

Arbitral Award
of the UIPM Court of Arbitration

in the matter

between

the **Danish Modern Pentathlon Association (MPADK)**, Vestre Slamravej 3, DK 3730 Nexoe, Denmark, represented by its President Mr Benny Elmann-Larsen,

- Claimant -

and

the **Union Internationale de Pentathlon Moderne (UIPM)**, Stade Louis II – Entrée C, 19 Avenue des Castelans, MC-98000 Monaco, represented by its President Dr h.c. Klaus Schormann,

- Respondent -

I. Parties

- 1 The Claimant, the Danish Modern Pentathlon Association (“MPADK”) is a member of the UIPM and the national federation of the Olympic sport of Modern Pentathlon on the national level of Denmark.
- 2 The Respondent, the Union Internationale de Pentathlon Moderne (“UIPM”) is the world governing body of the Olympic sport of Modern Pentathlon.
- 3 The Claimant and the Respondent are hereinafter jointly referred to as the "Parties".

II. Relevant Factual and Procedural Background

- 4 The following sets out a summary of the uncontested facts based on the Parties’ written sub-missions. Additional facts and allegations found in the Parties’ written submissions and evidences may be set out, where relevant, in connection with the legal discussion that follows.
- 5 While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidences submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidences he considers necessary to explain the reasoning regarding the decision on the Claimant’s requests for relief.
- 6 It is commonly known that the incidents as described in the following were ultimately triggered by the event in the UIPM Riding competitions at the 2020 Tokyo Olympic Games in August 2021 which brought the riding discipline of modern pentathlon, in particular due to the situation of the horses, into public disrepute.
- 7 On 31 October 2021, the UIPM Executive Board (“EB”) held a virtual meeting. It is undisputed between the Parties that during this meeting, the EB had endorsed a series of recommendations made by the UIPM Innovation Commission, including the recommendation that horse-riding be replaced with another discipline for the 2028 Olympic Games (hereinafter the “EB Decision”).
- 8 On 4 November 2021, the UIPM informed about this meeting of the EB via a news release to its member federations with the header “UIPM OPENS CONSULTATION ON REPLACEMENT OF RIDING DISCIPLINE IN MODERN PENTATHLON”. Within the news release, it has been further explained that

“All changes resulting from the consultation process will be implemented in time for the Los Angeles 2028 Olympic Summer Games – only coming into force after Paris 2024 (...)”.

- 9 On 18 November 2021, after Parties exchanged communications on the matter of the (primarily) jurisdiction of the UIPM Court of Arbitration, the Claimant provided the UIPM Secretary General with an email invoking the “*UIPM Arbitration process*” according to Chapter 7 of the UIPM Code of Ethics and filed its Request for Arbitration including supporting letters and documents.
- 10 On 23 November 2021, the UIPM stated any decision to change the UIPM Statutes and the Competition Rules to introduce a new 5th discipline, has to be made by the UIPM Congress at a later point in time.
- 11 On 25 and 27 November 2021, both Parties accepted to submit the case to the Sole Arbitrator, Mr Alexander Georgiev.
- 12 On 27/28 November 2021, the UIPM 2021 Congress was held including under agenda item 17 the discussion and ratification of the EB Decision. According to the Minutes, the UIPM 2021 Congress inter alia
- approved the updated agenda (see Minutes of the Congress, item 3 “Adoption of the Agenda”), and
 - approved the question “*Does the General Assembly ratify the EB decision of Oct 31, 2021, to submit to the IOC a competition format for the 2028 Olympic Games without riding and replacing discipline to be determined by the UIPM in collaboration with all stakeholders and that will be decided in 2022 UIPM congress and to open the consultation process regarding the 5th discipline?*” with a 81,48%-majority (see Minutes of the Congress, “Ratification of EB decision taken on Oct 31, 2021”, item 17).
- 13 On 3 December 2021, the Claimant provided the Sole Arbitrator with further submissions clarifying its requests for interim relief and making procedural requests.
- 14 On 9 December 2021, UIPM announced that upcoming actions linked to the reformation process will be conducted by the new 5th Discipline Working Group, which will be gender-balanced and will gather accumulated expertise from the following groups: the UIPM Athletes, Coaches, Technical and Medical Committees and Innovation Commission, event organizers, NF development staff, the Olympic host countries of Paris 2024, LA 2028 and Brisbane 2032, marketing and media experts and TV partners.
- 15 On 17 December 2021, UIPM submitted its Answer to the claim.
- 16 On 21 December 2021, the Claimant sent another submission referring to the 3 December submission and also clarified its requests for relief.

