

## 2021 Code Review - Second consultation phase

**Showing: All (603 Comments)**

### Fundamental rationale for the World Anti-Doping Code (18)

#### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The following comments are a collation of the ICC and its National Federation's comments.

#### World DanceSport Federation

Ineke Crijns, Chair anti-doping commission (Nederland)  
Sport - IF – Other

SUBMITTED

The currently proposed changes are based on findings during the last years in Olympic disciplines. For small IFs, not having Olympic disciplines, several of the requests are high end requests for such sport federations. Therefore, it might be considered to have gradations, one or two, for the code and its implementation for the level of IF.

#### IFSC - Int. Fed. Sport Climbing

Paolo ORIONE, Anti-Doping Executive Officer (Netherlands)  
Sport - IF – Summer Olympic

SUBMITTED

**The one-size-fits-all approach that is underlying the Code is not suiting the needs and risks faced by the small IFs.**

**The requirements embedded in the Code force a substantial diversion of resources from the "sport" development (that is essential to survive and develop the base of active athletes) to "compliance" topics that are not adding value nor (or little) lowering the risk of doping for small IFs.**

**While forcing IFs to adopt a risk-based approach, the Code itself mandate a unique approach where the "avoid at all costs" risk mitigation is the only possible mitigation to risk of doping.**

**A multinational company and a small shop although in the same market face different levels of risk and they have different levels of compliance obligations.**

**When the highest price in the top competition of an IF is a few thousands Euros, it is very very unlikely that an athlete will undergo sophisticated doping practices: they are expensive, relevant from a criminal perspective in many countries and not giving the security of success, given the high technical content of the disciplines. Therefore forcing the IF to equip itself with very sophisticated anti-doping approaches is a waste of resources diverted from sport development and not supported by a relevant risk level.**

**It would be much more beneficial a CODE proposing a "phased" approach where elements of complexity are added to IFs' anti-doping programs in line with progression in the sport development and considering whether the nature of the sport exercise is increasing risk. A sort of "anti-doping maturity" framework aligned with the "IF sport development maturity" and coherent with increasing levels of risk.**

**A phased approach would allow a coherent investment in anti-doping, the internal and gradual development of more and more sophisticated skills related to the technical and administrative aspects of the fight against-doping; this in itself is a benefit because will increase the awareness and the right cultural approach between administrators.**

**The current approach instead is forcing small IFs to consider outsourcing the anti-doping activities; this is contrary to current best management practices and may reveal itself as a very bad approach**

because will make anti-doping a "compliance cost" and not the core principle underlying the sport development activities.

As stakeholders we feel that we do face a serious deteriorating reputational risk: the negative perception from public of WADA and the anti-doping community as a niche fighting for its own existence.

### World Rugby

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby agree with moving Health to the top of the list of rationales

### Canadian Olympic Committee

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

While the COC supports Health as a primary objective for the Code, we suggest each of (i) Health, (ii) Ethics, fair play and honesty, and (iii) Potential for performance enhancement, be considered equally as primary fundamental rationale. The combination of those 3 objectives is core to the Code.

### Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

## FUNDAMENTAL RATIONALE FOR THE WORLD ANTI-DOPING CODE

### General remark

Please confer comments submitted under "GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY" and the heading "The Code review process". For the sake of good order, it is repeated here:

*"We also question why WADA/the team have chosen not to respond and address the number of stakeholders - ranging from athletes and sports organisations to NADOs and governments - explicitly expressing the need for amending the criteria for placing a substance/method on the prohibited list. Instead of addressing the issue as such, WADA/the team is referring to a decision from the European Court of Human Rights and suggestions made by "a number of stakeholders", and opt for moving "health" to the top of the list of the rationales for the Code.*

*Firstly, we were not aware of any order of importance of this bullet point list. Secondly, in our readthrough of all the comments from the stakeholders, we found only one stakeholder referring to the decision from the European Court of Human Rights and only three asking to move health on top of the list. Furthermore, when moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such amendments have been made. Instead, the decision to move health to the top of the list has made the lack of logic between the Code, the list and the consequences more accentuated. Also, we question the reference to the decision from the European Court of Human Rights as the sole legal basis and only reason for moving health to the top of the list. The Court found the French Government's Order as being in line with the European Convention on Human Rights (ECHR) Article 8, hence there should be no need for amending the bullet point list. Furthermore, any radical change in the rationale behind the Code requires a thorough analysis and reasoning. Simply referring to one single decision dealing with whereabouts requirements within a system that has other aims to protect (ECHR) than the Code, is in our view not sufficient nor satisfactory."*

**EU and its Member States**

SUBMITTED

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

***Comment on the Health as a Rationale for the Code***

In line with the EU's objectives of ensuring a high level of human health protection in the definition and implementation of all EU policies and activities[3] and of protecting the physical integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen[4], the EU and its Member States welcome and support the emphasising of the health aspect within the Code and the efforts taken to strengthen the importance of health within the Code.

In this context, the EU and its Member States would like to recall the link between sport, health and sustainable development that is enshrined in paragraph 37 of the 2030 Agenda for Sustainable Development[5], adopted by the United Nations in September 2015.

[3] Articles 9 and 168(1) of the Treaty on the Functioning of the European Union (TFEU)

[4] Article 165(2) of the TFEU

[5] "Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives."

