



**Arbitration CAS 2006/A/1164 Luca Scassa & MV Agusta Motor Spa v. Fédération Internationale de Motocyclisme (FIM), award of 15 March 2007**

Panel: Mr Quentin Byrne-Sutton (Switzerland), President; Prof. Massimo Coccia (Italy); Mr Jean-Philippe Rochat (Switzerland)

*Motorcycling*

*Disqualification of a rider and of its team from a race*

*Interpretation of sports regulations*

*Need for clarity and predictability of a rule*

1. Under Swiss law the regulations of an association can be viewed as partly hierarchical in nature – due to being adopted and implemented by the association – and partly contractual – since members agree to be bound by the regulations upon entering the association. Given the “*sui generis*” mixed nature of associative regulations and because the principles used to interpret the law (statutes) and contracts partially overlap, it is appropriate to account for both sets of principles when interpreting associative regulations. Consequently, the literal meaning of the terms employed in the provision, its history, its purpose and its logic within the framework of the other provisions forming the regulations, as well as the contractual principle of interpretation developed by the Swiss Tribunal fédéral whereby a declaration or an action must be interpreted in accordance with what a reasonable recipient thereof could and should have understood in good faith in the circumstances (“*principle of good faith*”), should be taken into consideration.
2. An association has the duty to respect equality of treatment between members, which implies that regulations must be both clear and predictably applied. When a practice has been tolerated by a sports federation for a period of time, it is not possible for it to invoke a general provision forbidding said practice. For reasons of equality of treatment and predictability it is important that prohibitions be unambiguous. A federation’s rules and practices must not contradict one another. This need for clarity is enhanced when the applicable sanction is based on the concept of strict liability. Indeed, it would be particularly unfair to automatically disqualify an athlete, i.e. without her or him being allowed to establish lack of fault, if the allegedly violated rule is not perfectly clear.

Mr Luca Scassa (first Appellant, hereinafter “Mr Scassa”) is a motorcycle racer currently competing in the Superstock 1000 FIM World Cup with an “MV Agusta F4 1000R” motorcycle, for the EVR-Ormeni Team.

MV Agusta Motor Spa (second Appellant, hereinafter “MV Agusta Motor”) is a motorcycle manufacturer based in Schiranna, Italy.

The FIM is the supreme organization governing the sport of motorcycling worldwide (the Respondent, hereinafter the “FIM”).

The FIM has published specific rules that contain, among others, sporting, technical and disciplinary provisions for each category and championship. According to the “Road Racing Superbike & Supersport World Championships and Superstock Cup Regulations” (hereinafter the “FIM Regulations”): *“Motorcycles for the Road Racing Superbike and Supersport World Championships and Superstock Cup are based on recent or current production motorcycles and available to the public through the normal commercial channels of the constructor”* (article 2.1.1).

The foregoing rule reflects the goal in the FIM race categories of Superbike, Supersport and Superstock that the motorcycles used be very close (and in Superstock almost identical) to serial machines of mass production sold for everyday use.

This goal is ensured through the FIM eligibility requirements that must be met to qualify for those categories (provided in article 2.9 of the FIM Regulations) and by the technical regulations governing them, according to which the modifications allowed are minimal and the motorcycle as homologated by the original manufacturer is the yardstick for measuring technical deviations.

With regard to the category in which Mr Scassa competes, i.e. the Superstock, article 2.7 of the FIM Regulations contains the technical specifications.

Article 2.7 begins by specifying that *“Everything that is not authorized and prescribed in this rule is strictly forbidden”* and that *“The motorcycle must be homologated by the original manufacturer only”* before underlining that *“As the name Superstock implies, the machines used are allowed limited modifications. Most modifications are allowed for safety reasons”*.

The English version of article 2.7.11 contains the following prohibition:

*“Additional equipment not on the original homologated motorcycle may not be added (i.e. data acquisition, computers, recording equipment etc.). Telemetry is not allowed. The only potentiometers and sensors allowed are those fitted as original equipment on the motorcycle as homologated”*.

On 1st October 2006, Mr Scassa finished first in the Superstock FIM Cup Championship in Imola, Italy.

At the end of the race, Mr Scassa’s motorcycle as well as the motorcycles of ten other classified participants underwent a routine technical inspection pursuant to the FIM Regulations. FIM officials at the event, Mr. Fabio Fazi, Technical Director, and Mr. Paolo Savettieri, Chief Technical Steward, performed the inspection.

