The New FIA Anti-Doping Regulations

The FIA has recently adopted new anti-doping regulations which will come into effect on January 1, 2006. These new regulations take over most of the rules of the WADA Code. This article first reviews the differences between the new FIA regulations and the WADA Code, the main one relating to the procedure for appeals against doping decisions. The WADA Code provides for an appeal to CAS, while the FIA regulations provide for an appeal before the FIA International Court of Appeal (ICA). The article then discusses the consequences of this difference. What decisions can be appealed from in motor sports? Under what procedures? What is the status of the ICA´s decision?

Table of contents

1. The incorporation of the world anti-doping code
   1.1 Anti-Doping Rule Violations
   1.2 Prohibited substances
   1.3 Burden of Proof
   1.4 Strict liability and disqualification
   1.5 Further sanctions - ineligibility
   1.6 Therapeutic Use Exemptions (TUE)
2. Appeal procedure under the fia anti-doping regulations
   2.1 Appeals against sanctions
   2.2 Appeals with respect to TUE decisions
   2.3 Procedure
   2.4 Challenge of ICA´s decisions

[Rz 1] At the end of May 2005, the Fédération Internationale de l´Automobile (FIA) announced that it had asked the World Anti-Doping Agency to proceed with more extensive testing. Previously, tests had only been carried out at races, but now Formula One drivers will be required to advise of their whereabouts at all times and can expect doping control officers to drop in unexpectedly anywhere in the world and demand urine and blood samples. The FIA´s move was announced in the wake of the adoption of the new Anti-Doping Regulations by the FIA World Motor Sport Council («FIA Anti-Doping Regulations»), which are scheduled to come into force on 1st January 2006 and which are generally claimed to incorporate the WADA World Anti-Doping Code (the «WADA Code» or the «Code»).

[Rz 2] In its proposal to the World Motor Sport Council of 30 March 2005, the FIA Medical Commission summarised its reasons for the adoption of the New FIA Anti-Doping Regulations as follows:

The FIA promised the World Anti-Doping Agency (WADA) that it would bring its entire anti-doping regulations into line with the WADA’s World Anti-Doping Code in order to allow anti-doping regulations to be standardised on the international level while maintaining the specificity of the FIA as far as appeals are concerned.

[Rz 3] This article will examine the main characteristics of the new FIA Anti-Doping Regulations. In a first part, it explores the main changes in the FIA’s anti-doping regime that result from the adoption of the Code. In a second part, it highlights the main features of the FIA Anti-Doping Regulations´ appeal procedure.

1. The incorporation of the world anti-doping code

[Rz 4] On March 5th 2003, at the World Conference on Doping in Sport held in Copenhagen, Denmark, almost all major sports federations and nearly 80 governments approved the WADA Code with a resolution establishing the Code as the basis for the fight against doping in sport. The purpose of the Code is to advance the anti-doping effort
through the universal harmonisation of core anti-doping elements. It is intended to be specific enough to achieve complete harmonisation on issues where uniformity is required. The adoption of the WADA Code is mandatory for all the Olympic Sports Federations. In order to achieve harmonization, the Code institutes the Court of Arbitration for Sport (CAS) as the sole competent body to rule on appeals concerning international level athletes.

[Rz 5] According to the FIA Statutes and the FIA International Sporting Code, «any dispute resulting from the application of the Statutes or of the rules decreed by the FIA» shall be resolved by the FIA International Court of Appeal (ICA).

[Rz 6] Because it found that the CAS was not in a position to provide the required expertise in the short time frame applicable to appeals, the FIA chose not to replace the ICA by the CAS. Hence, it did not accept the WADA Code in its entirety and, as result, lost its status as IOC-recognised International Federation.

[Rz 7] Rephrasing the wording of the introduction to the WADA Code, the FIA Anti-Doping Regulations’ purpose is «to protect the Drivers´ fundamental right to participate in doping-free sport and thus promote health, fairness, equality and safety in motor sport». Responsibility for implementing the regulations is referred to «the FIA or the competent ASN [i.e. the National Motor Sport Authorities affiliated to the FIA]». The exact distribution of responsibilities is yet unclear.