**Secretaria de Estado da Juventude e Desporto**

SUBMITTED

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

The Portuguese Government welcomes the majority of the changes proposed for the World Anti-doping Code in particular the additional focus on the public health dimension and the handling of recreational athletes.

Where otherwise noted please take in consideration the common positions presented by the European Union and the Council of Europe.

**Gouvernement du Canada**

SUBMITTED

Francois Allaire, Agent Principal de Programme (Canada)  
Public Authorities - Government

○The Government of Canada reiterates its concerns stemming from the implementation of the 2015 Code, with regard to the increasing gap in capacity to deliver on the requirements of the World Anti-Doping Code and its Standards.

○It is recognized that the Code must keep pace with increasingly complex doping practices, especially given recent large scale anti-doping scandals. However, capacity to effectively implement expanding Code requirement is an issue for governments and the sport movement.

○Some countries, particularly in the developing world, may have difficulty in achieving full Code compliance due to its increasing complexity and implementation costs.

In the interests of achieving harmonization, WADA must ensure that the new provisions in the 2021 Code are both realistic and achievable worldwide. An operational assessment of the various responsibilities, increased

costs, training requirements, new equipment, timelines etc., is required to ensure effective implementation of the new Code.

### **Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### **Purpose, Scope and Organization of the World Anti-Doping Program and the Code**

Add the wording to the section:

WADA publishes the text of the World Anti-Doping Code and International Standards which are an integral part of it, as well as relevant changes in the six official languages of UNESCO (English, Arabic, Spanish, Chinese, Russian and French)

On-point translation into the six official languages is crucial, as it provides clear and accurate communication and the correct interpretation of the basic documents in the field of anti-doping in sport.

It is necessary to supplement Comment 2 with the wording:

The change in standards should take place in strict accordance with the established procedure for issuing such documents and amending them, and subject to appropriate discussion with the countries of the nature and text of such changes.

### **Fundamental rationale for the World Anti-Doping Code**

Note that the Anti-Doping Charter of Athletes' Rights is currently being developed by WADA and not adopted.

#### *Proposed amendment:*

The ultimate goal of the anti-doping system is to preserve the spirit of sport and to help foster a clean sport environment.

There are four prevention strategies that encompass all the strands of an anti-doping program.

Education – to raise awareness, inform, communicate, to instil values, develop life skills and decision-making capability to prevent intentional and unintentional anti-doping rule violation.

Deterrence – to divert potential dopers, through ensuring that robust rules and sanctions are in place and salient for all stakeholders.

Detection – an effective testing and investigations system not only enhances a deterrent effect, but also is effective in protecting clean athletes and the spirit of sport by catching those committing Anti-Doping Rule Violations, while also helping to disrupt anyone engaged on Doping behaviour.

Enforcement – to adjudicate and sanction those found to have committed ADRVs.

These four prevention strategies set the framework for the wider anti-doping system.

### **Japan Anti-Doping Agency**

SUBMITTED

Akira Kataoka, Senior Manager, Results Management & Intelligence (Japan)  
NADO - NADO

#### 1. Principle of the Code

- "Education Outcome" is important to mention, which should be reflected in the World Anti-Doping Code. Preservation of the "Spirit of Sport" (already used term) and aiming for "Doping Free" world/sport have already been mentioned and the "Clean Sport Environment" is newly used in the ISE. The connectivity

between them should be clarified for much better understanding of the Outcome which the world of anti-doping and sport should be endeavour to in relation to the society.

- Avoid a narrow focus on the aim as "drug-free sport" / "Doping Free". Rather, the principle should be wide scope, and the aim should be set as fostering of role model in society, building the character-building of individuals or protecting/ ensuring the integrity of self and sport.

2. Wording on "integrity" should be used, for example integrity of sport and integrity of self (yourself / being), which are something the spirit of sport is founded on.

3. "Values-based Education" and fundamental rationale of the Code

We highly put the significance on implementing and developing the values-based education programme for ensuring the good values maintained for the future of sport and for future generation. However, since the Code mentions that "Anti-doping programs seeks to preserve what is intrinsically valuable about sport" which refers to "the spirit of sport" as the fundamental rationale of the Code, we take those 11 values stated herein that are found in sport and through sport are the most understood examples reflected in Values-based Education. To promote the implementation of values-based education, it could be considered to give a little bit more clarifications on what 'common values' that the Code/ADP is assumed. This 'common values' (based on the spirit of sport) should be mentioned in both Code18 and ISE.

## AEPSAD

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)

NADO - NADO

SUBMITTED

## GENERAL COMMENTS

AEPSAD thinks the CODE must be as simple and understandable as possible, not only in its wording, but in its basis and fundaments, and with that objective in mind, we submit these General Comments.

With that mission as our bearing compass, we would want to stress 4 very necessary, important and fundamental concepts:

**1.- THE CONCEPT OF "SPIRIT OF SPORT":** According to this first version of the World Anti-doping Code 2021, the PURPOSES OF THE WORLD ANTI-DOPING CODE AND THE WORLD ANTI-DOPING PROGRAM which supports it are:

- *" To protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide, and*

- *To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping."*

And we cannot agree more whit these purposes, but we think that the FUNDAMENTAL RATIONALE FOR THE WORLD ANTIDOPING CODE is not at all in accord with them: following this FUNDAMENTAL RATIONALE, the anti-doping programs seek to preserve what is "*intrinsically valuable about sport*". So it will very clear that the word "*protect*" on the first PURPOSE must be equivalent to the tem "*preserve*" on the FUNDAMENTAL RATIONALE. But what we find in this FUNDAMENTAL RATIONALE is another and very different thing.

