



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by Polski Związek Motorowy  
on behalf of Inter Europol Competition**

**against**

**Decision dated 28 November 2019 of the National Appeal Tribunal of the  
Fédération Française du Sport Automobile rejecting the appeal against Decision  
No. 19 of 27 October 2019 of the Stewards of the 4 hours of Portimão counting  
towards the**

**"European Le Mans Series 2019"**

**Case ICA 2019-11**

**Hearing of Thursday, 13 February 2020 in Paris**

**Decision of 27 February 2020**



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Thierry Julliard (Switzerland), who was designated President of the Hearing, Mr Xavier Bone (Spain), Mr Francesco de Beaumont (Italy) and Mr Philippe Narmino (Monaco), met in Paris on Thursday 13, February 2020 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Polski Związek Motorowy (“PZM”) on behalf of Inter Europol Competition (“Europol” or “the Appellant”) against the Decision of the National Court of Appeal of the Fédération Française du Sport Automobile (“FFSA”) (the “Decision of the NCA”) rejecting the appeal against Decision No. 19 of 27 October 2019 taken by the Stewards of the 4 Hours of Portimão counting towards the “European Le Mans Series 2019”.

The following persons attended the hearing:

On behalf of Europol:

Mr Sascha Fassbender (Team Manager)  
Mr Thomas Fleischer (Lawyer)

On behalf of the FFSA:

Ms Marie-Laure Gervais (Head of Contracts and Litigation)  
Mr Benjamin Lamy (Paralegal)  
Mr Chris Geffroy (Chairman of the Panel of Stewards,  
Witness)

On behalf of the FIA:

Ms Alejandra Salmerón Garcia (Senior Legal Counsel)

Also present at the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA  
Courts)  
Mr Nicolas Cottier (Clerk of the FIA Courts)  
Ms Sandrine Gomez (Administrator of the FIA Courts)



The parties filed written submissions and, at the hearing on 13 February 2020, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation. None of the Parties raised any objection, in relation either to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

## REMINDER OF THE FACTS

1. On the occasion of the “4 Hours of Portimão”, which took place in Portugal on 27 October 2019 (the “Race”) within the framework of the “European Le Mans Series” (the “Championship”), an incident occurred during the first lap and necessitated the showing of the red flag, suspending the Race for 52 minutes and 21 seconds.
2. On account of this suspension, the Stewards decided, in their Decision No. 12, to adjust the driving times for all drivers concerned by minimum and maximum driving times according to their categorisation (“Bronze”, “Silver”, “Gold”, “Platinum”). Appended to the Stewards’ Decision, receipt of which was signed for by each of the competitors, were the new individual maximum and minimum driving times of each driver.
3. On the basis of the report drawn up by the Chief Timekeeper of the Race, the Stewards noted that Mr Martin Hippe, the driver, categorised as “Bronze”, of Europol’s Car No. 13 (the “Driver”), had not respected his minimum driving time of 1 hour 22 minutes and 6 seconds imposed by the Stewards’ Decision No. 12. According to this report, the Driver’s driving time had been 1 hour 5 minutes and 53.881 seconds.
4. After hearing the representatives of Europol, the Stewards decided, in their Decision No. 19 of 27 October 2019 (the “Stewards’ Decision No. 19”), to impose a penalty of nine penalty laps on Europol’s Car No. 13 for failing to respect the minimum driving time of the Driver Mr Martin Hippe, categorised as “Bronze”, in application of Article 10.10.1.5 b) of the Sporting Regulations of the “European Le Mans Series 2019” (the “Sporting Regulations”).
5. The Stewards’ Decision No. 19 specifies in particular that, considering that the red flag period is not driving time, the Stewards decided, by means of Decision No. 12, to adjust the driving time of all the drivers and thus take into account the non-driving period under the red flag.
6. Europol declared its intention to appeal and the case was thus brought before the National Court of Appeal (the “NCA”) of the Fédération Française du Sport Automobile (the “FFSA”).



