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Amendment of the Federal Anti-Doping Act 2007, of
the Drug Act and the Prescription Requirement Act
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115th Federal Act amending the Federal Anti-Doping Act 2007, the Drug Act and the Prescription Requirement Act

The Austrian National Council (Nationalrat) has enacted:

**Article 1
Amendment of the Federal Anti-Doping Act 2007**

The Federal Anti-Doping Act 2007, FLG I No. 30, shall be amended as follows:

1. The following subsection heading shall be inserted before the heading of § 1:

**“Article 1
Anti-Doping Rules under Federal Sports Law**

2. The following subsection heading shall be inserted before the heading of § 21:

**“Subsection 2
Special Duty of Disclosure”**

3. The following subsection heading shall be inserted before the heading of § 22:

**“Subsection 3
Special Control and Penal Provisions”**

4. The following subsection headings shall be inserted before the heading of § 23:

**“Subsection 4
Final Provisions”**

5. In § 1 subsection 2 line 1 the words “according to” shall be replaced by the words “according to Annex I of the” and the quote from the “FLG III. No. 108/2007” shall be inserted after the word “sport”.

6. *In § 1 subsection 2 line 7 the words “the injunction pursuant to § 5a of the Drug Act, FLG No. 185/1983,” shall be replaced by the words “an injunction pursuant to § 22a”.*

7. *In § 1 subsection 4 the words “and/or its annexes” shall be inserted after the word “Convention” and the word “is” replaced by the word “are”.*

8. *In § 2 subsection 3 the words “Special Olympics Österreich” shall be deleted.*

9. *In § 4 subsection 2 line 10 the full stop shall be replaced by a semi-colon; the following line 11 shall be added to § 4 subsection 2:*

“11. The suspensions imposed by the IOC, IPC, by international sports federations, an athletic organisation pursuant to § 2 (3), the independent Arbitration Committee, a foreign national doping control agency or a foreign national sports federation stating the name of the athlete concerned and the duration of the suspension and its lifting with the reasons for this, without it being possible to infer the health data of the individual concerned.”

10. *§ 4 subsection 4 reads:*

“(4) The Independent Anti-Doping Agency shall establish the following committees:

1. The Ethics Committee, which shall consist of three, but no more than five, professionally qualified persons with experience in the fight against doping, for supporting doping prevention measures as well as for providing information and education regarding doping;

2. The General Medical Committee of Physicians comprising four, but no more than six medical practitioners with experience in the field of sports medicine and one pharmaceutical expert for ruling on applications for Therapeutic Use Exemptions according to § 8 subsection 3 and for counselling in medical affairs;

3. The Dentistry Committee, comprising two, but no more than four dentists, with appropriate experience and one pharmaceutical expert for ruling on applications for Therapeutic Use Exemptions according to § 8 subsection 3 and for counselling in dental affairs;

4. The Veterinary Committee comprising two, but no more than four veterinarians with appropriate experience and one pharmaceutical expert for ruling on applications for Therapeutic Use Exemptions for animals (§ 20 subsection 3 line 3) and counselling in veterinary medical affairs;

5. The Legal Committee, comprising five members, for ruling on disciplinary matters in the first instance in the event of violations of anti-doping regulations according to § 15 subsection 6. Three members must hold a degree in law and have experience in conducting formal preliminary investigation procedures; one member must be an expert in the field of pharmaceuticals or toxicology and one member must be an expert in sports medicine;

6. The Selection Committee pursuant to § 9 subsection 9, which must comprise at least three but no more than five persons with the necessary expertise;

The members of the committee pursuant to lines 1 to 5 shall be appointed for four years and members of the committee pursuant to line 6 for one year. A substitute with the necessary qualifications and experience must be appointed for each committee member for the event that the member is unable to perform his or her duties. The members shall appoint one member to serve as the chairperson and one person as his or her deputy. Reappointments are allowed. Appointment to the committee may only be revoked prematurely for important reasons. The members of the committee shall be independent in their decision-making. They shall make decisions by a majority vote and shall have a quorum when at least half the appointed members are present or represented by a proxy.”