- 17 On 25 January 2022, the Claimant submitted its (unsolicited) Reply to the Respondent's Answer.

III. The Claimant's requests for relief

- 18 As a preliminary remark the Sole Arbitrator notes that the Claimant and the Respondent agree (Answer, para. 15; Reply, para. 27) that the Claimant's requests for relief in this Arbitration are the following:

(1) declaring that the UIPM EB had no power to take the decision of 31 October 2021; and that it is a nullity (hereinafter the "1st Request"), and

(2) declaring that those members of the EB who purported to make the decision without a valid power to do so have breached the Statutes and the UIPM Code of Ethics (hereinafter the "2nd Request").

- 19 Therefore, in accordance with the general principle of "*ne ultra petita*", the Sole Arbitrator will limit his findings to these two issues.

IV. Jurisdiction

- 20 Article 7.3 a) provides:

"UIPM Court of Arbitration has jurisdiction:

a) to arbitrate controversies arising out between UIPM and any Member;"

- 21 The present controversy between UIPM and MPDAK as its member falls under this provision and the UIPM Court of Arbitration's jurisdiction for the case at hand is not disputed by the Parties.

- 22 In accordance with Article 7.1 UIPM Code of Ethics, the Parties agreed to submit the case to the decision of a Sole Arbitrator.

- 23 Hence, the Sole Arbitrator of the UIPM Court of Arbitration has jurisdiction to decide upon the case.

V. Applicable Law

- 24 Article 8.9 UIPM Code of Ethics states:

"In their decisions, the Court may have regard to UIPM Statutes, this Code and any other applicable UIPM Rules."

- ²⁵ The Sole Arbitrator considers that – in accordance with the common sense in sports-related arbitration – it shall be first the UIPM Statutes, the UIPM Code of Ethics and any other applicable UIPM Rules that shall be the basis of his decision. Subsidiarily, he will take into account the Code of Sports-related Arbitration of the Court of Arbitration for Sport (“CAS Code”) and the CAS jurisprudence since Article 8.14 UIPM Code of Ethics provides for the CAS being the appeal instance and therefore its procedural rules and its well-established jurisprudence would eventually be relevant for the decision on the case.

VI. Admissibility

- ²⁶ The claim is admissible. The Respondent did not raise any objection with regard to the admissibility of the claim.

VII. Merits

- ²⁷ In the following, the Sole Arbitrator will address the merits of the case by starting with the Claimant’s two main requests for a declaratory judgement (see 1.). After that, the Sole Arbitrator proceeds with deciding upon the Claimant’s request for interim relief (see 2.) as well as its procedural requests (see 3.).

1. The Claimant’s requests for a declaratory judgement

- ²⁸ As a preliminary remark, the Sole Arbitrator notes that – although he asked the Parties to refrain from unsolicited submissions – he nevertheless took into account the Claimant’s Reply and its arguments while not hearing the Respondent within the second round of submissions the reasons for which will be further outlined below (under 3.a)).
- ²⁹ Further, the Sole Arbitrator considers that it is important to highlight that he will base his decision on the findings following from the applicable law based on his ex-post-view on the relevant facts as outlined above.

a) The 1st Request

- ³⁰ With its 1st Request, the Claimant requests the Sole Arbitrator to declare “*that the UIPM EB had no power to take the decision of 31 October 2021; and that it is a nullity*”.
- ³¹ The Sole Arbitrator understands that the Claimant’s legal interest is focused on the clarification that the UIPM EB did not have the power to take the EB Decision. In its Request for Arbitration (Annex 3), the Claimant further detailed its criticism of the EB Decision by stating that “*the EB does not have the power to amend the UIPM Statutes and/or the UIPM Rules on Internal Organisation. Additionally, in the present circumstances, that the EB does not have the power to amend the UIPM Competition Rules*” and that “*only the General Assembly has the power to amend*” the UIPM Statutes

and other UIPM rules and regulations in this regard (see p. 1 et seq. of Exhibit 3 to the Request for Arbitration).