7. Having heard the representatives of Europol as well as the testimony of both Mr Chris Geffroy, Chairman of the Stewards of the Race, and Ms Gaëlle Chouteau, representative of the promoter “Le Mans Endurance Management (LMEM)”, the NCA, in its decision dated 28 November 2019, confirmed the Stewards’ Decision No. 19 “*in all its provisions*”.
8. In his testimony before the NCA, Mr Chris Geffroy stated that the Stewards had considered, based on Article 10.10.1.3 of the Sporting Regulations, that the suspension of the race had constituted a circumstance requiring the adjustment of the driving times for the drivers concerned by minimum and maximum driving times according to their categorisation, that furthermore, based on Article 10.11.2.2, the Stewards had also considered that the time that elapses during a race suspension cannot be assimilated to a driving time because:
  - on the one hand, drivers are allowed to leave their cars;
  - on the other hand, driver changes are prohibited, which, depending on the duration of the suspension, no longer allows certain drivers to respect their initial driving times.
9. As for Ms Gaëlle Chouteau, she explained to the NCA that Decision No. 12 had been communicated to all the competitors on the screens around the circuit, backed up with written information addressed to all the competitors.
10. The operative part of the NCA’s Decision was notified on 29 November 2019. The full Decision of the NCA, including its reasons, was notified to Europol on 11 December 2019.

## PROCEDURE AND REQUESTS OF THE PARTIES

11. Polski Związek Motorowy, the ASN of Poland, brought before the Court an appeal on behalf of Europol against the Decision of the NCA, by email, received by the Court on 17 December 2019.
12. On 16 December 2019, the Appellant paid an appeal deposit of 3,000 euros.
13. In its Grounds of Appeal, received by the Court on 9 January 2020 (English version) and 10 January 2020 (French version), the Appellant asks the Court to:
  - “- *declare and rule the appeal is admissible;*
  - *quash the decision taken on 28<sup>th</sup> November 2019 by the Tribunal d’Appel National de la Fédération Française du Sport Automobile;*

- *order the sporting authority concerned to rectify the classification of the “4 Hours of Portimao” at the International Circuit d’Algarve, Portimao (Portugal) on the 25<sup>th</sup> to the 27<sup>th</sup> of October counting for the 2019 European Le Mans Series;*

- *pronounce any other measure which it deems appropriate.”*

14. In its Grounds of Response, received by the Court on 30 January 2020, the FFSA asks the Court:
- *“to hold and judge that the ruling of the FFSA National Court of Appeal of 28 November 2019 is upheld in all its provisions;*
  - *to dismiss the appellant’s appeal and all its applications, pleadings and submissions as unfounded.”*
15. The FIA, in its written observations, received by the Court on 30 January 2020 (English version) and 3 February 2020 (French version), requests that the Court:
- i. *“assess the admissibility of the present appeal;*
  - ii. *assess the fact in this case after hearing the parties concerned, and to rule on the arguments put forward by the Appellant.”*

#### **ADMISSIBILITY OF THE APPEAL BEFORE THE COURT**

16. The FIA contends that the Appeal Deposit in the present case would be 6,000 euros and not 3,000 euros, the amount paid by the Appellant, but without formally maintaining that the appeal would not be admissible. The Court is therefore not called upon to consider an argument of inadmissibility on this point.
17. In any case, the Court notes that the provisions setting the amount of the Appeal Deposit, adopted by the World Motor Sport Council and published on the FIA website, make a clear distinction between so-called “major” FIA competitions, for which an Appeal Deposit of 6,000 euros is payable by any appellant, and the other FIA competitions, for which a reduced Appeal Deposit of 3,000 is to be paid. As the Competition counting towards the *European Le Mans Series 2019* is not a major FIA competition, but is registered on the official International Sporting Calendar of the FIA and can in good faith be considered as an “FIA competition” within the context of an appeal before the ICA of the FIA, it is clear that the amount of the Appeal Deposit within the context of that Competition could legitimately be perceived by the Appellant as having to be 3,000 euros.
18. Concerning the question of respecting the appeal time limit, raised by the FIA, which has observed that no notice of notification appeared in the dossier, the Parties confirmed at the hearing that the reasoned Decision had been notified to the representative of the Appellant on 11 December 2019 but that its operative part had already been communicated to the Appellant on 29 November 2019. The question of

the *dies a quo* of the appeal time limit can thus perhaps arise according to whether or not one considers that the simple communication of the operative part serves as notification of the decision.

19. According to Article 10.1.1 of the Judicial and Disciplinary Rules (“JDR”), the Appellant must, with its notification of appeal, produce a copy of the contested decision and present the reasons for its appeal, which will then be developed in its Grounds for Appeal.
20. The Court thus notes that in view of the requirements to provide a copy of the decision and to present the reasons for the appeal, set out in Article 10.1.1, there is no doubt that only the notification of the full decision, which came about on 11 December 2019, can constitute the starting point for the appeal time limit. The simple communication of the operative part could thus not compel the recipient thereof to notify its appeal, if such is its intention, within 7 days.
21. As the Appeal was notified on 17 December 2019, the 7-day limit stipulated in Article 10.3 (i) lit. b) JDR was thus respected.
22. Consequently, the Court declares the appeal admissible, which, subject to the two questions raised by the FIA and dealt with above, is undisputed.

