

**2021 World Anti-Doping Code Review - Recommendations and amendment proposals from the Olympic Movement for the consideration of the Code drafting team**

**General Comments**

- While not all comments provided under the previous round of consultation may be repeated here they remain for this round of consultation.
- The Olympic Movement notes that the regulations surrounding the fight against doping are increasing significantly and becoming more complex, not only to Signatories, but also to athletes. While it is necessary to ensure that the processes are clearly defined, there are concerns that this may lead to inconsistencies and thus to increased scope for legal challenge, often on technicalities. In this respect, the Olympic Movement would like to recall the importance of instituting regulations which ensure the worldwide harmonisation of the fight against doping and which can help to reduce the complexity of the system. The Code was drafted initially with the purpose of ensuring universality, respecting the fact that not all regions across the world had the same capabilities and resources while all signatories needed to ensure that they could implement a comprehensive anti-doping programme which was fit for purpose. Moreover, the tendency of exterritoriality of certain national legislation and the absence of minimum standards in terms of cooperation and sanctions should be addressed:
  - o A better balance and a clear separation should be found between the actual regulations which will effectively improve the fight against doping and what should be listed as best practices.
  - o There appear to be numerous discrepancies between the Code and the Standards and between the different Standards themselves.
  - o As a general matter, mandatory principles and processes should be directly defined in the Code and not in the Standards.
  - o Reemphasising the necessary coordination and defining the scope of national legislation is perennial for the efficiency of the anti-doping efforts.
- It appears that, in a number of sections of the Code and the International Standards, the term “fight-against doping” is being replaced by references to “Clean Sport” and “Integrity in Sport”. While the fight against doping is one aspect of several which must be addressed in achieving clean sport, such terminology encompasses other issues in sport which are not regulated by the Code but are covered by other means. For the sake of clarity and consistency, the Olympic Movement strongly recommends using the reference only to “the fight against-doping” within WADA documentation in order to remain within the mission framework of WADA.

**Comments on the International Standard on Code Compliance**

The Olympic Movement wishes to reiterate its concerns regarding the infringement of third parties' rights. It should be noted that the ISCCS has drastically changed the application of the Code, while only limited amendments were introduced into the Code to allow this. There are grave concerns that the

sanctions provided under the ISCCS and in particular the process to decide upon such sanctions can cause serious legal challenges with related uncertainty and confusion. This would seriously damage the system. The Olympic Movement is concerned that sanctions against a signatory should come with sanctions or significant consequences for third parties, such as athletes or sports organisations. Individual responsibility should be the guiding principle of the anti-doping policy whilst collective sanctions should be the ultimate resort.

The Olympic Movement is of the strong belief that sanctions should and can only be imposed on those who have not respected the rules rather than on those who have no responsibility for the violation of such rules.

These are fundamental principles which the Sports Movement feels the obligation to state again, as they are key to achieving a credible and trustworthy system. This being said, the Olympic Movement is prepared to have an ongoing and constructive dialogue to seek ways to address these concerns while bringing a balance to the system which will maintain, if not strengthen, the purpose of the World Anti-Doping Code.

The Olympic Movement has noted that it is not clearly understood or acknowledged that in effect it is the CAS which can rule on the Compliance status and sanctions of a signatory. Such lack of clarity may, at least in part, be due to the use of the word “assertion”; therefore, the Olympic Movement recommends replacing “assertion” with “allegation”.

The Olympic Movement also has concerns regarding the lack of graded sanctions. The general principle whereby the most severe consequences apply to the most severe cases should prevail. In addition, consequences impacting athletes directly or indirectly should be a last resort. Under such a consideration, Art 11.2.6 should be reinforced to allow clean athletes to compete under a neutral status. WADA should also ensure there are no gaps in testing when a signatory is declared non-compliant and is no-longer allowed to conduct testing.