During the inspection, the FIM officials discovered on the motorcycle of Mr Scassa additional equipment not on the original homologated motorcycle.

The additional equipment in question consisted of certain parts of an AIM MyChron Light TGLog data-acquisition system Mini Logger, namely a data-collection box (“junction box”), a display and an infrared receiver (hereinafter the “AIM Mini Logger”).

The AIM Mini Logger is designed to provide the driver with information pertaining notably to lap time, RPMs, speed, water and exhaust temperature and throttle position. It is useful during a test or practice session since the AIM Mini Logger stores the data that can then be downloaded to a computer for analysis.

After the inspection, the FIM Technical Director notified the Race Director of the presence of the AIM Mini Logger on Mr Scassa’s motorcycle. At the hearing regarding the review of the notification, Mr. Scassa acknowledged that additional equipment not present on the original homologated motorcycle was mounted on his motorcycle and the Race Direction decided to disqualify him from the Imola event.

Upon protest by Mr Scassa and MV Augusta Motor, the Race Direction confirmed the disqualification.

Mr Scassa and MV Agusta Motor then appealed this decision to the FIM Stewards’ Panel. In the hearing before the FIM Stewards’ Panel, the FIM Technical Director was heard as a witness and Mr Scassa confirmed that additional equipment was mounted on his motorcycle.

On 1st October 2006, the FIM Stewards’ Panel rendered the following decision (hereinafter the “FIM decision”), whereby it upheld the disqualification of Mr. Scassa:

*“The Stewards Panel on considering the evidence of the Technical Director and the statements made by the Appellants decided to confirm the previous decision of the Race Direction: Disqualification from the results of the Superstock 1000 race of Imola on 1<sup>st</sup> October 2006.*

*According to Article 3.4.2 of the Disciplinary and Arbitrary Code of the 2006 FIM Road Racing World Championship Superbike, Supersport and Superstock Cup, this decision is final”.*

On 5 October 2006, Mr Scassa and MV Agusta Motor filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as “CAS”) against the FIM Stewards Panel decision of 1<sup>st</sup> October 2006.

At the hearing the parties confirmed the following facts as being undisputed:

- The August 2006 amendment to article 2.7.11 of the FIM Regulations was validly adopted by the FIM, was publicly communicated by means of a press release dated 23 August 2006 and specifically communicated to the riders, the participating teams and the motorcycle manufacturers by e-mail of 25 August 2006.
- In the press release the amendments to article 2.7.11 were highlighted in bold as follows:

*“Additional equipment not on the original homologated motorcycle may not be added (i.e. data acquisition, computers, recording equipment etc.). Telemetry is not allowed. **The only potentiometers and sensors allowed are those fitted as original equipment on the motorcycle as homologated**”.*

- The French version of the amendments to article 2.7.11 was worded as follows:  
*“Un équipement supplémentaire ne se trouvant pas sur le motorcycle d’origine homologué peut être ajouté (par exemple, acquisition de données, ordinateurs, équipements d’enregistrement, etc.) ...”.*
- The Appellants were informed that the amended rule would apply from the event of 3 September 2006 in Assen onwards.
- The amended rule is applicable to this dispute.
- The prohibition as provided by article 2.7.11 applies to all the official sessions on the circuit as defined in the “Event schedule” under article 1.13 of the FIM Regulations, i.e. to “free practices”, qualifying practices”, “warm ups” and “races” (referred to collectively as the “official sessions”).
- Certain parts of the AIM Mini Logger - namely the junction box, the wire harnesses, the display and the infrared receiver (the latter two constituting a chronometer) - were mounted on the motorcycle ridden by Mr Scassa at the race in Imola. None of those parts form part of the motorcycle’s equipment as homologated by the manufacturer.
- During the 2006 Superstock season, the addition on motorcycles of a non-homologated chronometer - constituted by a larger display and an infrared receiver - was deemed acceptable by the FIM.
- During the FIM technical inspection that took place after the race in Imola neither the sensor/potentiometer nor the cables forming part of the AIM Mini Logger data-acquisition system were found on Mr Scassa’s motorcycle.
- The AIM Mini Logger has been widely used by motorcycle riders during private tests. However, in accordance with the prior version of article 2.7.11 of the FIM Regulations, the riders had the obligation to disconnect the sensors/potentiometers before the beginning of the official sessions.
- At the event in Brands Hatch/UK which took place on 5/6 August 2006 the following incident occurred involving Mr Scassa: He crashed during the practice session and certain other participants alleged that a junction box was visible under the damaged fairing of Mr Scassa’s motorcycle. This led to a special non-programmed inspection by the FIM of all participating motorcycles. At the inspection, to which Mr Scassa arrived about 40’ late, the FIM found several sensors but no junction box on his motorcycle.