The FUNDAMENTAL RATIONALE of this version of the code affirms that what is “*intrinsically valuable about sport*”, is something “often” referred to as “the spirit of sport”. And we cannot agree with a term without a clear name: “often” referred to as “the spirit of sport”, and sometimes referred with other names not listed on the text? (why not?, these synonyms can help us to understand the term. We think the Anti-doping System is a very serious issue preserving doping-free sport, health, fairness and equality for *Athletes* worldwide, and not uncertain and values with a need to help to be defined.

The FUNDAMENTAL RATIONALE on the Code defines this “spirit of sport” as:

1.

*“The essence of Olympism. Regarding “Olympism”, its definition is (Oxford Dictionary): “The spirit, principles, and ideals of the modern Olympic Games; commitment to or promotion of these values “. In other words, that spirit of sport would be the essence of another spirit and the essence of some principles and ideals of a Games in which few athletes and only in certain sports will have the opportunity to participate.*

2.

*The pursuit of human excellence through the dedicated perfection of each person’s natural talents. But the “natural talents” of the human being can be focused on sport, but also in many other fields, and some of these fields not very good for the fairness and noble principles. The “dedicated perfection” of an athlete’s “natural talents” can be easily achieved through doping.*

3.

*It is how we play true. The spirit of sport is the celebration of the human spirit, body and mind, and is reflected in values we find in and through sport, including:*

▪

*Health*

▪

*Ethics, fair play and honesty*

▪

*Excellence in performance*

▪

*Character and education*

▪

*Fun and joy*

▪

*Teamwork*

▪

*Dedication and commitment*

- 
- Respect for rules and laws*

- 
- Respect for self and other Participants*

- 
- Courage*

- 
- Community and solidarity*

A definition based on an action such as a "celebration" (which is difficult to identify if it is passive or active: if this "human spirit, body and mind, reflected in the values we find in sport", they are really those that celebrate or are celebrated). This concept of "celebration" implies an action to be carried out in the privacy of each human being. And in this way, very difficult to verify, to identify (nobody knows what% of participants, or even of spectators, are even of understanding that "celebration" "

All this indicates a term with an unquestionable poetic or even philosophical value, but with a huge lack of definition, which makes it totally inadequate as the basis of a legal text that clearly enters into important rights of people and can represent undoubted economic impacts. The "spirit of sport" finds no concretion or development in any legal text but is left to the discretion of, in each moment, those who have the power to interpret its content.

For AEPSAD all this is really evident and important in Article 4.3 (*Criteria for Including Substances and Methods on the Prohibited List*):

*"WADA shall consider the following criteria in deciding whether to include a substance or method on the Prohibited List:*

*4.3.1 A substance or method shall be considered for inclusion on the Prohibited List if WADA, in its sole discretion, determines that the substance or method meets any two of the following three criteria:*

*4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance;2021*

*4.3.1.2 Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete;*

*4.3.1.3 WADA's determination that the Use of the substance or method violates the spirit of sport described in the introduction to the Code."*

Following this rationale the solely and subjective determination of WADA about the violation of this "spirit of sport" can be used to put in or out of the *Prohibited List*, different Substances and Methods potentially dangerous for the health or sport performance enhancing, with only the WADA wisdom, and without any objective and clear evidence, because it is impossible to establish.

**AEPSAD thinks this is a very wicked way of managing a so serious issue, and this WADA capacity of a own determination is damaging the antidoping fighting and giving to the athletes and to the public opinion a very biased image of the World Antidoping System.**

**2.- WADA AS ANTIDOPING ORGANIZATION AND CODE SIGNATORY.** In this first version of Code 2021, we find on ARTICLE 23 ACCEPTANCE, COMPLIANCE AND MODIFICATION, 23.1 Acceptance of Code,

23.1.1. a list of entities who shall be signatories accepting the Code. An in this version WADA is barred (WADA). And AEPSAD find that totally unacceptable.

On Code 2003, 2009 and 2015, in the same Article 23, 23.1, 23.1.1 WADA is always in this list as an Anti-Doping Organization, and suddenly in 2021 WADA will not be more a Code Signatory. But we do not find any explanation about this important modification, no word about changes in WADA status.

First of all we must always bear in mind that the Definition of Anti-Doping Organization in this Code 2021 states very clearly what an Anti-Doping Organization is, and the status of WADA as an Anti-Doping Organization:

*“Anti-Doping Organization: A Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, WADA, International Federations, and National Anti-Doping Organizations.”*

What is the meaning of this change?

Is the Code 2021 meaning WADA will be not more an *Anti-Doping Organization*?

Or it is meaning WADA will be not more responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process?

Or maybe, WADA is not willing to implement applicable *Code* provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility, as stated for Signatories on 23.2.1?

So, what will be on 2021 the significance and the place of WADA in the anti-doping system?

Too many questions without answer, and too important to remain unanswered.

AEPSAD thinks that from 2003 to 2020 WADA was a signatory, and in 2021 WADA must continue being an Anti-doping Organization and a Signatory, there is nothing new coming to change a so important status. And because all that AEPSAD thinks that WADA status, scope, compliance and governance rules must be very clearly defined on the Code.

It's clear that WADA definition as it appears on the APPENDIX 1. DEFINITIONS: **WADA: “The World Anti-Doping Agency”** is not acceptable as a definition, this is not a definition it is only the explanation of an acronym with four letters.