32 The Sole Arbitrator considers that the EB did not take a decision to amend the UIPM Statutes and/or the UIPM Rules on Internal Organisation as well as the UIPM Competition Rules. The Claimant does not submit that the EB has decided on any changes to the wording of these UIPM Regulations within the EB Decision. These UIPM Regulations apparently remain unchanged until the present day.

33 Hence, the 1st Request of the Claimant could only be interpreted in a way that it seeks to clarify whether the EB would have the power to endorse the recommendation to replace riding and to open a consultation process about it. The Sole Arbitrator considers that such a sought for clarification about the competences of a federation's body could only be based on violation of the respective body with regard to the allocation of competences (i.e. the EB acting *ultra vires*).

(i) Allocation of competences within the UIPM

34 The Sole Arbitrator notes that with respect to the competence of the EB, Articles 13.1 and 13.2 UIPM Statutes provide the following:

"UIPM is governed by the General Assembly and the Executive Board."

and

*"In between General Assemblies UIPM is governed by the Executive Board.
(...) The Executive Board is competent to take decisions on any matter not
provided for in these Statutes, or in the event of force majeure."*

35 The Sole Arbitrator considers that these provisions vest the EB with the power to provide leadership to the UIPM. In particular, in between General Assemblies, it is the EB which is competent to take up relevant matters and to get also fundamental changes of the ground by setting political directions. Certainly, according to the UIPM Statutes, the General Assembly being the supreme legislative body, and the members of UIPM (through their minority rights) have the power to eventually determine whether to follow the path guided by the EB in between General Assemblies or not.

36 The Sole Arbitrator further notes that there are no provisions within the UIPM Statutes or other UIPM rules and regulations providing for the competence who may take a decision on starting a reform process which could lead to the amendment of the UIPM Statutes and the UIPM Competition Rules.

37 The Sole Arbitrator considers that due to the lack of an allocation of competence within the UIPM Statutes, the EB could rely on its general governing role and its subsidiary

competence as defined under Article 13.2 UIPM Statutes to endorse the recommendation to replace riding by another discipline.

38 This finding is made under the reservation that also under the Sole Arbitrator's understanding of the UIPM's Statutes, it must be the General Assembly which eventually decides whether to replace riding by another discipline, i.e. whether to amend the UIPM Statutes and the UIPM Competition Rules. By referring the matter for ratification of the UIPM 2021 Congress and the final decision for amendment to the UIPM 2022 Congress, the Respondent showed that it shares such understanding.

39 As a side remark, the Sole Arbitrator notes that the Claimant seems to put the legality of the UIPM 2021 Congress' decision on agenda point 17 in question due to a formally flawed procedure. However, the Sole Arbitrator considers that the Claimant did not include any request into its claims in this regard. Challenges to federations' general assemblies must be made in a timely manner. In any case, the Sole Arbitrator refers to Article 22.3 UIPM Statutes allowing the inclusion of agenda items "*if the matter is urgent and at least 2/3 of the voting members at the General Assembly approve of this procedure (...).*" In the present case, a 90%-majority approved the updated agenda including agenda point 17.

(ii) Legal interest of the Respondent following the ratification of the EB Decision

40 In view that the UIPM EB acted in line with its competences following from the UIPM Statutes, the question whether the Claimant had legal interest for its claim following the ratification of the EB Decision by the UIPM 2021 Congress does need to be addressed by the arbitrator. However, the ratification by the supreme legislative body of the UIPM certainly emphasizes that the EB Decision represented the will of the majority of the UIPM members.

41 In summary, the Sole Arbitrator concludes that the 1st Request of the Claimant has no merits and must be dismissed.

b) The 2nd Request

42 With regard to the 2nd Request, the Sole Arbitrator considers that it renders moot in view of the findings as outlined under a) above.

43 Hence, also the 2nd Request shall be dismissed.

2. The request for interim relief

44 The Sole Arbitrator notes that the Claimant also upheld its request for interim relief. Pursuant to Article 8.10 UIPM Code of Ethics, provisional or conservatory measures

could principally be granted by the UIPM Court of Arbitration, while there is no further guidance on when such measures should be applied.

- 45 Hence, the Sole Arbitrator considered it appropriate to refer to the CAS-Code, which provides for the following under Article R37.5 CAS- Code:

“When deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the Respondent(s).”