Appellants notably submit the following:

- A “data-acquisition system” is made up of essentially three parts: a junction box, at least one sensor for data detecting/measuring and an electric wire harness that connects the sensor to the junction box.
- The purpose of a data-acquisition system is to record data that can be analysed to adjust the motorcycle’s regulation parameters in view of improving its performance.

- The rationale of article 2.7.11 of the FIM Regulations is to prohibit the addition of equipment such as a data-acquisition system in order to prevent a rider obtaining the advantages that would derive from the use of the system.
- Only parts of the AIM Mini Logger were mounted on Mr Scassa's motorcycle and therefore found during the inspection after the race in Imola. In particular no harnesses or sensors were installed on the motorcycle driven by Mr Scassa in the Imola race.
- Consequently, Mr Scassa in effect had no data-acquisition system installed because the additional equipment mounted on his motorcycle could not function as such without the harnesses and sensors, and the FIM misapplied article 2.7.11 by considering it should apply to the additional equipment despite it not being able to fulfil a prohibited function.
- The fact that article 2.7.11 should only apply when a data-acquisition system is installed in a manner which enables it to function is confirmed by the prior version of such rule, which contained the following wording: *"Telemetry is not allowed, but potentiometers and others sensors can be maintained, if disconnected"*.
- The AIM Mini Logger as mounted on Mr Scassa's motorcycle could only function as a chronometer, which is perfectly admissible under the FIM Regulations.
- Mr Fabio Fazi of the FIM declared to the journalist Mr Luigi Rivola that Mr Scassa might have taken advantage of the complete data-acquisition system during the official tests before the race, despite there being no evidence of this because the motorcycle did not undergo any technical verifications during the official practices. More generally there is no evidence that Mr Scassa obtained any sort of advantage from the additional equipment that was mounted on his motorcycle.
- Furthermore Mr Fabio Fazi admitted that he had been pushed to apply the disqualification sanction under the pressure of an opponent team, namely the Celani team.
- For all the foregoing reasons combined, the FIM decision is unfair and illegal and Mr Scassa is not liable for violating article 2.7.11 and should not have been disqualified in Imola.

The FIM notably submits the following:

- In the Superstock category a primary goal is to ensure that each motorcycle corresponds as closely as possible to the motorcycle as homologated by the manufacturer.
- Consequently, the homologated motorcycle constitutes the yardstick to measure whether any technical modifications and additions have been made which go beyond the admissible changes exhaustively defined in the FIM Regulations.
- As was already the case under the prior version of article 2.7.11 of the FIM Regulations, the current version in effect prohibits riders in the Superstock category from using a data-acquisition system on their motorcycle during any official session and therefore from installing a junction box on their motorcycle for an official session. The purpose of this prohibition is to prevent riders gaining the advantage of data analysis enabling them to adjust the motorcycle's regulation parameters in view of improving its performance.

