

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR DZMITRY NABOKAU

### INTRODUCTION

1. In April 2017, World Athletics<sup>1</sup> established the Athletics Integrity Unit ("AIU") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code ('the "Code"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("ADR") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Mr Dzmitry Nabokau (the "Athlete") is a 25-year-old high-jumper from Belarus<sup>2</sup>.

### SUMMARY OF THE PROCEEDINGS

3. On 9 September 2019, the Athlete provided a urine Sample In-Competition at the 'The Match Europe v USA' held in Minsk, Belarus, which was given code 4391957 (the "Sample").
4. The Sample was analysed by the World Anti-Doping Agency ("WADA") accredited laboratory in Warsaw, Poland (the "Laboratory") and revealed the presence of Furosemide (the "Adverse Analytical Finding").
5. Furosemide is a Prohibited Substance under the WADA 2019 Prohibited List in the category *S5: Diuretics and masking agents*. Furosemide is a specified substance prohibited at all times.
6. On 24 October 2019, the AIU notified the Athlete (on behalf of World Athletics) of the Adverse Analytical Finding, informing him of his right to have the B Sample analysed and inviting him to provide an explanation for the Adverse Analytical Finding.
7. On 28 October 2019, the Athlete responded and accepted a voluntary Provisional Suspension.
8. Following a request from the Athlete, on 30 October 2019, the AIU wrote to the Athlete and confirmed that the estimated concentration of Furosemide in the Sample was 17ng/mL.
9. On 31 October 2019, the Athlete wrote to the AIU by e-mail and explained that he had never taken any banned substance intentionally and that he did not know how Furosemide had come to be present in the Sample. The Athlete requested the B Sample analysis of the Sample and copies of the Laboratory Documentation Packages ("LDP").
10. On 14 November 2019, the AIU wrote to the Athlete with the results of the B Sample analysis. The B Sample analysis confirmed the Adverse Analytical Finding with an estimated concentration of Furosemide of 17.78ng/mL.
11. The Athlete was provided with a copy of the B Sample LDP and was requested to provide his explanation and any supporting documents for the presence of Furosemide in the Sample by no later than 21 November 2019.

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<sup>1</sup> formerly the International Association of Athletics Federations

<sup>2</sup> <https://worldathletics.org/athletes/belarus/dzmitry-nabokau-14579360>

12. On 21 November 2019, the Athlete provided the AIU with an initial explanation which he proceeded to supplement with further explanations in February, April and May 2020, all of which were rejected by the AIU.
13. In July 2020, the matter was referred to the Disciplinary Tribunal (the “**Tribunal**”) and a hearing was held by videoconference on 19 August 2020.
14. On 1 September 2020, the Tribunal found the Athlete guilty of an anti-doping rule violation and imposed a period of ineligibility of two years until 27 October 2021. No appeal was made against the Tribunal decision.

#### WADA TECHNICAL LETTER - TL24

15. On 31 May 2021, the WADA Executive Committee approved WADA Technical Letter - TL24: Minimum Reporting Levels for Certain Diuretics that are known Contaminants of Pharmaceutical Products (“**TL24**”), with an effective date of 1 June 2021.
16. In accordance with Article 1.1.3 of the International Standard for Laboratories (“**ISL**”), once approved, a Technical Letter becomes an integral part of the ISL and supersedes any previous publication on the same topic, including Technical Document(s) and/or the ISL.
17. TL24 identifies 6 (six) named diuretics, including Furosemide, and states in material part as follows:

*“At estimated urinary concentrations of 20 ng/mL or less, a diuretic would not be effective to mask the presence of any other Prohibited Substances that may be present in the Sample. Therefore, the new Minimum Reporting Level (MRL) for the six (6) diuretics identified above, set at 20 ng/mL, will minimize the risk of sanctioning Athletes who test positive due to the use of contaminated medications, without undermining the fight for clean sport[....]”*

- *The presence in urine of one or more of these six (6) diuretics, namely acetazolamide, bumetanide, furosemide, hydrochlorothiazide, torasemide and triamterene, and their Metabolite(s) / degradation products, at an estimated concentration at or below ( $\leq$ ) 20 ng/mL, shall be reported as a Negative Finding; [....]”.*

18. The exception to the application of TL24 for certain sports that use weight classes does not include Athletics.
19. Rule 1.7.2(f) of the 2021 World Athletics Anti-Doping Rules (“**2021 ADR**”) states as follows:

*“These Anti-Doping Rules do not apply retroactively to matters pending before the Effective Date, save that:*

*[....]*

- (f) *Changes to the WADA Prohibited List and/or to Technical Documents relating to substances or methods on the Prohibited List will not be applied retroactively unless they specifically so provide. However, where the effect of the change is to remove a Prohibited Substance or Prohibited Method from the Prohibited List, an Athlete or other Person who is serving a period of Ineligibility on account of that (former) Prohibited Substance or Prohibited Method may apply to the Integrity Unit or other Anti-Doping Organisation that had Results Management responsibility for the anti-doping rule violation to consider a reduction in the period of Ineligibility in light of its removal from the Prohibited List”.*

## ATHLETE'S APPLICATION

20. On 3 June 2021, the Athlete made an application to the AIU for an urgent review of his case in light of the introduction of TL24 and requested a decision to allow him to compete in June 2021 so as to be able to qualify for the forthcoming Olympic Games.

## AIU DECISION

21. By application of Rule 1.7.2(f) described above, the AIU considers that the effect of TL24 is to remove Furosemide from the Prohibited List as far as reported concentrations of 20 ng/mL or less are concerned and, in the circumstances, it has decided out of fairness to the Athlete to reduce the remaining period of his ineligibility such that he is eligible to return to competition with immediate effect<sup>3</sup>.

## APPEAL RIGHTS

22. This decision is copied to the Athlete and his National Federation and to the parties with a right of appeal against the decision under the 2021 ADR, namely, the National Olympic Committee of the Republic of Belarus and the World Anti-Doping Agency.

Monaco, 10 June 2021

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<sup>3</sup> The Athlete has already served nearly 20 months of his 24-month period of ineligibility