1.1 Anti-Doping Rule Violations

[Rz 8] Articles 1 and 2 of the FIA Anti-Doping Regulations define doping as the occurrence of one or more anti-doping rule violations, and in particular «the presence of a Prohibited Substance or its Metabolites or Markers» in a driver’s bodily specimen (Article 2.1 FIA Anti-Doping Regulations), «Use or Attempted Use of a Prohibited Substance or a Prohibited Method» (Article 2.2 FIA Anti-Doping Regulations), and «Refusing, or failing without compelling justification, to submit to Sample collection» (Article 2.3 FIA Anti-Doping Regulations).

[Rz 9] This provision provides a clearer definition of doping than the one that governs presently and until 31 December 2005. Indeed, the definition of doping in Article 4.1.2, Chapter II of Appendix L to the FIA International Sporting Code also covers «the use of an expedient (substance or methods), which is potentially harmful to drivers´ health and/or capable of enhancing performance».

1.2. Prohibited substances

[Rz 10] In practice, the main doping offence is the presence of a prohibited substance within the meaning of Article 2.1 FIA Anti-Doping Regulations. Pursuant to the definitions listed in Supplement A to the FIA Anti-Doping Regulations, prohibited substance means «[a]ny substance described on the prohibited list», that is «[t]he list published by the World Anti-Doping Agency (WADA) identifying the prohibited substances and prohibited methods (available on the WADA website www.wada-ama.org)».

[Rz 11] The 2005 prohibited list is comprised of four sections:

- A first section describes the substances and methods which are prohibited at all times (in and out of competition). In other words, this section lists the substances that may never be used.
- A second section then lists the substances which are prohibited in competition only. These are obviously in addition to those prohibited at all times.
- A third section lists «Substances prohibited in particular sports», which include alcohol and beta-blockers for the automobile sport.
- A last section defines the «Specified Substances» referred to in Article 10.3 WADA Code as «substances which are particularly susceptible to unintentional violations of the Regulations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents».

1.3. Burden of Proof

[Rz 12] Article 3 of the FIA Anti-Doping Regulations incorporates Article 3 WADA Code insofar as it states that
«[t]he FIA or competent ASN shall have the burden of establishing that a violation of the Regulations has occurred» (Article 3.1) and adds that «Facts related to a violation of the Regulations may be established by any reliable means, including confession» (Article 3.2).

[Rz 13] The most commonly used method of establishing a doping violation, in particular the presence of a prohibited substance, is the analytical finding, i.e. a finding by a laboratory on a sample provided during a doping control.\(^{11}\)

[Rz 14] The samples «shall be analysed only in WADA-accredited laboratories» (Article 6.1 FIA Anti-Doping Regulations) «in conformity with the International Standards published by WADA for laboratory analysis» (Article 6.1 FIA Anti-Doping Regulations). Consistent with the WADA Code, Article 3.2.1 of the FIA Anti-Doping Regulations provide the following rules on the burden of proof in connection with laboratory tests:

- WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the WADA-approved international standards for laboratories.\(^{12}\)
- The driver may rebut this presumption by establishing a departure from such standards.
- If the driver rebuts the presumption by showing a departure from the standards, the FIA or the competent ASN may prove that the adverse finding was not caused by such departure.

[Rz 15] The doping controls must be conducted by the FIA and the ASNs in conformity with the standards set forth in Supplement C (Doping Controls – Rules of Procedure) (Article 6.1 FIA Anti-Doping Regulations). The FIA Anti-Doping Regulations are consistent with the WADA Code in respect of the burden of proof for doping controls as well:

- If the driver establishes a departure from Supplement C during the doping control, the FIA or the competent ASN have the burden to establish that such departures did not cause the adverse analytical finding.

[Rz 16] Regrettably, the FIA Anti-Doping Regulations do not incorporate the second part of Article 3.1 WADA Code defining the standard of proof as follows:

> The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.\(^{13}\)

[Rz 17] This provision consolidates the standard that has progressively emerged in doping cases and has been upheld by the courts. One can only speculate as to the reasons why the FIA decided not to incorporate this provision of the Code. The only certainty is that it was left out intentionally and that the competent body will not be in a position to rely in such respect on the practice of other anti-doping organizations acting under the WADC. This situation may cause uncertainty and give rise to arguments.