- Under the prior version of article 2.7.11, riders were entitled to leave potentiometers/sensors on their motorcycles for official sessions provided they were disconnected.
- However, given the ease with which sensors/potentiometers used for data-acquisition could be disconnected between an official session and an inspection and the difficulty for the FIM of verifying and establishing violations, i.e. of proving that sensors had in fact been connected during an official session, the FIM decided to amend article 2.7.11 in August 2006. This was done by deleting the wording that allowed sensors to be merely disconnected, and by adding wording whereby only those sensors forming part of the original equipment on the motorcycle as homologated may be installed.
- The amendment of article 2.7.11 was publicly communicated in a press release and by e-mail directly to the riders, teams and motorcycle manufacturers.
- Article 2.7.11 constitutes a strict-liability rule, comparable in such respect with anti-doping rules; it thereby being irrelevant whether or not Mr Scassa could make use of the junction box found on his motorcycle during the post-race inspection. In other words, it is the mere mounting of the additional equipment that is prohibited, not only its use.
- With regard to the prohibition of mounting a junction box on a motorcycle for official sessions, the prior version of article 2.7.11 was already a strict-liability rule since it stated in its first sentence that any addition of equipment not on the original homologated motorcycle was prohibited. This prohibition had been confirmed to the riders, teams and manufacturers, notably during a special FIM technical inspection that took place during the Brands Hatch event in August 2006.
- The nature of this rule and the fact that non-homologated equipment may not be added is further underlined by the general provision under article 2.7 of the FIM Regulation whereby *“Everything that is not authorized and prescribed in this rule is strictly forbidden”* as well as by the contrast with the rules applicable to the “Superbike” and “Supersport” categories which provide that additional equipment not on the homologated motorcycle may be added (respectively articles 2.4.11 and 2.5.11 of the FIM Regulations).
- In addition, prior to the Imola event, the FIM Technical Director, Mr Fabio Fazi, specifically informed Mr Scassa’s father, who also acted as his son’s personal mechanic, that the mounting of the AIM Mini Logger data-acquisition system was forbidden.
- For the above reasons and because Mr Scassa does not dispute the fact that the motorcycle he rode during the Imola race was mounted with a junction box, Mr Scassa is liable for violating article 2.7.11 of the FIM Regulations and must be sanctioned accordingly.
- The sanction of disqualification is valid and fair since it constitutes the minimum mandatory sanction provided by article 3.2 of the FIM Regulations for a breach of this type and because the Stewards’ Panel abstained from imposing a further sanction, such as a fine and/or suspension, as allowed by article 3.2.
- The FIM also contests that Mr. Fabio Fazi stated to the press that Mr Scassa had been sanctioned under pressure from another team. He simply said that if the FIM had not

sanctioned *ex officio* the irregularity committed by Mr Scassa, the Celani team would have filed a protest.

- On the above grounds, the Panel must reject the appeal and confirm the FIM Stewards Panel decision of 1<sup>st</sup> October 2006.

## LAW

### Admissibility and Jurisdiction

1. The admissibility of the Appellants' appeal is not disputed.
2. The jurisdiction of CAS, which is not disputed, derives from articles 3.9 of the FIM Regulations and art. R47 of the Code of Sports-related Arbitration (the "Code"), which is applicable to the present arbitration in accordance with art. R27 of the Code.
3. The scope of the Panel's jurisdiction is defined in art. R57 of the Code, which provides that: *"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*.

### Applicable Law

4. Art. R58 of the Code provides that:  
*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
5. In light of the foregoing provision and considering the Parties have both relied on the FIM Regulations, notably article 2.7.11 as amended in August 2006, those regulations are deemed applicable, completed where relevant by Swiss law since the FIM is domiciled in Switzerland.
6. Among others, the following provisions of the FIM Regulations are relevant in deciding the case:  
Art. 2.7.11:  
*"Additional equipment not on the original homologated motorcycle may not be added. (i.e. data acquisition, computers, recording equipment etc.). Telemetry is not allowed. The only potentiometers and sensors allowed are those fitted as original equipment on the motorcycle as homologated"*.

Art. 3.2:

*“If a motorcycle is found not to be in conformity with the technical regulations after a race, his rider will be disqualified. Further penalties (such as fine – a suspension and/or withdrawal of Championship or Cup points) may also be imposed”.*

### **Existence of an Offence**

7. The first question that needs examining is whether Mr Scassa committed an offence under the terms of article 2.7.11 of the FIM Regulations.
  8. The Panel will begin by examining the scope of the prohibition defined under article 2.7.11, since the parties disagree in that regard. It will then determine whether the equipment found on Mr Scassa’s motorcycle during the inspection at Imola falls within the prohibition as defined.
- A. Interpretation of Article 2.7.11 of the FIM Regulation*
9. The FIM being a Swiss association, its regulations must be interpreted in conformity with the principles of interpretation that apply under Swiss law to associative rules.
  10. Under Swiss law there is some controversy over the legal nature of the regulations of an association. They can be viewed as partly hierarchical in nature – due to being adopted and implemented by the association – and partly contractual – since members agree to be bound by the regulations upon entering the association.
  11. As a result of this “*sui generis*” nature of such regulations, certain scholars and some case law deem they should be interpreted according to the principles of interpretation that apply to the law (statutes), while others consider contractual principles of interpretation to apply.
  12. Given the mixed nature of associative regulations and because the principles used to interpret the law (statutes) and contracts partially overlap, this Panel considers it appropriate to account for both sets of principles.
  13. Consequently, the Panel will account for the literal meaning of the terms employed in article 2.7.11 of the FIM Regulation, the history of the provision, its purpose and its logic within the framework of the other provisions forming the technical regulations for the Superstock category, as well as account for the contractual principle of interpretation developed by the Swiss Tribunal fédéral whereby a declaration or an action must be interpreted in accordance with what a reasonable recipient thereof could and should have understood in good faith in the circumstances (the “*principe de la confiance*” hereinafter translated as the “*principle of good faith*”).
  14. The Panel considers the principle of good faith to be relevant because under Swiss law an association has the duty to respect equality of treatment between members, which implies that regulations must be both clear and predictably applied. A measure of this predictability is what