**It will be necessary to write a new ARTICLE 23 THE WORLD ANTI-DOPING AGENCY, its definition, its scope, its roles and responsibilities and its compliance to the Code and its Governance.**

**3.- MINORS.** For AEPSAD, as was clearly specified in our comments to the Code first document, it is essential to have in the Code a specific and separate treatment for anti-doping when it comes to minors. Minors, in any legislation of the world, are by definition irresponsible because the legal system considers that they do not yet have the capacity to act freely and voluntarily. It does not therefore seem very consistent with the Declarations of Human Rights or with the Declaration of the Rights of the Child, sponsored by the UN, that the Code only foresees the younger age of a minor as a mitigating circumstance.

We think that any regulation must take into account a dignified and humane treatment of minors, with an attention to the special circumstances that occur in them, when in the vast majority of cases the intake of substances or the use of doping methods are decided and administered by people who are criminally responsible. In addition, we are also obliged to prevent minors from being seen in the practice of sports for the rest of their lives as social stigma. This differential treatment for minors should avoid as much as possible any sanction involving the removal of minors from sports, and should arbitrate corrective or educational measures in order to try to recover these children for a clean and healthy sport that allows them to have a full life.

**A group of experts should to analyse the problem and to work on standards, to develop a new ARTICLE 11 MINORS in which the following subjects on minors will be addressed AS: Minors and different doping types, Minors and Control Planning (when, where, how), Management of results and**



**Minors (sanctions, environment), doping in Minors and Ordinary Justice, sanctions of doping in the interests of the Minor.**

**4.- SUBSTANCES AND METHODS IN-COMPETITION AND OUT-OF COMPETITION.** For us it makes no sense to distinguish between prohibited substances In-competition and out-of-competition if we follow the three actual criterion, two of them to meet to enter in the List of Prohibited Substances and Methods; and also if we follow the only two criterion we are proposing in this document.

The substances prohibited only in competition will be also improving the quantity and quality of training, and improving the sports performance. And to use dangerous substances or methods to improve the training, Out-of-competition do not stop these substances/methods to be harmful to health.

In the other hand we cannot forget the reality of many sports, especially team sports , in which it is very important to perform in training to be in the lineup of the team and to have the opportunity to participate in the competition; so in these sports it is really important for most of these athletes perform on the training sessions (a real and daily competition with their teammates, in which the protection of health and fair play must also prevail).

**So, if a substance or method is clearly performance enhancing and potentially dangerous for individual or public health, must be banned in all the circumstances; if not, is not necessary to include it in the list.**

#### **5.- WADA AS A SANCTIONING AUTHORITY.**

The World Anti-Doping Agency (WADA) has introduced new features in the first draft of the global anti-doping code in relation to its sanctioning role in the sanctioning procedure. We can also see it in other articles like in 10 and 5.

In many countries the fight against doping is structured in public laws body whose rules are in laws and regulations of general application and approved by national parliaments, so the participation of private sector entities, and also private foreign institutions, is not possible. This system is based on popular sovereignty and the public law body holds the mandate for this popular representation, so the interferences by foreign and private entities is neither possible nor acceptable.

The WADA intervention in the assessment or approval of measures or agreements adopted by national administrative entities will not be accepted by the bodies that have to approve the rules in which the provisions of the new world anti-doping code should be implemented.

**In this regard, the development of a sanctioning procedure subject to public law by WADA, in the terms that the draft is written, cannot accept by neither the legislative and judicial bodies.**

**Within the framework of the possible implementation of the rules proposed in the draft of the new World Anti-doping Code 2021, the executive decisions proposed must be replaced by queries and reports that in no case may imply exercise of public powers.**

#### **FUNDAMENTAL RATIONALE:**

We consider that the wording "spirit of sport" finds no concretion or development in any legal text but is left to the discretion of, in each moment, those who have the power to interpret its content.

So following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing its elimination from the Code.

In this sense, we consider that may start here:

Doping is fundamentally contrary to the values we find in and through sport, including:

- Health,
- Ethics, fair play and honesty,
- Excellence in performance,

- Character and education,
- Fun and joy,
- Teamwork,
- Dedication and commitment,
- Respect for rules and laws,
- Respect for self and other Participants,
- Courage,
- Community and solidarity, and the protection of *Athletes'* health and right to compete on a doping free level playing field as set forth in the Anti-Doping Charter of Athletes' Rights.<sup>4</sup>

To fight doping by promoting the mentioned values of sport above, the *Code* requires each *Anti-Doping Organization* to develop and implement education and prevention programs for *Athletes*, including youth, and *Athlete Support Personnel*.

### CITA

SUBMITTED

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

#### Emphasis on Health as a Rationale for the Code

CITA is very much in favor of such a rationale as it is itself considered one of the State Health Agencies per the Croatian Health Care Act. CITA is a longtime proponent of the opinion that the fight against doping in sports is also an important public health issue

### Anti-Doping Authority Netherlands

SUBMITTED

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

#### Emphasis on Health as a Rationale for the Code (Fundamental Rationale)

· We support the proposed change regarding health as a rationale for the Code. However, as it is now this change is a rather cosmetic one. Fundamentally, we think that it would be good if the anti-doping community agrees on the fact that the behaviour we are trying to curb is a unique combination of health deteriorating AND performance enhancing substances and methods. Health in itself is not the rationale for the code and is dealt with by other organisations (mainly the World Health Organisation). Performance enhancement is the heart of sport and in itself this pursuit can never be seen as problematic. It is the specific combination of these two aspects that makes certain acts unethical and contrary to the spirit of sport. It would be better to acknowledge this uniqueness in the rationale of the Code explicitly, and not just to 'verbally upgrade' the issue of health. In the past, we have suggested to follow this line of thinking in the criteria for the Prohibited List as well, but it certainly deserves a thorough explanation in the 'rationale'.