## ON THE MERITS

### a) *Submissions of the parties*

23. The Appellant puts forward the following grounds in support of its appeal:
  - (i) As the facts of the present case are undisputed, the Court must simply rule on the following legal question:

*“Is there any lawful basis to deduct or respectively exclude the Red Flag period in lap 1 of the race at issue from the actual driving time of the bronze Driver Martin Hippe?”.*
  - (ii) Only the regulations applicable to the Race and to the Competition can constitute a sufficient lawful basis for defining the driving time. In the opinion of the Appellant, there is no legal basis allowing the red flag period to be excluded from the driving time. On the contrary, Article 10.11.2.2 of the Sporting Regulations provides that *“while the race is suspended: (...) neither the Race nor the timekeeping will be halted, if the circumstances so require, the Stewards may take the decision to stop and/or modify the race time set”*. According to the Appellant, this article thus authorises the Stewards only to halt or to modify the time of the race, but on no account to modify the driving time.

- (iii) The NCA simply found that the Stewards had full discretionary power to adjust the driving time of the drivers, without indicating on which legal basis it was basing this finding.
- (iv) In any case, it was up to the Stewards to clarify that they intended to deduct the red flag period from the driving time when they delivered their Decision No. 12. In fact, the Stewards made no mention regarding this subject.
- (v) Lastly, the Appellant points out that the Sporting Regulations underwent a change in their 2020 version in that a new Article 14.3.1 has been inserted, the content of this article being the following:

*“While the race is suspended: (...) driving time during a red flag period will not be counted and the Stewards will confirm the updated driving times before the restart of the race”*. According to the Appellant, this modification shows that in their 2019 version, the Sporting Regulations did not allow the Stewards to take their Decision, lacking a sufficient lawful basis.

24. The FFSA, for its part, contends in essence as follows:

- (i) Concerning the facts, the FFSA states that the Chief Timekeeper’s Report mentions a time of 1 minute 51 seconds and 424 thousandths of a second as the Driver’s pit time. It appears that the Appellant has confused this pit time with the Driver’s driving time, which the Appellant indicates as having been, according to the Chief Timekeeper, 1 hour 51 minutes and 42 seconds. However, there is nothing in this report to suggest such a driving time. According to the report, this driving time is indeed 1 hour 5 minutes and 53 seconds.
- (ii) The Appellant is confusing the idea of driving time with that of race time. Article 10.11.2.2 of the Sporting Regulations, on which the Appellant is attempting to rely, in fact concerns the race time. By virtue of this article, neither timekeeping nor the race is stopped while the race is suspended after the showing of the red flag because, as the event is an endurance event, it follows, in essence, a timed format. The article in question therefore does not concern the driving time and the Appellant can draw nothing from it in support of its cause.
- (iii) The provisions concerning the driving time are found under Article 10.10 of the Sporting Regulations, titled *“driver changes and driving time”*. Thus, according to Article 10.10.1.3 *“Possible adjustments of driving time”*, *“If the circumstances so require, the Stewards may adjust minimum and maximum driving times at their discretion at any time during any Competition”*. This article thus confers discretionary power on the Stewards, recognised as a general principle as reflected by the heading 10.10.1 *“General Principles”* of which it is part. The change that was made to the regulations in 2020 does

not change that in the slightest and, in any case, fits perfectly with the spirit of the 2019 Sporting Regulations.

- (iv) Also, Article 10.11.2.2 of the Sporting Regulations provides that drivers are allowed to leave their cars during a race suspension, whereas driver changes are prohibited. This clearly shows that the race suspension cannot constitute driving time.
- (v) Therefore, Article 10.10.1.3 of the Sporting Regulations constitutes a sufficient lawful basis in support of Decision No. 12, which moreover was signed by all the competitors, including by the Appellant who has never disputed it.
- (vi) Lastly, the FFSA refutes the Appellant's argument that the Stewards ought to have clarified the contentious point in their Decision No. 12, as neither Article 10.10.1.3 nor any other article of the Sporting Regulations imposes any obligation of this kind on the Stewards.