a reasonable member could in good faith understand to be the meaning of a regulation in light of its formulation and its application by the association.

15. Obviously where sports associations are involved this requirement of clarity and predictability is crucial due to the complexity of the technical regulations often involved and the serious sanctions that can result from offences thereto.
16. The importance of predictability has been underlined in the following fashion in CAS case law:  
*“The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders”* (see CAS 94/129, award of 23 May 1995, in: Digest of CAS Awards, 1986-1998, pp. 197-198; see also TAS 2004/A/762).
17. At first sight, the literal meaning of article 2.7.11 of the FIM Regulations seems clear with regard to the words, *“Additional equipment not on the original homologated motorcycle may not be added (i.e. data acquisition, computers, recording equipment etc.)”*. Furthermore, the purpose of article 2.7.11 is beyond doubt: it confirms the principle that additional functional equipment, such as data-acquisition and recording equipment, is prohibited conforms with the stated purpose (confirmed by the witnesses at the hearing) in the Superstock category that the motorcycles should be as similar as possible to the mass-produced homologated machines in order to limit the costs of R&D for teams and thereby more easily maintain an equal playing field.
18. However, the exhibits filed by the parties as well as the testimony heard regarding the history of article 2.7.11, the nature of data-acquisition systems, the practices of the motorcycle teams and the implementation of the regulations by the FIM led the Panel to consider the wording of article 2.7.11 to be far less clear than first meets the eye.
19. It became obvious upon hearing the testimony in light of the brochures advertising the AIM Mini Logger that in a functional sense “data-acquisition system” could only qualify a set of equipment that included all the necessary components to record data and which was effectively installed in a manner enabling it to fulfil its function.
20. With the AIM Mini Logger this would mean that at least three main components needed to be installed and hooked up on the motorcycle for it to function as a data-acquisition system in the strict sense of the term: a junction box (in effect the data- collection box), one or more sensors and a wire harness linking each sensor to the junction box. For the lap-timer function (chronometer) to be effective three other components are required: the display, the infrared receiver and a battery.
21. In addition, all the witnesses concurred in considering that even entirely installed to effectively function the AIM Mini Logger data-acquisition system (aside from the chronometer) provided

no advantage to a rider during the race because the recorded data can only be analysed and used upon downloading it to a computer. Thus, its use could only constitute an advantage in practice sessions and warm ups not in races.

22. Inversely, in the strict sense of the term, the individual components of the AIM Mini Logger, e.g. the junction box alone or the sensor(s) alone, i.e. not harnessed together, do not enable the recording of data and can therefore be viewed as static pieces of equipment rather than as a data-acquisition “system”.
23. The question is therefore what riders/teams could understand to be the meaning of the terms “additional equipment” under article 2.7.11 of the FIM Regulations. Could and should they have understood it to cover only data-acquisition systems in the functional sense of the term or also the individual pieces of equipment forming such systems?
24. In this regard, the Panel considers the manner in which the FIM implemented and modified article 2.7. 11 to be determining factors of interpretation.
25. More specifically, the Panel considers that quite a large number of combined actions by the FIM had the result of entertaining some confusion about the meaning of article 2.7.11 and the possible good faith belief by certain teams/riders that individual components of equipment could remain mounted on the motorcycles without article 2.7.11 of the FIM Regulations being violated.
26. In this relation it is noteworthy that the Appellants and the Respondent agree that for some time already and at least during the 2006 season: *“The AIM Mini Logger is widely used by motorcycle riders”* (Respondent’s answer, p. 5 §12). In its answer brief, Respondent qualifies the prior admission as follows: *“However, Mr. Scassa was the first and so far the only competitor in any FIM Superstock event who did not dismantle the parts which are not allowed under the FIM Regulations. The dismantling of the data collection box and the sensors from the motorcycle prior to practice, warm-up or races is not complex”*.
27. In light of the testimony heard and the wording of article 2.7.11 of the FIM Regulations in the version that applied throughout a large part of the 2006 season, i.e. the version prior to the amendment of August 2006, the Panel finds the foregoing allegation by Respondent not to be entirely credible.
28. During his examination at the hearing, Mr Fabio Fazi testified that at the Brands Hatch event, which took place in early August 2006 prior to the change of rule, at least one other rider (n° 96) had a junction box mounted on this motorcycle during the official sessions and was not penalized (but he retired due to an accident). This testimony in itself clearly contradicts the above statement by Respondent.
29. Furthermore, a comparison of the wording of the last sentence of the prior version and of the amended version of article 2.7.11 of the FIM Regulations, as well as the explanations given with regard to the reasons for modifying that sentence, make it perfectly possible that under the prior