### Estonian Anti-Doping Agency

SUBMITTED

Eliina Kivinukk, Executive Director (Eesti)  
NADO - NADO

- The description of Health should be elaborated (addressing also recreational athletes within the scope of the Code)
- It is suggested to change the following wording „To fight doping“ into more positive (e.g striving for)

### Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

As a general comment for the final version of the Code, CCES recommends providing hyperlinks to references within the Code and to other International Standards within the Code.

As a general comment to this Standard, CCES recommends using “their” in place of “his/her” to comply with gender inclusivity norms.

### UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**5.1.2 (b)** - Drafting point. Reference to ADRVs should be to Articles 2.2 – 2.11, rather than 2.2 – 2.10.

**7.9.1 (b)** - Drafting point. Reference to Article 9 should be to Article 8.

**10.13.2** - If Article 10.6.1.1 is to allow ADOs to suspend all Consequences and not just the period of Ineligibility, then Article 13.2 will need to contain an appeal right consistent with this. As currently drafted it refers only to the suspension of the period of Ineligibility.**23.1** - UKAD notes the intention that WADA will no longer be a Code signatory. It is of course imperative that WADA does not seek to avoid from its anti-doping responsibilities, and UKAD notes WADA’s assurances that that it will not do so.

### Institute of National Anti-Doping Organisations

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

There is no objection to the change all though it must be recognised that the two elements of health and ethics/fairplay must act in tandem.

## Introduction (21)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED

SUBMITTED BY WADA

The ICC supports the decision of the European Court of Human Rights in regard to upholding the whereabouts requirements of the Code.

### IFSC - Int. Fed. Sport Climbing

Paolo ORIONE, Anti-Doping Executive Officer (Netherlands)  
Sport - IF – Summer Olympic

SUBMITTED

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

Please refer to our comments re Article 20

**World Curling Federation**

Susan Keith, Anti-Doping Administrator (Great Britain)  
Sport - IF – Winter Olympic

SUBMITTED

Delegation of Doping Control Functions by Anti-Doping Organizations:

As more aspects of the Doping Control process are delegated to specialist agencies such as the ITA, support should be given to ADOs in ensuring an appropriate contractual relationship which ensures Code Compliance.

**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We agree that the anti-doping organizations must remain responsible at all times for their subcontractors.

We warn that such principle may be undermined if ADOs can subcontract indefinitely as the more third parties involved, the lesser control can be exercised against possible breaches.

Further, the notion of doping control here should not only include sample collection, but also laboratory analysis.

**United States Olympic Committee**

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

The USOC is supportive of placing increased emphasis on the health of athletes in the Code.

The USOC is supportive of the Anti-Doping Charter of Athletes' Rights and including references to the Charter in the Code. However, to the extent that the Charter or its tenets will be incorporated into the Code, we believe that the drafting and/or amendment process for those aspects of the Charter should be conducted in an open and transparent manner, with a meaningful opportunity for stakeholders to provide comment before adoption. Also, Comment 4 explains that "Article 2 (Anti-Doping Rule Violations) could be amended to add a new anti-doping rule violation for violations of specific provisions of the Charter." It could be problematic if the Charter could be amended from time to time outside of the Code review by an external group, thereby subjecting individuals to new and expanded Code violations.

The USOC is supportive of the commitment to bring all individuals, as a condition of participation or involvement, within the jurisdiction of the Code and bound by the relevant anti-doping rules.

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

In general, the 2021 Code marks a significant progress in comparison with the 2015 Code in that these articles and provisions are more flexible and they will better solve the problems and challenges faced in the current anti-doping work, balance the demands of the anti-doping work and protection of athletes' rights, and respond to the concerns of various stakeholders on some important issues, which fully demonstrates WADA's foresight and leadership in the global anti-doping campaign. CHINADA gives positive comments and full support for the major changes in the first draft of the 2021 Code, such as reporting trace levels of

clenbuterol as atypical findings, providing fraudulent information constituting an anti-doping rule violation (ADRV), detailing further analysis of samples, developing the new International Standard for Results Management and Hearings, addressing the problems of common contamination in supplements and other products and additional period of ineligibility if a provisional suspension is violated, etc.

### Ministry of Culture

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED  
SUBMITTED BY WADA

The Danish Ministry of Culture, The National Olympic Committee & Sports Confederation of Denmark (DIF), The Danish Gymnastics and Sports Association (DGI), Anti Doping Denmark, Team Denmark, The Danish Institute for Sport Studies / Play the Game, The Athlete Committee of the Danish NOC, The Danish Football Players' Association, The Danish Handball Players' Association and the Danish Elite Athletes Association would like to thank World Anti-Doping Agency (WADA) for allowing stakeholders to comment in relation to the review of the World Anti-Doping Code (hereafter "the Code") and the International Standards.