### 1.4. Strict liability and disqualification

[Rz 18] Violation of Article 2.1 of the FIA Anti-Doping Regulations is a strict liability offence:

> It is each driver´s personal duty to ensure that no Prohibited Substance enters his or her body. Drivers are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the driver´s part be demonstrated […]

[Rz 19] Pursuant to Article 9 of the FIA Anti-Doping Regulations, the detection of a prohibited substance during an in-competition test results in the automatic disqualification of the individual result obtained by the driver in that competition with all resulting consequences, including forfeiture of any trophies, points and prizes. Disqualification takes place irrespective of the circumstances of the case and in particular of the culpability of the driver. Pursuant to the general principle *nulla poena sine culpa*, sanctions that go beyond disqualification may not be imposed on a strict
liability standard.

1.5. Further sanctions - ineligibility

[Rz 20] Further sanctions are the disqualification of the results obtained in all races during the Formula One World Championship and the imposition of a period of ineligibility.

[Rz 21] There is a presumption of fault for violations relating to the presence of a prohibited substance. Except for some specific substances, the periods of ineligibility imposed are the following (Article 10.2 FIA Anti-Doping Regulations):

- First violation: two years
- Second violation: lifetime

[Rz 22] The presumption of fault is rebuttable, i.e., it can be overcome if the driver establishes no fault or negligence or no significant fault or negligence. As a consequence of this presumption of fault, the burden of proof with respect to proving fault, which the prosecuting body normally bears, shifts to the driver, who must thus disprove fault:

If the driver establishes in an individual case involving an antidoping rule violation under Article 2.1 […] that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated (Article 10.5.1 FIA Anti-Doping Regulations).

[Rz 23] If the driver cannot discharge the burden of proof as to the absence of fault or negligence, he will be sanctioned. However, the duration of the period of ineligibility may be reduced by a maximum of one half if the driver can establish that he or she bears no significant fault or negligence. This rule will certainly give rise to litigation. It is anticipated that, although the CAS does not have jurisdiction in the FIA context, its decisions will have an important harmonizing role to play in this area.

1.6. Therapeutic Use Exemptions (TUE)

[Rz 24] Supplement B to the FIA Anti-Doping Regulations sets forth a specific regime in case of illnesses or other conditions that require a driver to take medication. If the substance that a driver is required to take is included in the Prohibited List, a therapeutic use exemption (TUE) may still allow the driver to take the medicine.

[Rz 25] An application for a TUE will be reviewed by a therapeutic use exemption committee (TUEC) (Article 2.1 Supplement B). Formula One drivers must submit their applications to the FIA’s TUEC, through the intermediary of their parent ASN (Article 5.3 Supplement B).

[Rz 26] An exemption will be granted only in strict compliance with the following criteria:

- The driver must submit an application for a TUE no less than 21 days before participating in an event (Article 2.2 Supplement B). A TUE will only be considered following the receipt of a completed application form that must include all relevant documents (Articles 5.1 and 6.4 Supplement B).
- The driver would experience a significant impairment to health if the prohibited substance or method were to be withheld in the course of treating an acute or chronic medical condition (Article 2.3 Supplement B).
- The therapeutic use of the prohibited substance or method would produce no enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition (Article 2.4 Supplement B).
- There is no reasonable therapeutic alternative to the use of the prohibited substance or method (Article 2.5 Supplement B).

2. Appeal procedure under the fia anti-doping regulations

[Rz 27] The most important differences between the new FIA Anti-Doping Regulations and the WADA Code relate
to the appeal procedure (see Article 11 FIA Anti-doping Regulations and Article 13 WADA Code) and the bodies in charge of the implementation of such Regulations (see Article 10.1 and Article 10.11 FIA Anti-Doping Regulations).

2.1. Appeals against sanctions

[Rz 28] The WADA Code provides that decisions in cases arising from competition in an «International Event» or in cases involving «International-Level Athletes» may be appealed exclusively to the Court of Arbitration for Sport (CAS) (see Article 13.2.1 WADA Code), while the FIA Anti-Doping Regulations merely state that «decisions made under the Regulations may be appealed» (Article 11.1). Moreover, Article 11.2. of the FIA Anti-Doping Regulations, which has the same wording as the current Article 4.4, Chapter II of the Appendix L to the FIA International Sporting Code, provides for the right of the driver to appeal to the FIA International Court of Appeal (ICA) «against any sanctions imposed in application of the Regulations resulting from a Doping Control carried out during an international event included on the calendar of the FIA, or following an Out-of-Competition Doping Control».