25. The FIA contends in substance that:

- (i) In accordance with Article 11.9.1 of the International Sporting Code (the "Code"), the Stewards have supreme authority for the enforcement of the Code and of the applicable Sporting Regulations.
- (ii) Article 10.10.1.3 of the Sporting Regulations clearly confirms the discretionary power of the Stewards as regards adjusting the driving times.

**b) Conclusions of the Court**

26. After having carefully examined the various observations presented by the Parties to the procedure, and having listened to the statements made by them and the witness cited during the hearing, the Court rules as follows.

*On the alleged absence of provisions in the Sporting Regulations as a basis for Stewards' Decision No. 12*

27. The Appellant, basing itself on Article 10.11.2 of the Sporting Regulations, claims that the Stewards could not deduct the race suspension time from the effective driving time and that Decision No. 12 was not based on any regulatory foundation.

28. Article 10.11.2.2 of the Sporting Regulations provides in particular that:

*"While the race is suspended:*



- Neither the race nor the timekeeping will be halted, if the circumstances so require, the Stewards may take the decision to stop and/or modify the race time set. This may not exceed the time of the Competition provided for in Appendix 1 of the Competition.

- [...]

- The drivers are allowed to leave their cars (but must not move away from them) and remove their helmets and gloves;

- Driver changes are prohibited;

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- [...]”.

29. The Court observes firstly that the driving time, which is at the heart of the present case, is not explicitly mentioned in this article, which refers only to the race and to the timekeeping as well as to the race time. If the article indeed does not indicate that the driving time may be stopped or modified, it also does not explicitly prohibit it. Thus, the literal interpretation of the article does not allow the interpretation made of it by the Appellant to be definitively confirmed or contradicted.

30. As the literal interpretation has not allowed the definitive removal of doubt as to the exact scope of this article, the Court must resort to another method of interpretation.

31. The FIA is governed by its own regulations, which are silent over the methods of interpretation of the texts.

32. Having its headquarters in France, it is also subject to French law, as an association governed by the law of 1 July 1901.

33. As the regulations in question are of a contractual nature, it is pertinent to refer to the methods of interpretation of contracts as set out in the French Civil Code.

34. In this respect, Article 1188 provides that:

*“A contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms.*

*Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it.”*

35. Also, Article 1189 provides that:

*“All the terms of a contract are to be interpreted in relation to each other, giving to each the meaning which respects the consistency of the contract as a whole.*

*(...)”*

36. It is thus pertinent, in a systemic approach, to seek in the Sporting Regulations the provisions which would allow it to give a sense that respects the coherence of the Sporting Regulations as a whole.

37. Matters relating to driving time are dealt with in Article 10.10 and the question of the adjustment of the driving time, contested by the Appellant, is governed by a specific article (Article 10.10.1.3), which provides under the heading “*Possible adjustments of driving time*” that:

*“If the circumstances so require, the Stewards may adjust minimum and maximum driving times at their discretion at any time during any Competition”.*

38. Insofar as the Sporting Regulations, in Article 10.10.1.3, confer on the Stewards a particular and discretionary right to adjust the minimum and maximum driving times “*if the circumstances so require*” without setting aside the case of a race suspension, Article 10.11.2 of these same Sporting Regulations did not prohibit the Stewards from adjusting the Driver’s minimum driving time.

39. The Court thus concludes, given the clear provisions of the Sporting Regulations, that the Stewards’ Decision No. 12 was based on a clear legal foundation.

40. Lastly, the Court notes that the Appellant never contested Decision No. 12, which clearly concerned an adjustment of the minimum and maximum driving times, including in particular the Driver’s minimum driving time. On the basis of Ms Gaëlle Chouteau’s testimony, mentioned in the Decision of the NCA and not challenged by the Appellant, it was confirmed that Decision No. 12 had indeed been communicated to all the competitors through being displayed on all the screens around the circuit, backed up by written information. Decision No. 12 also included an appendix indicating the new minimum and maximum times of each driver. Lastly, each competitor signed for receipt of this decision.

41. The Appellant could thus absolutely not be unaware of the existence of this Decision No. 12 and hence of the fact that adjustments, which impacted notably the Driver, Mr Martin Hippe, had been carried out on account of the race suspension.

42. Regardless of the fact that Decision No. 12 was based on a clear legal foundation, the Court also finds that the Appellant, who did not make use of its right to appeal against Decision No. 12 within the given time limit, cannot in any event call this decision into question within the context of the present case.