This submission to the 2nd stakeholder consultation of the review of the Code and the International Standards is submitted on behalf of the above mentioned organisations, which all support the content of the joint submission. Some of the organisations may, however, choose to submit supplementary stakeholder submissions at this stage as well as later on in the review process, which do not prevail the common submission.

We acknowledge and recognize that WADA has taken great steps in the first draft of the new Code in order to ensure a strong and consistent fight against doping across borders and sports organisations and creating an even more robust anti-doping system.

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

It is called for a clarification in the introduction: Which legal orientation has the WADC: law or guideline! Is the interpretation and case-by-case application of the Code by national / international disciplinary bodies intended? The consequence of this would be that athletes' anti-doping rule violations are or will be differently assessed and sanctioned.

Or shall the WADC otherwise give clear guidelines and specifications? This would lead to the fact that a disciplinary body has no margin of discretion in establishing a specific sanction in establishing an anti-doping rule violation. This would relate to classic case law; comparable cases are sanctioned similarly in any way and not on a case-to-case basis.

Experience indicate that by using a positive approach applying words like "clean", "fair" and "true" is more acceptable to all than "anti-doping". Therefore it is suggested to replace the wording "anti-doping" with "clean", "fair" and "true" in the Code where appropriate.

In order to increase the focus world-wide, as is the intention, the fundamental rationale for the WADC, emphasising "to fight doping by promoting the spirit of sport,.....", should be adjusted to read "to fight doping by promoting a Clean Spirit of Sport,.....".

Directors, officers and employees of signatories being subject to the ADR. ADO staff should be subject to suspensions from involvement in sport where they have committed an ADRV, and to that extent it supports this proposal. However, we do seek clarity about how it is envisaged this will work – in particular, confirmation that the relevant people are only directly covered by Articles 2.5, 2.7, 2.8 and 2.11, and the primary intention is to make them subject to 2.9 (complicity).

If this provision is adopted, we suggest that it be widened to cover contractors, to ensure that it covers people performing tasks for ADOs on a less formal basis than directors, officers and employees.

WADA proposal: «Anti-doping rules, like competition rules, are sport rules governing the conditions under

which sport is played. Athletes, Athlete Support Personnel or other Persons (including directors, officers and employees of Signatories) accept these rules as a condition of participation or involvement and shall be bound by these rules».

This provision, which repeatedly occurs later in the text of the changes, requires elaboration, since the mechanism of fixing their obligation to observe anti-doping rules is unclear, the need for such changes is not sufficiently substantiated, and the circle of persons is not clearly defined on the basis of the intended goals. The provision needs serious improvement.

WADA proposal: «As provided in this Part One of the Code, each Anti-Doping Organization shall be responsible for conducting all aspects of Doping Control. Any aspect of Doping Control may be delegated by an Anti-Doping Organization to another Person, however, the delegating Anti-Doping Organization shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the Code».

It is necessary to replace the words “that any delegated aspects are performed in compliance with the Code” with the words “that Person to whom any aspects of Doping control are delegated is compliant with the Code”.

Thus, the delegating person must make sure that the person to whom the procedures of doping controls are delegated comply with the Code. In this case, the delegating person will not control every particular procedure of doping control, as this is objectively impossible.

Introduction Part contains interpretation of the definition of other Persons (including directors, officers and employees of Signatories). At the same time, for example, Article 2.10 prohibits Prohibited Association by an Athlete or Other person with any ineligible Athlete Support Person. Thus, the wording given in the definition, causes confusion and requires a detailed explanation, for the purposes of which articles it has been introduced.

### **Antidoping Switzerland**

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

General comment: Antidoping Switzerland supports the changes proposed for the new WADA Code. ADCH understands, why the Code 2021 sets the emphasis on health, however, it should always be noted that this is not the only rational and goes in concert with the others. Some issues, however, are not addressed in the draft, the respective comments can be found under the "other suggestions" section. Sanctions: The proposal is that there is a greater flexibility in sanctioning recreational athletes and minors. Although ADCH does not oppose these proposals, in general, there should be less flexibility in sanctions. Flexibility should only be possible for a few explicit situations (e.g. involving minors or recreational athletes). A wide gap between minimum and maximum sanction for a certain code violation opens the door for unfair leniency by some sporting organisations.

### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### **Introduction**

Directors, officers and employees of signatories being subject to the ADR. ADO staff should be subject to suspensions from involvement in sport where they have committed an ADRV, and to that extent it supports this proposal. However, we do seek clarity about how it is envisaged this will work – in particular, confirmation that the relevant people are only directly covered by Articles 2.5, 2.7, 2.8 and 2.11, and the primary intention is to make them subject to 2.9 (complicity).

If this provision is adopted, we suggest that it be widened to cover contractors, to ensure that it covers people performing tasks for ADOs on a less formal basis than directors, officers and employees.

### **Anti-Doping Norway**

SUBMITTED

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

Anti-Doping Norway agree with the increased emphasis on education and welcome an International Standard for Education.

Experience indicate that by using a positive approach applying words like "clean", "fair" and "true" is more acceptable to all than "anti-doping". A quick search on the ADOs websites identify "clean sport", being used quite frequently. WADA is using words like "play true", "fair play" and "parents guide to support clean sport". With this in mind Anti-Doping Norway suggest replacing the wording "anti-doping" with "clean", "fair" and "true" in the Code where appropriate.

In order to increase the focus world-wide, as is the intention, Antidoping Norway suggest that the fundamental rationale for the WADC, emphasising "to fight doping by promoting the spirit of sport,.....", is adjusted to read "to fight doping by promoting a Clean Spirit of Sport,.....".