11. § 4 shall be amended by the following subsection 9:

“(9) The Independent Anti-Doping Agency may communicate to public authorities, courts of law and social insurance funds, any personal data obtained during the course of its duties with the exception of health data, if such data constitutes a vital prerequisite for the performance of the tasks entrusted to it by law. This shall not affect obligations under federal or provincial laws to communicate personal data.”

12. In §5 subsection 1 line 4 the words “belong to a federal sports federation directly or indirectly through an association or provincial federation and” shall be inserted before the word “meet”.

13. §5 subsection 1 line 5 reads:

“5. Athletes as defined by lines 1 to 4, who have been suspended or barred by an organisation pursuant to § 4 subsection 2 line 11 and who have not announced the ending of their active careers to the Independent Doping Agency;”

14. § 5 subsection 1 line 6 reads:

“6. Athletes as defined by lines 1 to 4 who have ended their active careers and who have announced the resumption of their active careers to the Independent Anti-Doping Agency.”

14a. In § 6 subsection 1 line 1 the words “and the proceedings of the Legal Committee (§ 15 subsection 1 and 6)” shall be inserted after the word “doping controls.”

15. In § 8 subsection 1, first sentence, the following clause shall be inserted after the words “competent body:”

“or a valid Therapeutic Use Exemption in accordance with subsection 2 issued by WADA, an international sports federation, a foreign national anti-doping agency or a foreign national sports federation is not available.”

16. § 8 subsection 3 reads:

“(3) To rule on applications for Therapeutic Use Exemptions the Independent Anti-Doping Agency shall consult the Medical Committee (4 subsection 4 line 2); in the

case of Therapeutic Use Exemptions for dental treatment the Dentistry Committee shall be consulted.”

17. *In § 9 subsection 6 the words “notwithstanding § 5” shall be inserted before the words “outside championships.”*

18. *In § 9 subsection 9 the final sentence shall be deleted and the words “three persons with the necessary expertise” shall be replaced by the words “the Selection Committee (§ 4 subsection 4 line 6)”.*

19. *§ 15 subsection 6 states:*

“(6) The Independent Anti-Doping Agency shall consult an independent Legal Committee for the ruling (§ 4 subsection 4 line 5). The national sports federation for which the Independent Anti-Doping Agency is making the ruling has the right – except in the case of the chairman – to delegate another person with appropriate education and experience in lieu of a member of the Legal Committee who holds a degree in law.”

20. *§ 16 shall be amended by addition of the following subsection 5:*

“(5) § 4 subsection 9 shall apply analogously.”

21. *§ 17 subsection 2 shall be amended by addition of the following sentence:*

“The request for such examination shall have no suspensive effect on the decision pursuant to § 15.”

22. *In § 17 subsection 6, the words “an appeal to the Court of Arbitration for Sports (CAS) as well as” shall be inserted after the words “option of resorting to.”*

23. *In § 18 subsection 2 line 4, letter c the full stop shall be replaced by a semi-colon and the following letter d. added:*

“d. the obligation of the athlete to acknowledge the regulations according to § 19 subsection 1 lines 1, 3, 6 through to 8.”

24. *In § 18 subsection 8 the quote “§ 5 subsection 1 line 4” shall be replaced by the quote “§ 5 subsection 1 lines 3 and 4”.*

25. *In § 19 subsection 3 the quote “§ 5 subsection 1 line 4” shall be replaced by “§ 5 subsection 1 line 3 and 4”.*

26. *§ 20 subsection 3 line 3 reads as follows:*

“3. rulings regarding Therapeutic Use Exemptions according to § 8 subsection 3 shall be made by the Veterinary Committee (§ 4 subsection 4 line 4) and”

27. *§§ 22 and 22a including the headings read as follows:*

Special Control Regulations

§ 22. (1) The agents of the Federal Chancellor, of the experts commissioned by the Federal Chancellor and the Independent Anti-Doping Agency commissioned separately by the Federal Chancellor for this purpose are, for the purpose of

monitoring the prohibitions according to § 22a, authorised to inspect premises belonging to legal or natural persons which are dedicated to the pursuit of sport or the promotion of health and fitness, or in which sporting events and competitions take place. This authorisation to carry out inspections also applies to premises where there are reasonable grounds for presuming that the paraphernalia for the production of prohibited substances or agents with prohibited substances or for the purposes of blood doping or genetic doping are located there. The official inspection must, except in cases of clear and present danger, be carried out during normal business and opening hours or competition times.