Notwithstanding the importance of education, the Olympic Movement welcomes that it has been moved from the “Critical requirements” to the “High Priority requirements”, as this is a difficult area to assess and by its nature, requires a significant degree of subjectivity in that assessment of compliance. The Olympic Movement also supports doing this for the two proposed new requirements k) and o). The latter would also require some clarifications.

Regarding education, the varying roles of Code signatories in relation to education still appear to be somewhat misunderstood. The International Federations appropriate role is to address the issue of education during their respective major events for international elite athletes, whereas the National Federations, sports ministries, NADOs and NOCs should focus on national athletes and programmes of a more general and comprehensive nature and any assessment of compliance must reflect this.

The Olympic Movement also wishes to make the following recommendations:

- Understanding that one of the purposes of the ISCCS is to allow greater predictability, the list of critical requirements should be an exhaustive one included directly in the Code;
- Art 9.4.4 of the ISCCS should provide the framework for reporting by the CRC to the Executive Committee, with a first section being purely factual without any pre-judgement;

- As a matter of consistency with the Code and understanding that the purpose of the ISCCS is to promote Code compliance, the burden of proof within the ISCCS should be the “comfortable satisfaction of the panel”.

### **Comments on the Anti-Doping Charter of Athletes Rights**

The Olympic Movement supports the position of the IOC Athletes Commission regarding the Anti-Doping Charter of Athletes Rights being developed by the WADA Athletes Committee and wishes to highlight the following:

As of today, neither WADA, nor the Code drafting team has been able to provide clarifications on whether it would be the equivalent of a Standard, fully part of the Code or a guiding document, and whether it would have any implications for compliance monitoring.

The World Anti-Doping Code was first drafted with the objective of establishing regulations for drug-free sport which could be applied by everyone across the globe, regardless of the geographical origin. Such fundamental principles should prevail for all other documents in relation to WADA and the Code.

This includes the Anti-Doping Charter of Athletes Rights for which there remain concerns regarding the implementation of its provisions as well as the scope of the Charter. Indeed, some of its provisions seem to have a reach beyond the fight against doping (e.g. corruption-free sport, freedom of expression, etc.) thus raising the spectre that WADA would be going beyond its mission framework.

In addition, the formulation of the document implies that it would supersede the World Anti-Doping Code which is of great concern as this could consistently diminish the available mechanisms to fight doping in sport, which also include the protection of athletes' health in terms of drug abuse.

Further clarifications are also required regarding:

- The need to have a standalone document listing all these rights (and responsibilities, currently not reflected in the document) which would have legal authority, since these are already addressed under the relevant articles of the Code and International Standards, as indicated in the draft.
- Whether WADA has assessed if the current draft would effectively contribute to improving the anti-doping system and making more efficient. For example, the way the actual rights have been drafted indicates that the Charter would fall under litigation law allowing athletes to seek damages from fellow athletes. Would this truly be proportionate within the anti-doping framework and in particular considering the geographical challenges of ensuring that all athletes benefit from the same education and level of awareness?
- The exact role of the Ombudsperson and whether there is a risk of duplication with the whistleblower programme.
- The process put in place by WADA to ensure that all athletes across the globe are being appropriately consulted.

### **Comments on International Standard on Education**

Notwithstanding the importance of education and prevention in the fight against doping and the need for these to be promoted, the Olympic Movement questions whether an International Standard will meet these needs.

The current challenges in education include the separation of international and national responsibilities, building capacity and providing tools to signatories which they can adapt to their own culture, structures and purposes. For example, the requirement to have event-based Education fails to recognise that Athletes during events are focused on their competitions and it should be considered whether it is appropriate and proportionate to distract athletes during competition and if so, to what extent. In addition, those events which, because their format, allow space for education purposes cannot focus only on anti-doping but also include education and awareness raising around other topics such as match-fixing, athlete safe-guarding and career-after-sports, PHAS, injury prevention, etc.

Therefore, the Olympic Movement is of the opinion that Article 18 requires significant further review and consideration to make it more universal and inclusive and that it would be appropriate and relevant to include the drafted standard in the guidelines for education.

