADA's Intelligence and Investigations Department could concentrate on reviewing and authenticating the analytical data it had obtained from the Moscow anti-doping laboratory (see <https://www.wada-ama.org/en/media/news/2019-01/wada-successfully-retrieves-data-from-moscow-laboratory>), some of which has since been provided to the IBU to support doping cases against Russian biathletes.

1.10 We remain in close contact with WADA, keeping it updated on the Commission's investigation.

## **2. INVESTIGATION ON BEHALF OF THE IBU**

2.1 The Commission has spent considerable time and resources gathering information and evidence to help it determine whether any person or body has a case to answer for breach of IBU rules and regulations. This has included the following:

2.1.1 On our application, the Austrian criminal authorities recognised the Commission's legitimate interest in reviewing the information in the Austrian criminal file, and therefore granted the Commission full access to the file.

2.1.2 We have also been provided with evidence gathered by WADA, including copies of reports issued by its Intelligence & Investigations Department. In February 2019 we had a very useful and constructive meeting with Gunter Younger and his I&I colleague Julian Broséus in Lausanne, and agreed on the most efficient means of sharing information and progressing open items moving forward. We also liaised with WADA in relation to the analysis of blood screening data collected by the IBU until 2015. Subsequently WADA has also been extremely helpful in assisting the Commission to investigate various anomalies in relation to IBU blood passport profiles, including in relation to samples collected at the 2014 Sochi Olympics that were initially declared void.

2.1.3 In November 2018, we also made contact with Margarita Pakhnotskaya, Deputy Director-General of RUSADA (the Russian NADO), who has been very cooperative and provided relevant information on request.

2.1.4 In February 2019, we launched a whistleblower web portal using the BKMS<sup>®</sup> System provided by Business Keeper AG, the leading whistleblower service provider in Europe, allowing persons with information of interest to communicate with the Commission securely and on an anonymous basis (the portal is available in English, German and Russian: <https://www.bkms-system.com/ibuerc>). To date, however, we have received limited information from this source.

2.1.5 Over the course of the investigation to date, we have interviewed a number of IBU officials and staff members, and taken copies of various emails and documents from the IBU server. In addition, in May 2019 we conducted an in-depth interview of Dr Grigory Rodchenkov, former head of the Moscow anti-doping laboratory, regarding his allegations relating to the IBU and Russian biathlon referenced in the WADA report that prompted the pending criminal investigations. Dr Rodchenkov provided significant further information and documents to the Commission, and has agreed to continue to assist the Commission with its inquiries moving forward.

2.1.6 Information and evidence have also been gathered from other sources, including the Russian Biathlon Union, the WADA-accredited laboratories in Cologne and Seibersdorf, and the Nordic APMU.

2.2 We are currently working through the significant information and data gathered to date, in order to identify and pursue any further lines of inquiry. We hope to be able to conclude the investigation in the first quarter of 2020, although achieving that will depend on a number of factors not wholly under our control, including the ready availability of various witnesses.

### **3. REFORM OF THE IBU CONSTITUTION AND SUPPORTING RULES**

3.1 The Commission has worked with the IBU Constitution Working Group chaired by Dr Franz Steinle on the review of the IBU Constitution and various supporting rules. We have recommended a series of reforms and improvements that are designed to bring the IBU's governance into line with international best practice in sports governance, in particular in relation to the policing and enforcement of integrity-related rules.

3.2 I provided a detailed explanation of our recommendations in my letter of 19 July 2019 to member federations that accompanied the initial drafts of the Constitution and supporting rules (the new Integrity Code, Biathlon Integrity Unit Rules, Vetting Rules, Rules of Congress, and Executive Board Rules), and the proposal to adopt them forms the main part of the agenda for this Extraordinary Congress Meeting. For this report, therefore, I limit myself to highlighting two of the key reforms that (in the Commission's view) put the IBU at the cutting edge of good governance in international sport:

3.2.1 Article 28.2 of the new IBU Constitution will establish a new Biathlon Integrity Unit (**BIU**), which will replace the current IBU Ethics Commission, and will be a new specialised unit that is responsible for investigating and prosecuting violations of the Integrity Code, and for ensuring that the IBU complies with its obligations under the World Anti-Doping Code and with its other governance and ethical compliance obligations set out in the Constitution and the Rules. The BIU will operate independently of the IBU Executive Board and IBU staff, under the supervision of an independent board of directors. As a result, the IBU Executive Board will no longer have any actual or apparent conflict of interest in dealing with potential violations of the IBU Integrity Code. Instead all of the IBU member federations and other stakeholders in the sport will be able to have confidence that the BIU will investigate and determine whether to bring proceedings for apparent violations of the IBU Integrity Code independently, impartially, and without any fear or favour.

3.2.2 Articles 26 and 27 of the new IBU Constitution will require all persons elected or appointed or nominated for election or appointment as IBU staff or as members of the IBU Executive Board or an IBU Committee to be vetted to ensure they meet specified eligibility criteria (e.g., not having any serious criminal convictions or doping violations on their record, not being bankrupt, not being subject to other specified disqualifying conditions). The vetting will be carried out by the independent members of the BIU board of directors in accordance with the new Vetting Rules. The nature and scope of such vetting will vary depending on the amount of responsibility the person in question would have (for example, a candidate for President will be subject to much more scrutiny than a candidate for employment in an administrative post at IBU HQ). Any decision by the vetting panel that a person is not eligible for election or appointment as an IBU official or IBU staff member may be appealed to the CAS.

3.3 The draft Constitution and supporting rules were first circulated to member federations on 19 July 2019. Clare Egan, Chair of the Athletes' Committee, also circulated those drafts to biathletes on the same date. The feedback received through the consultation process was positive and supported the many reforms proposed. The feedback also provided a number of very detailed and helpful comments, which have helped to improve the draft rules.

3.4 Following a meeting of the IBU Constitution Working Group on 19 August 2019, and the IBU Executive Board on 31 August 2019, amendments were made to the draft Constitution and rules, and revised drafts were circulated to IBU member federations on 5 September 2019. My letter of 5 September 2019 explains the key changes made in the revised drafts.

3.5 As I will report in detail at other parts of the Congress agenda, the IBU Executive Board has accepted all of the Commission's recommendations, and as a result the Commission is able to fully endorse the draft Constitution and supporting rules that have been circulated to members. In the Commission's view, if adopted by Congress, the new IBU Constitution and supporting rules will introduce the highest standards of integrity and transparency to the IBU, in line with international best practice in this area, and will ensure that the IBU has a greatly strengthened ability to protect itself against, and to respond robustly to, future threats to the integrity of the sport.

#### **4. ENGAGEMENT WITH BIATHLETES**

4.1 The Commission would also like to underline that it is grateful for the cooperation with and input it has received from biathletes. In particular:

4.1.1 Vincent Defrasne and the Commission Legal Secretary Lauren Pagé staged a Q&A session for biathletes and support staff at the IBU World Cup in Holmenkollen on 19 March 2019, to explain the Commission's work and to invite biathletes and support staff to come forward with any information that they might wish to share with the Commission. Based on those discussions, it is clear that biathletes are keen to see stronger governance structures put in place at the IBU, and greater transparency in dealing with anti-doping and other integrity-related issues.

4.1.2 Ms Pagé also had an opportunity to speak with a number of biathletes one-on-one, including Clare Egan, Martin Fourcade, Michal Šlesingr, and Sebastian Samuelsson, as well as retired US Olympic biathlete Lowell Bailey.

4.1.3 Mr Defrasne, Ms Pagé, and Clare Egan hosted a webinar for biathletes on 8 August 2019, to provide an update on the key governance reforms in the new proposed Constitution and supporting rules, to give them an opportunity to ask questions or comment on the draft Constitution and rules, and to provide an update and forum for questions about the Commission's investigation.

4.2 The Commission is in the process of organising the next in-person meeting with athletes, which is scheduled to take place on 2 December 2019 in Ostersund.

Jonathan Taylor QC  
Chair of the External Review Commission  
17 September 2019