- 46 When considering the Claimant’s request for interim relief, the Sole Arbitrator took note that within its 3 December-submission, the Claimant informed that the “*Events, particularly the Congress of 27/28 November have overtaken some of our requests,*” and therefore limited its requests for interim relief to the 1st Request and the 2nd Request.

- 47 The Sole Arbitrator already has doubts whether the Claimant could effectively request for interim as well as final relief by referring to identic requests due to the general principle that provisional reliefs granted must not pre-empt the decision within the main proceedings.

- 48 The Sole Arbitrator, however, considered that this question can remain open since the Claimant did already not establish the required irreparable harm following from not issuing a preliminary decision on the two requests of the Claimant.

- 49 In view of this, the Claimant’s request for interim relief had no merits and had to be dismissed.

3. The procedural requests

a) Hearing

- 50 With regard to the procedure of the Arbitration, Article 8.8 UIPM Code of Ethics states:

“The Court may have regard to and apply such of the UIPM Procedural Rules set out below as are appropriate to the case.”

- 51 The Sole Arbitrator finds that this leaves him with discretion on the appropriateness of a hearing in the case under scrutiny since this is not a dispute of disciplinary nature.

- 52 In the case at hands, the Sole Arbitrator relied on the following factors for his decision to not hold a hearing:

- the relevant facts of the case at hands are not in dispute but rather its legal assessment based on the UIPM Statutes,
- the Parties did not submit any witness statements or named any witnesses to be heard,
- the Parties were granted the opportunity to present their positions within their written submissions,
- the Claimant submitted a Reply to the Respondent's Answer which the Sole Arbitrator took on the record and into his consideration, and
- the Respondent has not been deprived of his right to be heard since the Claimant's Reply did not fundamentally affect the Respondent's position.

53 Against this background, the Sole Arbitrator finds that the Parties' right to be heard had been sufficiently considered and that he can duly rely on his discretion to not summon a hearing but base his decision on the written submissions exchanged and the applicable law.

54 In consequence, the Claimant's request for a hearing shall be dismissed.

b) Document production requests

55 Within its letter dated 25 January 2022, the Claimant repeated its request for the production of the following documents:

(1) All documents on which UIPM relies in support of its claim that there was an event of force majeure.

(2) All papers before the EB meeting on 31 October 2021 ('the meeting').

(3) A list of attendees, decisions and resolutions made at the meeting insofar as not apparent from the minutes of the meeting.

(4) The minutes of the meeting.

(5) All documents (i) referring to riding or the intended new 5th discipline and (ii) which reflect communications between UIPM and IOC leading to the deadline of 24 November 2021, including all such communications between them after 31 October 2021 to date.

- 56 The Sole Arbitrator – due to the lack of a procedural rule within the UIPM Code of Ethics and other UIPM rules – again makes reference to the CAS Code stating under Article R44.3:

“A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant.”

- 57 The Claimant did not demonstrate why the production of these documents would be relevant to the case, e.g. to what extent a violation of the UIPM Statutes could follow from reviewing these documents.

- 58 Therefore, the Sole Arbitrator also dismisses the document production request.

VIII. Costs

- 59 According to Article 8.13 UIPM Code of Ethics, the UIPM Court of Arbitration may also rule on the costs of the proceedings.

- 60 In accordance with the CAS Code (Article 64.5) the relevant criteria for both the allocation of costs and the reimbursement of legal fees and expenses are (1.) the outcome of the proceedings, (2.) the procedural conduct of the parties and (3.) the financial resources of the parties.

- 61 With regard to the outcome of the proceedings, the Claimant being the losing party shall in principle bear the costs (if any). The Sole Arbitrator finds that both parties shall bear their respective legal fees.

IX. Decision

- 62 On these grounds, the Sole Arbitrator of the UIPM Court of Arbitration rules that

I. the Claimant’s requests for relief are dismissed;

II. all other requests are dismissed;

III. the Claimant bears the costs of these proceedings.

IV. the Claimant shall pay a contribution to the legal costs of the Respondent in an amount of EUR 1,000.

Award issued on 1 February 2022 by the UIPM Court of Arbitration Sole Arbitrator Mr Alexander Georgiev.

Note: In accordance with Article 8.14 UIPM Code of Ethics the decision of the UIPM Court of Arbitration may be appealed with the Court of Arbitration for Sports (CAS), Lausanne, in accordance with the Code of sports-related Arbitration (CAS-Code).



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Mr Alexander Georgiev.