regime other riders than Mr Scassa were using data-acquisition systems and not entirely dismantling various parts, such as the junction box and/or sensors) for official sessions.

30. Indeed, according to the last sentence in the prior version of article 2.7.11, *“Telemetry is not allowed, but the potentiometers and other sensors can be maintained, if disconnected”*, which was amended in September 2006 to provide that, *“The only potentiometers and sensors allowed are those fitted as original equipment on the motorcycle as homologated”*.
31. It is uncontested that the purpose of this amendment was to make cheating more difficult because under the prior rule sensors could remain mounted on the motorcycles and simply be disconnected during the official sessions, by disconnecting the harnesses and taping them to the bodywork.
32. In other words, there is no doubt that under the regime of the prior rule, riders and teams were entitled to at least leave sensors and harnesses mounted on the motorcycles, providing they were not connected to any other component allowing data recording.
33. Mr Mauro Marelli testified that in most of the races during the 2006 season leading up to and including the Brands Hatch event, Mr Scassa’s motorcycle had been mounted with the various components making up the AIM Mini Logger, including the junction box, but that during the official sessions they were simply disconnected. He also testified that despite the motorcycles being inspected by the FIM after the events there had never been any objection to the presence of the disconnected sensors or the junction box.
34. Mr Fabio Fazi testified that the FIM made practically no spot checks during the official practices and warm ups and that during the technical inspections after the races (usually involving the first 10 motorcycles in the race ranking) they did not focus on verifying the presence of data-acquisition systems, due to the number of other elements that warrant inspection and the general complexity of the inspections. Although his testimony was not altogether clear on this point, Mr Fazi seemed to be stating that the fairings were not systematically removed during inspections and that as a result he had no way of knowing whether or not a junction box was present on Mr Scassa’s motorcycle or other motorcycles during the post-race inspections.
35. Mr Mauro Marelli testified to the contrary that the fairings were nearly always removed by the FIM during the post-race inspections and that the AIM Mini Logger junction box was immediately visible upon removing the fairings.
36. Confronted with this contradictory testimony, the Panel finds its more credible, on the balance of probabilities, that fairings were quite often removed during post-race inspections because it is a relatively simple operation that would enable to inspect important parts of the motorcycle. It is possible that Mr Fazi’s testimony is linked to the fact that he was not and could not be a direct witness of all and every inspection of motorcycles, i.e. that other members of the inspection team would have removed the fairings.