See also comments on art. 18 Education.

### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

We propose the following Draft Text:

"The ultimate goal of the Anti-Doping System is to preserve the spirit of sport and to help foster a clean sport environment.

There are four Prevention strategies that encompass all the strands of an Anti-Doping Program.

Education – Awareness, Information, Communication, Values Based Education and Anti-Doping Education

Deterrence – to divert potential dopers, through ensuring that robust rules and sanctions are in place and salient for all stakeholders.

Detection – an effective testing and investigations system not only enhances a deterrent effect, but also is effective in catching those committing Anti-Doping Rule Violations, while also helping to disrupt anyone engaged on Doping behaviour.

Enforcement – to adjudicate and sanction those found to have committed ADRVs."

These four Prevention strategies set the framework for the wider Anti-Doping System.

### **UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**Introduction and Article 20** - Directors, officers and employees of Signatories (and International Federations and member organizations etc) being subject anti-doping rules. UKAD sees some value in ADO staff being subject to suspensions from involvement in sport where they have committed an ADRV, and to that extent it supports this proposal. However, we do seek clarity about how it is envisaged this will work – in particular, confirmation that the relevant people are only directly covered by Articles 2.5, 2.7, 2.8 and 2.11, and that the primary purpose of this provision is to make them subject to 2.9 (complicity).

If this provision is adopted, we suggest that it be widened to ensure that it covers people performing tasks for ADOs on a less formal basis than directors, officers and employees, for example contractors.

**RUSADA**

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

Introduction Part contains interpretation of the definition of other Persons (including directors, officers and employees of Signatories). At the same time, for example, Article 2.10 prohibits Prohibited Association by an Athlete or Other person with any ineligible Athlete Support Person. Thus, the wording given in the definition, causes confusion and requires a detailed explanation, for the purposes of which articles it has been introduced.

Definition of doping-control . Add the following:.....TUEs, investigation, processing results and conducting hearings.

Chapter 3.0 Terms and definitions

Missed test: ..... The test is also a case of a documented or otherwise proven absence of an athlete in the specified location and at the specified time (if the athlete is in the registered testing pool) without testing

Notes: travel documents, certificates of other persons, independent geometers of athletes in social networks and their interviews with the press, etc.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

It some cases this may be not possible due to the Data Protection rules of the different countries, neither the majority of the signatories have no authority to establish rules and procedures regarding this issue. So we propose the following text: Each signatory, according to its domestic laws, and under the new DGPGE, shall establish rules and procedures to ensure that all *Athletes* or other *Persons* under the authority of the *Signatory* and its member organizations consent the dissemination of their private data as required or authorized by the Code.

**Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

[On behalf of Anti-Doping Authority the Netherlands]

1. The new sentence in the third paragraph reads as follows:

*Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. Athletes, Athlete Support Personnel or other Persons (including directors, officers and employees of Signatories) accept these rules as a condition of participation or involvement [...]*

Taking into consideration the wide(r) scope of this sentence, it would be preferable to add the words 'in sport' as a clarification ('as a condition of participation or involvement in sport').

2. The draft sometimes uses the phrase 'Athletes, Athlete Support Personnel or other Persons' and the phrase 'Athletes and other Persons' at other times. It is preferable to consistently use only of these phrases.

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO



We note that the Introduction to the redline version of the Code emphasizes that ADOs remain responsible for all aspects of Doping Control, and therefore for the conduct of Sample Collection Authorities. We understand that WADA envisages that ADOs should seek to ensure Code compliance by such Authorities via contract. We are against this approach and we consider that the most appropriate and effective way of seeking to ensure Code compliance by Sample Collection Authorities is by making them directly subject to the Code, and so WADA's oversight.

### International Testing Agency

SUBMITTED

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

In relation to the last paragraph, we would change the term "Person" with "Third Parties". Although, under the Code, the literal definition of Person could theoretically encompass service providers, we would use a more generic (non-defined) term such as "third parties" or "service providers" or potentially not define the notion at all (see the wording of Article 20 of the 2021 Code draft). The term Person is used across the Code to refer, for instance, to the spectrum of individuals (other than athletes) that could potentially be subject to an ADRV. The use of the same term in a completely different connotation could possibly generate confusion. The term "third parties" or "service providers" are somewhat already used in the Code and Standards in a similar spirit (see for example Article 7.1.1 of the Code, Article 20 of the 2021 Code draft, definition of SCA in the ISTI, definition of Approved Third Party in the ISCCS, Articles 7.2.4, 9.4.3.2 of the ISCCS, etc.).

### GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

The express reference to 'directors, officers and employees' of Signatories as being encompassed within the term '*Persons*' reflects an important policy goal, which is to ensure that administrators of sports are sanctioned as severely as those participating in sport, if the administrators are involved or complicit in doping. One way to capture such personnel would be by way of the definition of Athlete Support Personnel.

There are some issues with 'shoe-horning' these personnel into the Code framework:

a) The reference is viewed through the prism of well-funded, substantial organisations. It excludes a number of other potentially culpable personnel, such as volunteers and occasional participants. Many International Federations rely on volunteer support.

b) The Consequences to such persons of committing ADRVs are rather unclear. There is, perhaps a need for particular sanctions that are relevant to such persons. For example, would a 'ban' apply just to 'athlete-facing' roles? Is there, in that regard, a justification for excluding a person from, say, fulfilling an IT role at a sports organisation?

c) There is a risk that provisions along these lines will result in differential sanctions, in that administrators could find that they have a greater degree of professional curtailment than Athletes. That in turn creates a legal vulnerability.

d) Will such persons be encompassed within Article 2.10 as 'disqualified persons'? If so, Article 2.10 will need some amendment, as the limitation on association relates to Athlete Support Persons.