[Rz 29] Formula One races are among the «international event[s] included on the calendar of the FIA» referred to in Article 11.2 of the FIA Anti-Doping Regulations. Under the relevant rules, Formula One drivers are thus entitled to appeal to the ICA against sanctions imposed pursuant to the FIA Anti-Doping Regulations resulting from a doping control carried out during an event or out-of-competition.

2.2. Appeals with respect to TUE decisions

[Rz 30] Article 13.3 WADA Code provides that «International-Level Athletes» may appeal decisions that deny TUE application or withdraw a TUE to the CAS.

[Rz 31] Neither the FIA Anti-Doping Regulations nor its Appendix B contains any specific reference to the appeal procedure in respect of TUE decisions. However, pursuant to the general provisions of Article 11.1 FIA Anti-Doping Regulations, decisions on TUEs must be deemed appealable under the FIA Anti-Doping Regulations.

[Rz 32] The question thus arises whether Formula One drivers may appeal TUE decisions directly to the ICA. The answer appears to be in the affirmative. Indeed, the criteria that triggers the driver’s obligation to file a TUE application directly with the FIA’s TUEC (participation in events counting towards a FIA championship) is analogous to the one applied by the FIA to determine whether a driver is entitled to appeal directly to the ICA (the decisive criteria being in this case the participation in an international event included in the FIA calendar; see above). As a result, Formula One drivers whose application for a TUE has been denied by the FIA’s TUEC should be entitled to appeal that decision directly to the ICA.

2.3. Procedure

[Rz 33] Article 11.2 of the FIA Anti-Doping Regulations provides that the procedure applicable before the ICA is defined by Articles 184 et seq. of the International Sporting Code.

[Rz 34] Pursuant to Article 185 (2) of the International Sporting Code, international appeals may be brought by the ASN on behalf of its competitors or license-holders (see also Article 184 section 3 and 4). The appeals of decisions made under the FIA Anti-Doping Regulations related to Formula One drivers must, therefore, be brought to the ICA by the ASN on behalf of their license holders. As stated in Article 11.2 of the FIA Anti-Doping Regulations, «the ASN may not refuse its aid».

2.4. Challenge of ICA´s decisions

[Rz 35] The application form that the drivers have to file with the FIA in order to participate in the FIA Formula One World Championship provides that the driver undertakes to observe the Statutes of the FIA, the International Sporting Code and all regulations governing the FIA Formula One World Championship. As a consequence the driver, inter alia, undertakes to comply with the rules contained in the International Sporting Code relating to the appeal procedures.
Formulas One drivers are, therefore, contractually bound not to challenge decisions taken by a representative of the FIA, or by the FIA directly, before a court other than that provided for by the FIA International Sporting Code (namely ICA) (Article 184). The following question thus arises with respect to the ICA’s jurisdiction in relation to the appeal of decisions taken by the FIA ruling bodies under the FIA Anti-doping Regulations: can the ICA’s decisions on doping-related disputes be the subject of an appeal before another court?

Pursuant to the well-established principle applying in sports law, each competitor is entitled to appeal the decisions taken by its governing body before an independent jurisdiction, which may be either a state court or an arbitral tribunal. The FIA recognizes such principle in its International Sporting Code when it states that «nothing in the Code shall prevent any party from pursuing any right of action which it may have before any Court or Tribunal, subject always to any obligations it may have accepted elsewhere first to pursue other remedies or alternative dispute resolution mechanisms» (Article 191bis).

When Formula One drivers sign the application form referred to above and agree to observe the rules of the FIA International Sporting Code, they explicitly accept the principle set forth in Article 184 of such Code stating that the ICA «shall be entrusted with judging definitively any dispute [...]». In the Alboreto case decided in 1983, it was held that the decision of the ICA could be reviewed by the competent court in Paris as the ICA was not sufficiently independent to qualify as an arbitral tribunal. In recent years, the FIA has made significant efforts to increase the independence and the transparency of the ICA:

- The prohibition to challenge the decisions of the ICA in court was removed and replaced by the express recognition of such right;
- The hearings were opened to the media;
- The ICA Secretary General is now an elected function and is thus no longer part of the internal management of the FIA.

