

**Anti-Doping Hearing Panel**  
of the  
**International Biathlon Union**

Decision  
in the matter of  
**Mr. Alexander Loginov**

The Anti-Doping Hearing Panel, according to Article 8.1.3 IBU Anti-Doping Rules, in the composition of Christoph Vedder, Professor of Law, Munich, Germany (Chair), Walter O. Frey, Medical Doctor, Zurich, Switzerland, and Markus Manninen, Attorney-at-Law, Helsinki, Finland tried the case of Mr. Alexander Loginov and, having duly deliberated the facts and the law, renders the following decision:

**I. Statement of Facts**

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Mr. Alexander Loginov ("the Athlete"), an athlete under the jurisdiction of the Russian Biathlon Union ("RBU"), was submitted to an out-of-competition doping control initiated by the International Biathlon Union ("IBU") on November 26, 2013 at Ostersund, Sweden.

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The first analysis of the A samples of the Athlete was performed in early December 2013 by the WADA accredited laboratory in Cologne and showed atypical results and, therefore, were stored for later re-analysis. Between 4 and 12 November 2014 the A sample A 2690977 collected on November 26, 2013 was re-analysed in the Cologne laboratory. The analysis revealed the presence of recombinant EPO. The Expert Opinion by the WADA accredited Seibersdorf Laboratories, dated November 10, 2014, confirmed the presence of exogenous EPO. The Cologne laboratory informed the IBU of the Adverse Analytical Finding ("AAF") under letter of November 17, 2014. The Documentation Package was sent to IBU under letter of December 10, 2014.

3

By letter of November 25, 2014 the IBU Secretary General notified the RBU and the Athlete that the sample taken on November 26, 2013, after a re-test was performed according to Article 6.5 IBU ADR, resulted in an AAF. The Athlete was provisionally suspended.

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By the said letter of November 25, 2014 the Athlete and the RBU were further notified of:

- the result of the analysis not being consistent with an applicable TUE
- the initial review conducted by the IBU not showing any apparent departure from the WADA International Standards for Testing and for Laboratories ("ISL")
- the initiation, by the IBU, of the result management process for a possible Anti-Doping Rule Violation ("ADRV") in the sense of Article 2.1. IBU ADR
- the right to request the analysis of the B sample or, failing such request, that the B sample analysis may be deemed waived
- the scheduled date, time and venue as well as the costs of the B sample analysis and the opportunity of the Athlete and/or his representatives as well as representatives of the RBU to attend the B sample analysis
- the possibility to have a provisional hearing according to Articles 7.6.3, 7.6.1 IBU ADR.

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By letter of December 25, 2014 RBU, on behalf of the Athlete, waived his right to the B sample analysis.

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On January 8, 2015, the IBU Secretary General referred the matter to the ADHP.

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On February 2, 2015, according to Article 8.1.3 IBU ADR, the particular Panel to hear the Athlete's case was established.

## **II. Proceedings before the Anti-Doping Hearing Panel**

### **1. The IBU ADHP**

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According to Article 8 IBU ADR, the ADHP is the competent body to decide whether or not, in a given case, an ADRV was committed. According to Article 11.2 of the IBU Constitution and Article 8.1.8 IBU ADR, the decisions of the ADHP may be appealed directly to the Court of Arbitration for Sport in Lausanne, Switzerland.

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Although the ADHP is part of the institutional framework of the IBU and renders, in matters of alleged ADRVs, the final decision for the IBU, it acts in complete independence. As Article 8.1.1 IBU ADR states "*(e)ach panel member will be otherwise independent of IBU*". The Panel members appointed in the case pending have no prior involvement with the case.

### **2. The Proceedings before the Panel and the Submissions of the Parties**

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Under letter of January 8, 2015 the IBU served to the Panel the documentation package of the laboratory and the full set of correspondence with the Athlete and the RBU. On the same day the documentation package and other documents were sent to RBU and the Athlete.

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By letter of February 2, 2015, directed to RBU, the Chairman of the Panel reiterated the right of the Athlete to request a hearing and notified that a hearing could take place if explicitly requested by the Athlete no later than February 9, 2015. Furthermore, the Athlete was invited to submit a statement no later than February 16, 2015.