(2) In pursuit of their duties the control organs pursuant to subsection 1 are subject to the instructions of the Federal Chancellor and prior to commencing the doping controls must present their authorisation. When carrying out controls care must be taken to avoid any disruption or obstruction to activities which is not absolutely necessary.

(3) The control organs defined in subsection 1 shall be authorised to demand or to take samples of the medicinal products and other agents suspected of containing prohibited substances as defined by § 1 subsection 2 line 1. Unless an explicit decision is taken to the contrary, part of the sample, or if the sample cannot be divided into parts of equal quality or only at the risk of endangering the test purpose, a second item of the same type taken as a sample shall be left behind. The samples that have been taken and left behind shall be appropriately packed, closed in an official form or sealed and dated. The sample that has been taken shall be furnished for official examination.

(4) The organs authorised to represent the association, the proprietor of the business, the persons responsible for organising the competition, their deputies and agents shall be obliged to grant access to the control organs defined in subsection 1, and to assist them in the performance of their control duties, and in particular to provide them upon request with information regarding rooms and containers, to grant access to the rooms and to facilitate inspection of containers, documents and records as well as the taking of samples.

(5) At the request of the control organs the federal police shall render assistance within the scope of their legal sphere of competence to the control organs defined in subsection 1 in the exercise of their powers derived from subsections 1, 3 and 4.

(6) No compensation shall be due for samples taken in accordance with subsection 3.

(7) Those who fail to comply with the obligations set out in subsection 4 or the instructions of the control organs are guilty of a misdemeanour and shall be penalised with a fine of up to 40,000 Euro, in the event of non-payment with a custodial sentence of up to six weeks.

Penalties

§ 22a. (1) Anyone who for the purposes of sports doping

1. circulates or dispenses to others prohibited substances specified in Annex 1 of the UNESCO International Convention against Doping in Sport (Prohibited List), unless they are not prohibited drugs as defined by the Prohibited Drug Act, FLG. I No. 112/1997, or

2. uses upon others the prohibited methods to artificially increase oxygen transfer (blood doping) or gene doping (the non-therapeutic use of cells, genes, gene components or the regulation of the gene expression to increase athletic performance) specified in the Prohibited List shall be penalised with a custodial sentence of up to six months or a fine of up to 360 daily rates.

(2) Penalties shall also be imposed on anyone who in violation of the regulations is found to be in possession of anabolic agents, hormones or stimulants in a quantity that exceeds the threshold level (subsection 7) with the intention of bringing them into circulation or used upon others for the purposes of sports doping.

(3) Anyone who is guilty of an offence pursuant to subsection 1 line 1 in connection with the anabolic agents, hormones or stimulants shall be penalised with a custodial sentence of up to one year.

(4) Anyone who

1. commits a criminal act as defined by subsection 1 in connection with minors and who themselves is of full age and more than two years older than the minor, or who

2. commits a criminal act as defined by subsection 1, and who within the last twelve months prior to that act has committed at least three such acts and who acted with the intention of obtaining regular income by repeatedly committing the offense, shall be penalised with a custodial sentence of up to three years.

(5) Anyone who commits a criminal act as defined by subsection 4 in connection with the anabolic agents, hormones or stimulants specified in the Prohibited List shall be penalised with a custodial sentence of up to three years, however, if the quantity exceeds the threshold quantity (subsection 7) the penalty shall be a custodial sentence of up to five years.

(6) Under subsections 1 to 5 the offender shall only be penalised if the act is not subject to a stricter penalty under other provisions.

(7) The Federal Chancellor shall in agreement with the Federal Minister of Health, Family and Youth and the Federal Minister of Justice define by decree the threshold quantity of the individual anabolic agents, hormones and stimulants which in terms of the pure ingredient of the substance is capable of resulting in a serious threat to the life or health of a person (threshold quantity).”

28. § 23 reads as follows:

“§ 23. Provincial regulations in the sense of this act as well as the regulations of the Drug Act, FLG. No. 185/1983, the Prescription Requirement Act, FLG. No. 413/1972, as well as § 5 subsection 2 line 7 and § 38 of the Animal Welfare Act, FLG. I No. 118/2004, shall remain unaffected.”