### **Comments on the International Standard on Results Management**

The Sports Movement favours having principles and processes directly defined in the Code and not in the Standards and therefore still questions the need for a specific International Standard on Result Management:

- Should any principle or process related to Result Management and Hearings not be clearly defined then this needs to be clarified under the Code?
- Should there be a need to clarify the application of such principles and processes then this should be addressed with the “Results Management, Hearings and Decisions Guidelines”.

Nonetheless, based on the version shared, the Olympic Movement would like to raise the following comments:

- In order to align with Article 20 of the Code, the possibility to delegate the right to act as Results Management Authority should be granted to other entities than NADOs and NFs as per the current version of article 4.1.2.3 of the ISRM;
- Although the Olympic Movement is favourable to ensuring that Results Management (incl. hearings) is prosecuted and concluded in a timely and expedited manner, imposing a strict timeline of six months (as per article 4.4. of the ISRM) may be unrealistic in certain circumstances, which are not necessarily under the control of the ADO. Therefore, it should avoid referring to such strict timelines. Moreover, the Olympic Movement raises the concern that a guilty Person may be cleared should the timeline not be respected;
- Article 8.5 of the ISRM enshrines the principle of “independence”, which is not referred to in the Code, and should therefore be removed and replaced by the wording currently used in Article 8.1 of the Code (“fair hearing within a reasonable time by a fair and impartial hearing panel”) or art. 8.7 (a) ISRM. “Independence” increases the required thresholds and opens the door to challenges for “lack of independence”.

Also noting that several annexes of the ISRM have still to be developed, the Olympic Movement reserves its right to provide comments on the proposed new International Standard on Results Management during the next consultation phase.

**Enlargement of the scope of people bound by the Code**

While the Olympic Movement has taken note of the revised version of this obligation to require directors, officers, employees and volunteers of Signatories to comply with the Code as a condition of participation or involvement in sport, there remain concerns as to the practical implementation of such a requirement:

- Employment: with this additional obligation to comply with the Code, employees may have conflicts of interests between their employers (with the duty of care) and the obligations set forth in the Code (which may lead to disclosure of information evidencing potential violations of the Code), especially regarding article 21.3 of the Code. The footnote trying to address this concern would go against the principle of the Code to achieve harmonisation of the fight against doping as it is understood that the application of this article would depend on the different national laws
- WADA's authority to monitor, sanction and implement sanctions on employees may be questioned;
- Consequences of a breach of the WADA Code by such Persons: will it be considered as an individual sanction to the Person and/or to the Signatory? What kind of sanctions could be foreseen as this would usually be governed by employment law processes and rules;
- Jurisdiction: in accordance with the Code, any case should be brought before a first instance entity and appealable to CAS, which may be conflicting with employment law in a specific jurisdiction;
- The scope of persons to be affected by this obligation is very broad since it includes all persons working in the sports' movement (as per the wording in the Introduction); and
- Other aspects: monitoring a register of all Person who would have breached the Code; management of confidential information and personal information between the Person and WADA.
- This taken into consideration, the Olympic Movement recommends maintaining the actual version of the Code without specifying "other Persons" and to remove the proposed new art 20.1.7, 20.2.7, 20.3.4, 20.4.8, 20.5.10, 20.6.5 and 22.3.

**Roles and responsibilities of Signatories**

There has been a shift of responsibilities in Article 12 of the Code (and reflected in the respective roles and responsibilities of Signatories, e.g. art. 20.1.4, 20.2.4, etc.), since it is now the obligation of Signatories to take action under their own rules against any sporting body over which they have authority to implement and enforce the Code. In that context, it should remain WADA's role to monitor the compliance with the Code which may require the support of Signatories.

**Other specific comments:** Art. 2.1.4: The Olympic Movement supports the proposed amendment as it should enable the protection of athletes from AAF due to contamination with some prohibited substances.