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Since no response was received within the time-limit RBU was contacted by the IBU and, for the sake of fairness to the Athlete, the Panel, by letter of February 26, 2015, granted RBU and the Athlete a second opportunity to request a hearing and to submit a statement no later than March 25, 2015.

13

By letter of March 24, 2015, RBU forwarded a written statement of the Athlete together with an English translation. The Athlete explained that he had waived his right to have the B sample analysed exclusively because he did not want

*"to publicly disclose my intimate and personal problem. but 2 years ago, I was diagnosed with acute prostatitis."*

He further explained that, due to the tight schedule of the World Cup races, he was not able to get medical treatment at a hospital but was prescribed ambulatory treatment, instead. Because of an exacerbation suffered in late October 2013 he was offered a "*biologically active supplement*" by a "*friend who suffers from the same problem*".

*"Under a strong pressure of the idea that in February I have to take part at the Olympic Games in Sochi, to which I was training hard for the entire Olympic cycle, I took this biologically active supplement, not knowing that, as it turned out, it*

*contained certain elements of the prohibited metabolite, which was found later in my A sample."*

He emphasized that he had

*"no intention of taking any WADA prohibited substances in order to improve my performance and gain advantage during competitions."*

For the event he would be found guilty of an ADRV he pleaded that the period of ineligibility should start from the date of the sample collection.

14

On April 3, 2015 IBU was invited to respond no later than May 8, 2015. On May 8, 2015, within the time-limit, IBU filed a written statement which replaced a first statement dated February 16, 2015. IBU submitted that the rules applicable to the case are the ADR 2012 while the amended ADR 2015 may be applied as *lex mitior* to the extent they provide for a milder sanction.

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IBU claims that, based on the documentation of the A sample analysis, it has demonstrated the presence of recombinant EPO, a prohibited substance, in the Athlete's A sample which constitutes an ADRV under Article 2.1 IBU ADR and refers to the fact that recEPO is a non-specific substance which, according to S2.1 of the 2013 Prohibited List is prohibited in- and out-of-competition.

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IBU states that the Athlete, in his written explanation, did neither dispute the AAF nor that the analysis was in line with the applicable WADA standards. IBU concludes that the Athlete is guilty of an ADRV for which, as it is the Athlete's first ADRV, according to Article 10.2 IBU ADR, the standard sanction of two years must be imposed.

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In reply to the Athlete's written explanation IBU refers to the following elements:

- in the event of EPO as a non-specific substance it is not relevant whether the substance was taken intentionally
- the Athlete is not in the possession of a TUE
- there is no evidence of the Athlete's alleged medical condition
- the Athlete did not identify the medical product allegedly applied by him
- the Athlete had admitted having applied the medication without any medical advice
- there is no evidence that the medication caused the AAF.

IBU concludes that the explanations put forward by the Athlete do not justify a reduction of the standard sanction.

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Nor does the IBU find aggravating circumstances.

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Concerning the Athlete's request to start the period of ineligibility from the date of the sample collection IBU states that no reasons had been given for such request. Instead, IBU refers to Article 10.2 IBU ADR which provides that the period of ineligibility shall commence on the date of the hearing decision.

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Based upon Article 10.8 IBU ADR IBU claims that all results obtained subsequent to the sample collection, i.e. November 26, 2013, shall be disqualified automatically.

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However, taking into consideration the decision the ADHP has pronounced on April 15, 2015 in another re-test case, the IBU invites the Panel

*“... to consider whether in a case of a re-test which took place more than one year after the sample collection, the commencement date should be determined by taking the delay not attributable to the Athlete (Art. 10.9.1 IBU ADR) at least partially into account, especially since all results since that date have to be disqualified. The strict application of both Art. 10.8 and 10.9 would otherwise lead to a de facto ban of more than 3 years.”*

22

IBU suggests with a certain sympathy to determine a date for the commencement taking into account the specificities of the case:

*“... the Athlete should still serve at least 1/2 of the period of ineligibility going forward from the date of the ADHP Decision in order to avoid the wrong signal that cheating and hiding pays.”*