In the Alboreto case decided in 1983, it was held that the decision of the ICA could be reviewed by the competent court in Paris as the ICA was not sufficiently independent to qualify as an arbitral tribunal. In recent years, the FIA has made significant efforts to increase the independence and the transparency of the ICA:

- The prohibition to challenge the decisions of the ICA in court was removed and replaced by the express recognition of such right;
- The hearings were opened to the media;
- The ICA Secretary General is now an elected function and is thus no longer part of the internal management of the FIA.

Whether these efforts to improve the independence of the FIA are sufficient to qualify the ICA as a «true» arbitration tribunal is an open question. The FIA has published excerpts of a recent unreported decision of the Tribunal de Grande Instance of Paris upholding the independence of the ICA in the following terms:

Considering the composition of the ICA and the rules of procedure applicable before it, the fact that this judicial body comprises of a maximum of 15 [currently 18] titular members of different nationalities to whom an equal number of deputy members of the same nationalities as the titular members is added. They must constitute a body of international competence, both sporting and legal. They shall be elected for 3 years [...]. Members belonging to the countries concerned by the appeals will not sit’ (Article 188 of the Sporting Code); [Considering further] the fact that the hearing complies with due process, that “all parties concerned shall be given adequate notice of the hearing on any appeal” and “shall be entitled to call witnesses” and that the judgements of the Court of Appeal shall be reasoned (Article 189 of the Sporting Code); [Considering] the fact that “nothing in the Code shall prevent any party from pursuing any right of action which it may have before any Court or Tribunal” (Article 191bis of the Sporting Code); that the combination of these elements demonstrates the independence of the ICA.

On the sole basis of the excerpts just quoted and without insight into the full decision and a thorough analysis which is beyond the scope of this contribution, it is not possible to assess whether the ICA decision at stake was challenged as a determination of an internal sports body (as in Alboreto) or as an arbitral award.

It thus remains to be seen whether the ICA qualifies as a «true» arbitral tribunal. In the negative, its decisions would be open to a full trial de novo. In the affirmative, its decisions would qualify as «arbitral awards» and would be challengeable before the Paris Court of Appeal on the very limited grounds defined in Articles 1501 to 1507 of the French New Code of Civil Procedure. These limited grounds are very similar to those upon which a CAS award may be set aside before the Swiss Supreme Court. Future will tell which alternative is the right one.
In the meantime, doping cases will be solved in accordance with the rules embodied in the FIA International Sporting Code and its Appendix L and the FIA Regulations for the Therapeutic Use Exemptions.

In an interview published by the Australian Herald Sun on 23 May 2005, F1 medical delegate Dr Gary Hartstein said: «We have called in WADA because they are the experts. […] With so much at stake it’s the kind of thing that has to be done properly and they have a very complex testing, checking and monitoring procedure. It has to be that way because every step has to stand up to scrutiny in case the results are contested. There is no suggestion that anyone is using drugs but it makes sense, in everyone’s interests, to have a more sophisticated and better monitored process.»


Up to that point, WADA took a consultative approach with the Code, releasing a series of drafts to the international sport community and incorporating feedback to build the final product.

In its introduction, the Code provides for the mandatory incorporation into the International Federations’ rules «without any substantive changes» of: Definitions and Article 1 on defining doping; Article 2 on Anti-Doping Rule Violations; Article 3 on Proof of Doping; Article 9 on Automatic Disqualification of Individual Results; Article 10 on Sanctions on Individuals; Article 11 on Consequences to Teams; Article 13 on Appeals; and Article 17 on the Statute of Limitations.

See Article 23 of the FIA Statutes.

See in particular Articles 184 et seq of the International Sporting Code.

See, Sports Governance and the FIA International Court of Appeal, A Briefing Note by David Ward, Secretary General of the FIA International Court of Appeal.