*On the taking into account of the suspension time in the Driver’s effective driving time*

43. The Court notes that the suspension time was subtracted from the regulatory minimum and maximum driving times to set, in Decision No. 12 and more especially in its appendix, the new minimum and maximum driving times of all the drivers in the race, and notably the minimum driving time of the Driver.

44. In so doing, the decision necessarily and with no possible doubt meant that the suspension time was also not taken into account when it came to determining whether the Driver had or had not reached the minimum driving time that had been assigned to him, especially since the deduction of the race suspension time would have left the Driver with just over 30 minutes of minimum driving time, which is devoid of any logical sense for an endurance competition.
45. The Stewards' Decision No. 19, the subject of the present appeal, is therefore well-founded.
46. However, the Appellant claims that the Stewards should have included the time that its Driver had spent in parc fermé during the suspension of the race in order to calculate his driving time. In other words, according to the Appellant, if the minimum driving time imposed on its Driver was indeed reduced through the effect of Decision No. 12, through the fact of subtracting the suspension time, this same suspension time cannot be subtracted when it comes to calculating the effective driving time of this same Driver.
47. This reasoning on the part of the Appellant is incoherent. Insofar as the minimum driving time could be adjusted by the Stewards by deducting the race suspension time, it is not only logical but also necessary that the effective driving time of each Driver is adjusted in the same way, otherwise that would amount to voiding Decision No. 12 of its content and, consequently, to enabling Drivers in an absurd manner to achieve the minimum driving time.
48. The Court also observes that, with the exception of the Driver, all the competitors respected the new driving times set by Decision No. 12, as was confirmed by the witness Mr Geffroy and which was not contested by the Appellant.
49. The Appellant is thus the only one to interpret the Sporting Regulations and Decision No. 12 in this way and, once again, in a perfectly incoherent manner.
50. The Court also shares the opinion of the NCA of the FFSA, which rightly noted in its Decision that such an interpretation was in conflict with Article 10.11.2.2 of the Sporting Regulations, cited above, which provides that the drivers are allowed to leave their cars and that driver changes are prohibited during a race suspension.
51. If the race suspension time formed part of the drivers' effective driving time, this would have an effect on the fairness of the Competition, since the teams would find themselves unable to change drivers during a long period, in this case 52 minutes, and this without being able to determine in advance which of their Platinum, Gold, Silver or Bronze drivers would thus be reduced to spending his driving time, or the major part of it, in parc fermé.
52. This long race interruption constituted a special circumstance which, moreover, is not contested. It was therefore necessary to correct the proportions of the driving times during the suspension.



53. Furthermore, the Court notes, referring to Article 1188 of the Civil Code, that “*a reasonable person placed in the same situation*” would clearly not be of the opinion that one can consider as “driving time” a race suspension period during which the cars are in a parc fermé situation and the drivers may leave their cars and remove their helmets and gloves but cannot be replaced, in application of Article 10.11.2.2 of the Sporting Regulations.
54. Lastly, the Court notes that the Driver’s effective driving time, stopped by the Chief Timekeeper at 1 hour 5 minutes 53 seconds and 881 thousandths, constitutes a decision of a “Judge of Fact” and is therefore unassailable.
55. As this driving time is lower than the minimum driving time set for the Driver, namely 1 hour 22 minutes and 6 seconds, in application of Decision No. 12, the Court rules that the Driver did indeed breach Article 10.10.1.5 b) of the Sporting Regulations.
56. The Court then notes that the Appellant puts forward no argument on the subject of the proportionality of the sanction and that in any case nothing in the dossier allows it to judge that this sanction is disproportionate and that the Stewards abused their power of discretion.
57. The Court therefore decides that this sanction must be confirmed.
58. Taking the above into account, the Appeal is rejected and the Decision of the NCA, and consequently the Stewards’ Decision, are upheld.

## **COSTS**

59. Considering that the Appeal is rejected, the Court leaves it to the Appellant to bear all the costs in accordance with Article 11.2 of the JDR.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the Appeal admissible;**
- 2. Rejects the Appeal and confirms the decision of the National Court of Appeal of the Fédération Française du Sport Automobile, dated 28 November 2019, rejecting the appeal against Decision No. 19 of 27 October 2019, taken by the Stewards of the 4 Hours of Portimão counting towards the “European Le Mans Series 2019”;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Leaves it to Europol Competition to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Rejects all other and further conclusions.**

**Paris, 27 February 2020<sup>1</sup>**

**The President**

**Thierry Julliard**

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<sup>1</sup> The operative part of the present decision, without the reasons, was previously communicated to the parties on 14 February 2020.