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IBU's request for relief is:

*“The Athlete shall be declared ineligible for a period of two years because of an Anti-Doping Rule Violation according to Art. 10.2 IBU ADR 2012.”*

### **3. The Hearing**

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The hearing took place on June 1, 2015, 9.00 h until 11.15 h at the premises of IBU in Salzburg. Present were:

on behalf of the Athlete:

- Mr. Serguey Mnatsakanov, Head of the International Relations Department, RBU
- Mr. Serguey Kostin, Chief Executive Officer, RBU

on behalf of IBU:

- Dr. Martin Noth, Counsel to IBU
- Ms. Nicole Resch, Secretary General, IBU

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In his opening remarks the Chairman stated that the presence of EPO and the performance of the analysis according to the ISL are not challenged. The parties confirmed their satisfaction with the proceedings so far. The Chairman identified as remaining matters of dispute: the alleged administration of a “biologically active substance” and the date of the commencement of a potential period of ineligibility.

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Based on the arguments submitted in its submission of May 8, 2015, IBU requested that a two years' sanction for an ADRV under Article 2.1 IBU ADR be imposed on the Athlete. With regard to the commencement of the sanction IBU, in their closing statement, amended its previous submission to the effect that the delay between the sample collection and the re-analysis of the sample were not attributable to the Athlete and, therefore, according to Article 10.9.1 IBU ADR, the period of ineligibility should commence on November 26, 2013.

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On behalf of the Athlete the representative of the RBU acknowledged the AAF and did not claim mitigating circumstances and, hence, a sanction shorter than 2 years. Instead, it was submitted that the Athlete, taking the disqualification of the results into account, serves a de

facto-ban as of November 26, 2013 and, therefore, the period to be imposed should commence on the date of the sample collection. The remaining part of the sanction would be enough and fair to the Athlete who was a young athlete.

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The following issues were discussed with the parties: (1) the alleged "biologically active substance" was administered by taking pills while EPO must be administered by injections, and (2) the date of the commencement of the sanction in the particular case considered against the background of re-test situations in general. At the end, closing statements were made on behalf of IBU and the Athlete.

#### **IV. In Law**

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The Panel considered the facts and the law as discussed both in the written proceedings and at the hearing.

##### **1. Applicable Law**

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The Athlete who is an Athlete under the jurisdiction of the RBU is bound by the IBU ADR which, according to their introductory "Scope"

*"apply to the IBU, each national federation ... and each participant in the activities of the IBU or any of its national federations by virtue of the participant's membership, accreditation, or participation in IBU, its member federations, or their activities or Events."*

Therefore, the IBU ADR are the law applicable to the dispute before the Panel.

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The law applicable consists of the rules applicable at the time when the alleged ADRV was committed, i.e. on November 26, 2013. Hence, the IBU ADR as adopted in 2012 apply while the IBU ADR 2014, according to their Article 25 are in force as of January 1, 2015. According to Article 20.7.2 IBU ADR 2014, the new rules have no retroactive effect except for a possible *lex mitior*.

##### **2. Anti-Doping Rule Violation**

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Doping, by virtue of Article 1 IBU ADR, is defined as the occurrence of one of the ADRV set forth in Article 2 IBU ADR.

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According to Article 2.1 IBU ADR,

*"the presence of a prohibited substance or its metabolites or markers in an Athlete's sample"*

constitutes an ADRV. The prohibited substances are contained in the WADA Prohibited List which, according to Article 4.1 IBU ADR, is incorporated to the IBU ADR.

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The 2013 Prohibited List, which applied at the time of the sample collection, under S2.1 lists "erythropoietin (EPO)"

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The re-analysis of the Athlete's A samples performed in November 2014 showed the

presence of recombinant EPO. According to Article 6.5 IBU ADR, IBU has the authority to re-analyse samples. This analysis too has to be and was conducted in conformity with the ISL.

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In a situation where the Athlete waived the analysis of the B sample, the finding of a prohibited substance in the Athlete's A sample, according to Article 2.1.2 IBU ADR, establishes sufficient proof of an ADRV.