37. Moreover, it is evident from the photographs of the junction box mounted on Mr Scassa's motorcycle that the junction box would have been immediately visible upon removing the fairings if the box was present on the motorcycle during any inspections.
38. Because it is uncontested that MV Agusta Motor was using the AIM Mini Logger data-acquisition system during private practices and considering the junction box was mounted on Mr Scassa's motorcycle during the race in Imola, the Panel has no particular reason to doubt Mr Marelli's testimony when he states that the junction box often remained mounted on Mr Scassa's motorcycle during the official sessions of events of the 2006 season.
39. At the same time, it is uncontested that throughout the 2006 season the addition of non-homologated chronometers was accepted by the FIM. The Respondent underlines this in the following manner in its answer brief: *"Pursuant to Art. 2.7.7 FIM Regulations, the riders were allowed to replace the original chronometer and lap timer of the homologated motorcycle by a different brand, such as the AIM Lap Timer or the chronometer features of the AIM Mini Logger, and to use a large display ..."*.
40. It is relevant in connection with the foregoing submission of Respondent that according to the adduced evidence the chronometer feature of the AIM Mini Logger necessarily entails the use of the junction-box component because the junction box contains the electric battery enabling the display to work (contrary to the AIM Lap Timer where the battery is included in the display component). Indeed, that submission contradicts Mr Fazi's testimony that during the 2006 season the riders were not entitled to use the junction box even if disconnected from any sensors and only employed for the chronometer function.
41. Also the Respondent did not provide conclusive evidence regarding on what basis the AIM Lap Timer would not have constituted prohibited "additional equipment" under the wording of the prior (or amended) version of article 2.7.11. In the above-quoted part of its submission, the Respondent refers to article 2.7.7 of the FIM Regulations as the regulatory basis whereas during his testimony Mr Fazi stated that it was article 1.22 §12 of the FIM Regulations.
42. The Panel finds that the term "*instrument*" used in article 2.7.7 is unclear or at least very unspecific in defining what items may be added to the motorcycle and that article 1.22 §12 of the FIM Regulations is not even part of the "Technical Regulations", under chapter 2 of the FIM Regulations, wherein the technical specifications (article 2.7) define what items can and cannot be added. Instead, article 1.22 is contained in chapter 1 of the FIM Regulations, dedicated to defining "Sporting Regulations", under the heading "Behaviour during Practice and Race".
43. Furthermore, Mr Fazi admitted that his interpretation of article 1.22 §12 of the FIM Regulations as the regulatory basis for accepting the installation of AIM Lap Timers had never been communicated to the riders, teams or manufacturers, despite such chronometers not being homologated.

44. The testimony of Mr Marelli and Mr Goggi confirmed the absence of any communications from the FIM because neither of them knew under what provision of the FIM Regulations riders had been permitted to mount non-homologated chronometers for official sessions.
45. Mr Goggi testified in a convincing manner that in his view the permitted use of non-homologated chronometers – which in his opinion had always included the chronometer features of the AIM Mini Logger, i.e. also the junction box disconnected from sensors – was based on the unwritten practice of the FIM tolerating the use of non-homologated chronometers. This statement was not directly contradicted by Mr Fazi because although he referred to article 1.22§ 12 of the FIM Regulations he also added that everyone knew that non-homologated chronometers were tolerated.
46. For all the above reasons, the Panel considers that the riders and teams could in good faith have understood the prior version of article 2.7.11 to mean that only data-acquisition systems installed to function during official sessions were prohibited; or in other words that any individual components of a data-acquisition system, such as those making up the chronometer feature of the AIM Mini Logger (the display, the infrared, the junction box, the sensors and the related harnesses), could be mounted providing the sensors remained disconnected.
47. The question remains how the meaning of the modified version of article 2.7.11 of the FIM Regulations could be understood in light of this history of the provision prior to August 2006 and given the prior practices of the FIM.
48. Mr Fazi testified that the purpose of amending the rule was to clarify it, further to the incidents in Brands Hatch, and to make any form of cheating more difficult.
49. Mr Fazi stated that he began the process by indicating to all the teams/riders individually during the special FIM technical inspection in Brands Hatch that in the future it would be prohibited to leave a data-acquisition system mounted on a motorcycle during the official sessions. He also said he had not, at the time, given a general briefing to the teams/riders as a group or provided them with any written form of clarification.
50. Mr Goggi indicated during his testimony that he did not remember any form of briefing during the Brands Hatch inspection – during which he was present on behalf of MV Agusta. Mr Goggi stated he first heard about an amendment to the regulations upon receiving a copy of Mr Fazi's e-mail of 25 August 2006 enclosing a copy of the press release including the modified version of article 2.7.11 of the FIM Regulations.
51. The Respondent filed a written statement dated 7 October 2006, signed by a large number of the teams competing with Mr Scassa's team at Brands Hatch, which includes the following sentence in Italian and English concerning the unscheduled technical inspection in Brands Hatch: "... *in tale occasione fu ricordato che l'installazione di strumenti per acquisizione dati era vietato*" "*In such occasion we where (sic) informed again that the installation of data recorders instruments was forbidden*".