Other violations are: Violation of applicable requirements regarding Driver availability for Out-of-Competition Testing (Article 2.4 FIA Anti-Doping Regulations), Tampering, or Attempting to tamper (Article 2.5 FIA Anti-Doping Regulations), Possession of Prohibited Substances and Methods (Article 2.6 FIA Anti-Doping Regulations), Trafficking in any Prohibited Substance or Prohibited Method (Article 2.7 FIA Anti-Doping Regulations), Administration or Attempted administration of a Prohibited Substance or Prohibited Method to any Driver (Article 2.8 FIA Anti-Doping Regulations).

The new FIA Anti-Doping Regulations abandon the principle set by Article 4.1.1 of Appendix L to the FIA International Sporting Code, under which Alcohol (Ethanol), Cannabinoids (Hashish, marijuana (THC)) and Beta-blockers (Acebutolol, alpenolol, atenolol, betaaxolol, bisoprolol, carvedilol, esmolol, labetalol, metoprolol, nadolol, oxprenolol, pindolol, propranolol, sotalol, timolol and related substances) were to be systematically tested for.

Supplement A to the FIA Anti-Doping Regulations defines the concept of Adverse Analytical Finding as [a] report from a laboratory or other approved testing entity that identifies in a specimen the presence of a prohibited substance or its metabolites or markers (including elevated quantities of endogenous substances) or evidence of the use of a prohibited method.»

Available at .
Article 3.1 WADA Code in fine further specifies that «[w]here the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption [see infra …] or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.»


If the violations involves a «Specified Substance» as defined by the WADA prohibited list, the periods of Ineligibility are following: – First violation: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year’s Ineligibility. – Second violation: Two (2) years’ Ineligibility. – Third violation: Lifetime Ineligibility (See Article 10.3).

The same ineligibility periods apply for violations of Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and 2.6 (Possession of Prohibited Substances and Methods).

The same exculpation applies to the possible disqualification of all the result obtained in a multi-competition event.

It bears recalling that the FIA Anti-Doping Regulations did not incorporate the standard of proof set forth in the WADC (see supra).

If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years.


This regime was already adopted in 2004 in application of Article 4.1.2 of Appendix L to the FIA International Sporting Code under the denomination of FIA «Regulations for Therapeutic Use Exemptions».

Decision of the Tribunal de Grande Instance de Paris of 26 January 1983, Alboreto et al. c. FIA, reported in Dalloz 1986, somm. p. 366, obs. Baron and discussed by Jan Paulsson, Arbitration of International Sports Disputes, Arb. Int. 1993, pp. 363-364. More recently, there have been cases in which the decisions of the ICA have been challenged successfully. Both Peugeot and Tyrrell went to the Tribunal de Grande Instance in Paris and won, although both cases were later overturned in the Court of Appeal of Paris.

See the above-mentioned Briefing Note by David Ward, Secretary General of the FIA International Court of Appeal.

Decision of the Tribunal de grande instance of Paris of 29 March 2005, Société Coli and Cie; unreported (free translation of the excerpt quoted in Mr. Ward’s above-mentioned Briefing Note, p. 5: «Attendu enfin qu’il y a lieu de rappeler la composition du TAI et les règles de procédure qui y sont applicables ; que cette juridiction comprend ’15 membres titulaires de nationalités différentes auxquels sont adjoints 15 Membres suppléants de même nationalité qu’eux. Ils doivent constituer un collège de compétence internationale, à la fois sportive et juridique. Ils sont élus pour trois ans (…) Les membres nommés appartenant aux pays en cause ne siégeront pas. Les décisions du Tribunal d’Appel International ne seront valables que si trois membres au minimum sont présents’ (article 188 du CSI) ; que l’audience du TAI respecte le principe du contradictoire, les intéressés étant avisés en temps opportun de la date de l’audience de l’appel’ et pouvant ‘faire entendre des témoins ’ ; que ses décisions sont motivées (article 189 du CSI) ; qu’enfin, ‘aucune disposition du Code (CSI) ne pourra empêcher une partie d’intenter des poursuites devant une juridiction’ (article 191 bis du CSI) ; que l’ensemble de ces éléments démontre l’indépendance du TAI».

Under French law, appeals against arbitral awards are to be brought directly before the Court of Appeal (Article 1505 NCPC). However, the Tribunal de Grande Instance has jurisdiction in actions to support the arbitration proceedings (Article 1493(2) NCPC).