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Based upon the laboratory's documentation including the Expert Opinion by Drs. Gmeiner and Reichel of Seibersdorf Laboratories, the IBU has discharged its burden of proving that an ADRV occurred "to the comfortable satisfaction" of the Panel, according to Article 3.1 IBU ADR. According to Article 3.2.1 IBU ADR, WADA accredited laboratories are presumed to have conducted the sample analysis in accordance with the ISL. The initial review in the course of the results management conducted by the IBU did not reveal any departure from the ISL. No TUE was present.

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The Athlete, in his written explanation and at the hearing, did not challenge the finding of an AAF nor did he claim that a departure from the ISL occurred which reasonably could have caused the AAF actually detected.

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Therefore, the presence of recEPO, which is a prohibited substance listed under S2.1 of the Prohibited List, in the Athlete's A sample and, hence, an ADRV in the sense of Article 2.1 IBU ADR has been proven. According to Article 2.1.1 IBU ADR, no intent, fault, negligence, or knowing use is required in order to constitute an ADRV.

### **3. Sanction**

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For a first ADRV in the form of the presence of a prohibited substance Article 10.2 IBU ADR provides a regular sanction of two years' ineligibility. The doping offense under consideration is the Athlete's first ADRV.

### **4. Elimination or Reduction of the Sanction**

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If an athlete establishes by a balance of probability, as required by Article 3.1 IBU ADR, that, due to exceptional circumstances, he or she bears no significant fault or negligence Article 10.5.2 IBU ADR allows to reduce the period of ineligibility, but in the case before the Panel the reduced period may not be less than one year.

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In the event of an ADRV for the presence of a prohibited substance Article 10.5.2 IBU ADR specifically requires that the athlete establishes how the substance entered his body. In his written explanation as well as at the hearing the Athlete did neither identify the medication he allegedly applied nor that the medication caused the AAF nor that he actually took that medication. The Athlete did not demonstrate the existence of a TUE related to his alleged disease. Hence, the explanations concerning the alleged application of a "biologically active substance" provided by the Athlete in his written statement and during the hearing are irrelevant and do not allow the application of Article 10.5.2 IBU ADR.

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In the Doping Control Form he mentioned "Polyvitamines, L-Carnithine, Mildonate". These are ordinary supplements which are allowed but have no relation to EPO.

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Therefore, in the absence of exceptional circumstances which would allow to reduce the

sanction, the period of ineligibility to be imposed on the Athlete for the ADRV committed on November 26, 2013 is two years as provided for in Article 10.2 IBU ADR.

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The new regime of sanctions established by Article 10 IBU ADR 2015 does not constitute a *lex mitior* because, according to Article 10.2 IBU ADR 2014, the regular sanction for a violation of Article 2.1 IBU ADR, as in the present case, would amount to four years.

## **5. Disqualification of results**

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According to Article 10.8 IBU ADR, also in the event of an out-of-competition test,

*“ all ... competitive results obtained from the date a positive sample was collected ..., through the commencement of any provisional suspension ..., will, unless fairness requires otherwise, be disqualified .... ”*

Therefore, all competitive results the Athlete has obtained as of November 26, 2013 shall be disqualified.

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However, the first analysis of his A sample conducted in December 2013 was reported negative. Only as late as on November 25, 2014, i.e. about 11 months after the first analysis, the A sample was re-tested. The first analysis did not lead to any consequences and was even not made known to the Athlete.

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Regularly, the span between the sample collection and the report of an AAF, if any, extends to not more than one month and the retroactive effect of the disqualification by virtue of Article 10.8 IBU ADR over that short period of time is acceptable because the athletes concerned must be aware that the analysis may reveal an AAF. After the time generally needed for analysis, notification and suspension had elapsed, athletes who had administered a prohibited substance, nonetheless, are not legally authorized to compete just because of a lack of an AAF. A re-analysis of the sample may reveal an AAF.

