

INTERIM REPORT NO.11 OF THE EXTERNAL REVIEW COMMISSION

1. Since I last reported to the IBU Executive Board on 11 February 2020, the lockdown forced upon us by the COVID-19 pandemic has obviously stopped or delayed progress on many aspects of the work of the Commission. However, there have been developments, which I summarise below, and we are now in a position to identify a pathway to providing a final report in mid-September 2020.

Criminal investigations

2. The Commission continues to review the regular updates that are made to the Austrian criminal file, in order to identify any new evidence that might assist its investigation, as well as to identify how it might assist the criminal authorities with their investigations.
3. The Commission has been advised that the Norwegian criminal authorities have agreed to take over investigation of the allegations that Mr Besseberg received unauthorised and undeclared payment for corrupt purposes. A joint investigation team (JIT) has been set up between the Austrian and Norwegian criminal authorities to facilitate the sharing of information between them. Europol may also assist the JIT. As part of the JIT, the Austrian criminal authorities will assist the Norwegian investigation, and in the meantime they have temporarily suspended their investigation against Mr Besseberg in Austria. However, the Austrian criminal authorities have reserved the right to re-open that investigation if necessary in the future, and in the meantime they continue with their investigation in relation to Ms Resch (now Mrs Rühr).
4. The Commission continues to support the work of the Austrian criminal authorities, and has also contacted the Norwegian criminal authorities to make it clear that it is ready and willing to assist them in their investigation if and when required.
5. Further, by way of update, several months ago counsel for Mr Besseberg brought proceedings before the Landesgericht (first instance court) in Vienna, in which he (among other things) sought to have the investigation against him in Austria discontinued (arguing that there was no criminal offence in Austria) and to prevent the Austrian criminal authorities from requesting that the Norwegian criminal authorities take over the investigation against him. The court dismissed his requests. Mr Besseberg appealed those decisions to the Oberlandesgericht (appeal court) in Vienna, but again without success. In particular, the appeal court found (in its February 2020 decisions) that 'in view of the extensive facts of the case, the number of persons involved, the scope of data to be evaluated and the considerable public interest in clarification, the consideration of the court of first instance that the continuation of investigative proceedings is justified in view of the suspicion, urgency, and weight of the offences as well as the previous duration and scope of the preliminary investigation is not objectionable' (unofficial English translation).

Investigation of cases to answer under sporting rules

6. The Commission has been continuing its investigation work to the extent possible despite the COVID-19 pandemic, although it has no doubt had an impact on all

working arrangements.

7. The Commission has reviewed a significant amount of evidence and other documentation collected throughout the investigation, and has begun the process of condensing and classifying it for the final report.
8. The Commission is in the process of arranging and conducting final witness interviews. Given the COVID-19 pandemic, interviews are (where possible) being arranged by video or telephone. As set out in the Commission's previous interim report, in early 2020 the Commission conducted interviews with some former RBU officials. It is also still seeking the cooperation of other former RBU officials.
9. The Commission has had further helpful cooperation from Dr Grigory Rodchenkov's representatives, and has also arranged to interview another potentially important witness based in Russia.

Next steps

10. The Commission has defined a clear pathway to finalise its investigation, including by identifying the final documents to be reviewed and the final witnesses to be interviewed. The Commission members plan to meet by video conference in early June to finalise this pathway.
11. Subject to receiving cooperation from the remaining witnesses in organising dates for interviews, and subject also to any other factors beyond its control, the Commission plans to produce its final report in this matter to the BIU Board and to the IBU Executive Board by mid-September 2020.
12. After the Commission issues its final report in this matter, the Commission's mandate will come to an end, unless otherwise extended by the IBU Executive Board. However:
 - a. If (as is highly likely) the criminal investigations have not been completed at that time, the BIU Board and the IBU Executive Board will need to decide how best to continue supporting those investigations.
 - b. To the extent the Commission identifies that any individuals have cases to answer for breach of the IBU's rules, and/or it is determined as a result of the ongoing criminal investigations that any individuals have a case to answer for breach of the IBU's rules, it will be for the Biathlon Integrity Unit to decide how to address those cases.

If the IBU Executive Board has any questions, I would be happy to join the meeting by phone to answer them.

Jonathan Taylor QC
Chair, IBU External Review Commission
27 May 2020