29. § 26 line 2 shall become line 5; the following lines 2 to 4 shall be inserted:
“2. the Federal Chancellor in cooperation with the Minister of Internal Affairs as regards § 22 subsection 5;

3. the Federal Minister of Justice as regards § 22a subsections 1 to 6;

4. as regards § 22a subsection 7 the Federal Chancellor in cooperation with the Minister of Health, Family and Youth and the Federal Minister of Justice;”

30. § 27 shall be amended by the addition of the following subsection 7:

“(7) §1 subsection 2 line 1 and line 7, §1 subsection 4, §2 subsection 3, §4 subsection 2 lines 10 and 11, §4 subsections 4 and 9, §5 subsection 1 lines 4 to 6, §8 subsections 1 and 3, §9 subsections 6 and 9, §15 subsection 6, §16 subsection 5, §17 subsections 2 and 6, §18 subsection 2 line 4, §18 subsection 8, §19 subsection 3, §20 subsection 3 line 3, §22 to 23 and §26 as amended in the FLG.I No. 115/2008, shall come into force on 1 August 2008; if this Federal Act is promulgated after 31 July 2008 upon expiry of the day of promulgation. Furthermore, the following applies:

1. The penalties changed by this Federal Act shall not be applied in criminal cases in which the judgement in the first instance was given before they came into force. Following the reversal of a judgement as a result of a nullity appeal, appeal, retrial or resumption or reopening of criminal proceedings or as a result of an objection, action shall be taken in accordance with the purpose of §§ 1 and 61 of the Penal Code – StGB, FLG. No. 60/1974.

2. The term of the members of the Ethics Committee, the Medical Committee, the Legal Committee, the Veterinary Committee and the Selection Committee appointed before the coming into force of Federal Act FLG. I No. 115/2008 shall be calculated as of 1 August 2008.”

Article 2

Amendment to the Drug Act

The Drug Act, FLG. No. 185/1983, most recently amended by Federal Act FLG. I No. 52/2008, shall be amended as followed:

1. § 5a shall be deleted.

2. § 68a shall be deleted.

3. In § 76a subsection 1 the words “or contain prohibited substances as defined in § 1 subsection 2 line 1 of the Anti-Doping Act 2007” shall be inserted after the word “are.”

4. In § 76a subsection 7 and in § 76b subsection 1 the quote “§ 5a” shall in each case be replaced by the quote “§1 subsection 2 line 1 of the Anti-Doping Act 2007”.

5. §§ 84a and § 84b shall be deleted.

6. In § 87 the wording “- with the exception of those according to § 5a and § 68a ---“ shall be deleted.

7. *§ 95 shall be amended by the addition of the following subsection 11:*

“(11) § 5a, § 68a, § 76a subsection 1 and 7, § 76b subsection 1, § 84a, § 84b, § 87 as amended in the FLG. I No. 115/2008, shall come into force on 1 August 2008; if this Federal Act is promulgated after 31 July 2008, upon expiry of the day of promulgation.”

8. *§ 96 subsection 2 line 1 reads:*

“1. of § 76a subsections 6 and 7 – provided it concerns an examination of substances specified in § 1 subsection 2 line 1 of the Federal Anti-Doping Act 2007 – is the Federal Chancellor;”

9. *In § 96 subsection 2 line 2 the quote “§§ 84a and 85a” shall be replaced by the quote “§ 85a”.*

Article 3 **Amendment of the Prescription Requirement Act**

The Prescription Requirement Act, FLG. No. 413/1972, most recently amended by the Federal Act FLG. I Nr. 36/2008 shall be amended as follows:

1. *§ 2a reads:*

“§ 2a. It is forbidden to prescribe medicinal products with prohibited substances as defined by § 1 subsection 2 line 1 of the Federal Anti-Doping Act 2007, FLG. I No. 30, line for the purposes of sports doping.”

2. *§ 8 shall be amended by the following subsection 9:*

“(9) § 2a as amended in the FLG. I No. 115/2008 shall come into force on 1 August 2008; if this Federal Act is promulgated after 31 July 2008, upon expiry of the date of promulgation.”

Fischer

Gusenbauer