52. Mr Fazi also stated during his testimony that before the event in Imola he remembers talking to Mr Scassa's father (who also functions as his son's personal mechanic) to confirm that data-recording systems should not be installed and that he recalls the father replying that they would need to change components of the system.
53. Mr Marelli testified that he was not present at the Brands Hatch inspection but had heard afterwards that the only change that was being proposed to the rules was to prohibit the installation of non-homologated sensors.
54. Mr Goggi testified that upon reading the amendment to article 2.7.11 in the press release he was convinced that the change was aimed only at prohibiting the installation of sensors because they were at the root of any data-acquisition system and that their elimination would prevent any effective data acquisition, thereby solving the problem. He was therefore confident prior to the official sessions in Imola that Mr Scassa's motorcycle was equipped in conformity with the regulations.
55. Confronted with this contradictory evidence regarding whether, when and, if so, in what exact terms, the amendment to the article 2.7.11 was explained to the riders, teams and manufacturers, the Panel finds it difficult to determine whether or not they were in fact all clearly informed in similar terms by the FIM regarding the intended scope and meaning of the amendment made to article 2.7.11 of the FIM Regulations.
56. On the other hand, the Panel finds that for the following reasons the amended version of article 2.7.11 could be understood by a rider/team in good faith to only eliminate the right to install sensors:
  - The prior wording of article 2.7.11 combined with the FIM's prior practice entitled riders/teams to believe that the mounting of certain components of a data-acquisition system, in particular of the lap-timer features of the AIM Mini Logger, was tolerated providing the sensors were disconnected.
  - The amendment to article 2.7.11 only concerned the wording of its last sentence relating to the installation of sensors, thereby reinforcing the impression that the existing practice was maintained except for obliging riders/teams to remove the non-homologated sensors to reduce the risk of cheating.
  - In the written communication by Mr Fazi of the amendment, the emphasis in bold characters of the modified words re-enforced the impression that only the installation of sensors was being targeted as a new prohibition.
  - Although the Panel accepts that it was a mistake, the French version of the Technical Rules was potentially misleading as it said exactly the contrary of the English version, confirming that data-acquisition and recording equipment not on the original homologated motorcycles may be added.
  - There was no form of written explanation simultaneously released to the riders/teams, whereas it would have been simple to do so in order to remove any ambiguity regarding the scope of the change.

- The need for clear explanations was all the more important due to the tolerated use of non-homologated chronometers and the fact that the terms “data-acquisition system” are ambiguous to the extent they can be understood in different ways.
57. In addition, the fact that in Imola Mr Scassa left the junction box installed on his motorcycle, whereas it is undisputed that he could gain no advantage from its presence on the machine during a race, tends to confirm that he and his team did in good faith understand the amendment to mean only that in the future they must dismount the sensors but did not need to worry about the junction box (which could be used for the chronometer alone).
  58. The Panel also considers that where a practice is tolerated by a sports federation for a period of time it is not possible for it to also invoke a general provision stating that “*everything that is not authorised and prescribed in this rule is strictly forbidden*”, since for reasons of equality of treatment and predictability it is important that prohibitions be unambiguous. In other words, a federation’s rules and its practices must not contradict one another.
  59. This need for clarity is enhanced where the applicable sanction is based on the concept of strict liability. Indeed, it would be particularly unfair to automatically disqualify an athlete, i.e. without her or him being allowed to establish lack of fault, if the allegedly violated rule is not perfectly clear.
  60. In the present case and given the rapidly evolving nature of data-acquisition systems, which according to the testimony heard are becoming very cheap and simple to use and are beginning to be designed for homologation by certain motorcycles manufacturers, the Panel recommends that the FMI either further amend article 2.7.11 to make it more specific regarding exactly what is prohibited or that the FMI issues an official written explanation concerning the scope of the prohibition.
- B. *Application of Article 2.7.11 of the FIM Regulations as Interpreted*
61. Given the scope of application and the ambiguity of article 2.7.11 of the FIM Regulations as found above by the Panel, and because it is uncontested that no sensors were discovered on Mr Scassa’s motorcycle during the FIM inspection after the race in Imola, the Panel finds that Mr Scassa did not commit any offence under such provision.
  62. Consequently, the FIM’s decision to disqualify Mr Scassa is invalid and must be annulled.

### **The Court of Arbitration for Sport rules:**

1. The FIM Stewards’ Panel decision of 1<sup>st</sup> October 2006 is set aside.

2. The FIM must without delay take all necessary measures to restore Mr Scassa as the winner of the event in Imola (by correcting the classification), to attribute to him the points gained as the winner and to correct in a corresponding manner the current ranking of the “*2006 Superstock 1000cc FIM Cup*”.

(...).