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In re-test cases the sequence of sample collection, re-analysis and suspension is different in time. When A samples are re-analysed the span between sample collection and the report of an AAF which leads to the provisional suspension is much longer than the situation regularly envisaged by Article 10.8 IBU ADR: it may take even years. The application of Article 10.8 IBU ADR in re-test cases like the one before the Panel would extend the retroactive effect of the disqualification to a longer period of time during which the athletes concerned in fact were not prevented from competing. This, together with the period of ineligibility, leads to a sanction which de facto is extended considerably.

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Those considerations, although neither Party relied on the fairness clause enshrined in Article 10.8 IBU ADR (above par. 46), could cause the Panel to have recourse to that clause. However, a decision other than provided for in Article 10.8 IBU ADR - for instance, to let the disqualification commence on the date of the notification and suspension following the re-test - would run against the rationale of re-testing stored samples: to have the opportunity to disqualify the results of cheating athletes when, for instance, later in time the analytical devices had improved.

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Based on the foregoing, the Panel concludes that Article 10.8 IBU ADR is to be applied strictly and, therefore, all competitive results the Athlete obtained since November 26, 2013 through the commencement of the provisional suspension, i.e. November 25, 2014, shall be disqualified.

## 6. Commencement of the Period of Ineligibility

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According to Article 10.9 IBU ADR, the period of ineligibility shall commence on the date of the decision of the Panel. The time of a provisional suspension is to be credited against the period of ineligibility ultimately imposed. On November 25, 2014 the Athlete was provisionally suspended. Accordingly, the period of two years' ineligibility shall commence on November 25, 2014.

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However, with regard to the commencement of the period of ineligibility to be imposed on the Athlete, IBU, in its statement of May 8, 2015, invited the Panel to consider the particular situation in a re-test case where the re-analysis took place roughly one year after the sample collection in order to avoid that a de facto ban of three years be imposed on the Athlete. At the hearing, IBU requested that the period of ineligibility should commence at the date of the sample collection because the delay between the sample collection and the re-analysis were not attributable to the Athlete. The Athlete, as well, pleaded that the sanction should commence at the date of the sample collection.

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Article 10.9 in connection with Article 10.9.1 IBU ADR allows to start the period of ineligibility

*"at an earlier date, commencing as early as the date of the sample collection ..."*

under the condition that

*"there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete ..."*

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The Panel is aware of the cumulative effect of the application of Articles 10.8 and 10.9 IBU ADR which, in re-test cases, generally would lead to an extended de facto-sanction: a period of ineligibility from the date of the decision, actually from the date of the suspension, plus retroactive disqualification of the competitive results obtained during the time between the sample collection and the suspension imposed after the re-analysis which may amount to some years, in the case of the Athlete to 11 months.

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Since the Panel already came to the conclusion that a deviation from Article 10.8 IBU ADR would undermine the legislative purpose of that rule (above par. 50) the only avenue to avoid an extended and, perhaps, disproportionate sanction would be to apply Article 10.9.1 IBU ADR in re-test cases in a way that the period of ineligibility should commence

*"at an earlier date, commencing as early as the date of the sample collection".*

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The first condition set forth in that clause ("*delays in ... other aspects of doping control*") is met. According to the definition appended to the IBU ADR, "*doping control*" comprises

*"all steps and processes from the test distribution planning through to ultimate disposition of any appeal ...".*

58

The critical issue is whether or not a "*substantial delay*" is "*not attributable to the athlete*". Article 10.9.1 IBU ADR is aimed at a situation where the IBU caused an unnecessary substantial delay to the detriment of an athlete. However, the opportunity to re-analyse samples is provided by virtue of Article 6.1.5 IBU ADR and, therefore, justified by the rules. IBU ordered the re-analysis of the Athlete's samples, which was performed in early December 2014, without delay after the refined method of analysis became known to it in



October 2014 and conducted the results management process timely. The analysis methods available after the sample collection showed an atypical finding but were not of a kind to prove the AAF reliably. This shows that the Athlete had administered EPO some time ago or, as it became usual, in a small dose so that an AAF could not reliably be reported following the first analysis. In any event, the delay was caused by the Athlete and justified by the IBU ADR. The Panel concludes that the delay is necessarily implied in the re-test procedure and therefore not *"not attributable to the athlete"*

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This conclusion is supported by the rationale of Article 10.9.2 IBU ADR which provides that, in the event of a prompt admission, the period of ineligibility may start at the date of the sample collection. However, according to that rule, the athlete must serve at least one-half of the period going forward from the date of the decision.

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The Panel does not consider the application of the general rule enshrined in Articles 10.9 and 10.9.3 IBU ADR leading to a disproportionate sanction in the case before it. The disqualification of the results is an automatic consequence of the presence of a prohibited substance while only the period of ineligibility imposed is a sanction for the ADRV. This sanction will not be augmented if the period starts at the date of the decision, taking into account the time since the suspension. An application of Article 10.9.1 IBU ADR in re-test situations would lead to the consequence that the period of ineligibility ultimately imposed would have elapsed already or, as in the case before the Panel, elapsed to a great extent. In such situation, the athletes, as a matter of fact, were free to compete all over the time until the notification of the re-analysis result and only run the risk to lose their results and to be declared ineligible for a period of time which already had elapsed in full or partly.

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Furthermore, the Athlete committed an ADRV in the form of the administration of EPO. The fact that this ADRV was not detected as an immediate result of the sample collection on November 26, 2013 reveals that the Athlete committed the ADRV in such meticulous manner that it remained unreported following the analysis in December 2013. After the failure of that first analysis the Athlete *bona fide* could not have the belief that he was legally free to compete. On the contrary, he must have been conscious that, due to the possibility of a re-test, the ADRV could be detected at a later stage.

62

All other conceivable dates for the commencement of the period of ineligibility (*"an earlier date, commencing as early as the date of the sample collection"*) would be determined arbitrarily in re-test situations. Even in the event of an admission at least one-half of the sanction is to be imposed (above par. 59). However, the Athlete tried to mislead the Panel rather than to admit the violation.

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Based on these considerations, the Panel does not find any reason to deviate from the clear and unconditional provision of Article 10.9 IBU ADR or to apply Article 10.9.1 IBU ADR. The IBU ADR neither expressly nor implicitly contain particular rules concerning the commencement of the sanction in re-test cases. Therefore, the period of ineligibility shall commence on November 25, 2014 (above par. 52).

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This conclusion is supported by the relevant rules of the IBU ADR 2014. Articles 10.11 and 10.11.1 IBU ADR 2014 on the commencement of the sanction are identical in substance with Articles 10.9. and 10.9.1 IBU ADR 2012. However, Article 10.11.1 IBU ADR 2014 was amended by a Comment which reads as follows:

*"In cases of anti-doping rule violations other than under Article 2.1, the time required for an anti-doping organization to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the athlete ... has*

*taken affirmative action to avoid detection. In these circumstances, the flexibility provided by this Article to start the sanction at an earlier date should not be used."*

The Panel understands this Comment to the effect that delays in the process of establishing sufficient proof of an ADRV shall not entail the application of Article 10.11.1 IBU ADR 2014 which is identical to Article 10.9.1 IBU ADR 2012.

#### **IV. Conclusions**

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The A sample collected from the Athlete on the occasion of an out-of-competition test conducted on November 26, 2013 reveals the presence of recombinant EPO which is a prohibited substance on the WADA Prohibited List and, therefore, the Athlete committed an ADRV according to Article 2.1 IBU ADR.

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In the absence of any exceptional circumstances the Athlete shall be declared ineligible to compete for a period of two years commencing on the date of his provisional suspension, i.e. November 25, 2014.

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All competitive results obtained by the Athlete as of November 26, 2013 are disqualified. All medals, points, and prizes are forfeited.


#### **V. Decision**

On these grounds the Panel decides:

1. Mr Alexander Loginov is ineligible to compete for two years commencing on November 25, 2014.
2. All competitive results obtained by Mr. Alexander Loginov as of November 26, 2013 are disqualified.

The Anti-Doping Hearing Panel  
June 30, 2015

  
Christoph Weidner  
Chairman of the Panel

  
Walter O. Frey  
Member of the Panel

  
Markus Manninen  
Member of the Panel