### International Paralympic Committee

SUBMITTED

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

The definition of Minor does not require a change, the relevant results management section is adequate to differentiate sanctions for different classes of minors.

## Article 2.3 (5)

**Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Art. 2 (in general)**

“Degree of Fault”, is a significant condition for an Anti-Doping Rule violation. It is stated in comments or in definitions for some articles, but not for all. Athletes and other Persons would have difficulties knowing what act and omission that will make the him/her liable. That is challenging related to Athletes legal rights.

The understanding would increase considerable for all parties if this condition is expressed in the article itself.

*Examples:*

Art. 2.2.2 The success or failure of the Use or “*Intentional*” Attempted Use.

Art. 2.3 “*Intentionally*” Evading Sample Collection, or “*Intentionally*” Refusing or “*Intentionally or negligently*” failing to submit to Sample Collection...

Art. 2.4 Any “*negligent*” combination of three missed tests...

Art. 2.5 “*Intentionally*” Tampering or “*Intentionally*” Attempted Tampering....

Art. 2.6.2 “*Intentional*” or “*Negligent*” Possession by an Athlete Support Person...

Art. 2.7 “*Intentionally*” or “*Negligently?*” Trafficking or “*Intentionally*” Attempted Trafficking.

Art. 2.8 “*Intentional*” Administration or “*Intentional*” Attempted Administration...

**Article 2.1**

We support a reconsideration of sanctions for athletes that test positive for recreational drugs in-competition, where the use was out of competition. From a psychological perspective, the motivation for taking recreational drugs is often completely at odds with the motivation for taking performance-enhancing substances.

We understand that WADA is proposing to partly address this through raising reporting thresholds. However in favour of a re-assessment of this issue as a whole. We are in favour of considering a uniform one-year or eighteen-month suspension, if the use was out of competition and not connected to sport. It would save a lot of time and money arguing over “fault”, and particularly about mental health issues. Sports could also be given the power to stipulate that an athlete must also undergo therapy or rehabilitation before they return to sport.

But the sanction should still be stipulated according to the individual circumstances of the case.

**Article 2.1.4***WADA proposal:*

*Article 2.1.4: As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously or have reporting limits established in a WADA Technical Document or International Standard.*

The situation needs further elaboration with explanations of the objectives of fixing such limits in technical documents and international standards. In addition, a simplified regime for changing international standards may entail a very rapid change in such thresholds. The introduction of changes to regulatory documents is possible only after passing the standard revision procedure.

#### **Comment 8 to Art. 2.2, Comment 16 to Article 3:**

Examples are given of what can be used as evidence in the investigation.

In particular, witness statements, documentary evidence, conclusions from the profile and other analytical information.

These provisions should be deleted in order to exclude the formulation of wording in the WADA Code that will later allow the use of untested and substandard information as evidence of the use of doping.

The provision needs to be improved.

#### **Comment to Article 2.3**

Clarification would be helpful on (i) the distinction between a refusal and intentional failure to submit to sample collection, and (ii) what constitutes “notification” of testing. Also, clarification is needed about the ingredients of the ADRVs of refusal and evasion – are they only committed where the athlete’s conduct is intentional, as that is defined in Article 10.2.3? This has further implications for Articles 10.4 and 10.5.2 that need to be made explicit in the Code – can either of these Articles apply in evasion or refusal cases?

#### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

#### **Art. 2.3**

Clarification would still be helpful on (i) the distinction between a refusal and intentional failure to submit to sample collection, and (ii) what constitutes “notification” of testing. Also, clarification is needed about the ingredients of the ADRVs of refusal and evasion – are they only committed where the athlete’s conduct is intentional, as that is defined in Article 10.2.3? This has further implications for Articles 10.4 and 10.5.2 that need to be made explicit in the Code – can either of these Articles apply in evasion or refusal cases?

#### **Anti-Doping Norway**

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

“Degree of Fault”, is a significant condition for an Anti-Doping Rule violation. It is stated in comments or in definitions for some articles, but not for all. Athletes and other Persons would have difficulties knowing what act and omission that will make the him/her liable. That is challenging related to Athletes legal rights.

We think that the understanding would increase considerable for all parties if this condition is expressed in the article itself.

Examples:

Art. 2.2.2 The success or failure of the Use or “*Intentional*” Attempted Use.

Art. 2.3 “*Intentionally*” Evading Sample Collection, or “*Intentionally*” Refusing or “*Intentionally or negligently*” failing to submit to Sample Collection...

Art. 2.4 Any “*negligent*” combination of three missed tests...

Art. 2.5 “*Intentionally*” Tampering or “*Intentionally*” Attempted Tampering....

Art. 2.6.2 “*Intentional*” or “*Negligent*” Possession by an Athlete Support Person...

Art. 2.7 “*Intentionally*” or “*Negligently?*” Trafficking or “*Intentionally*” Attempted Trafficking..

Art. 2.8 “*Intentional*” Administration or “*Intentional*” Attempted Administration...

### UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

Clarification is needed on whether intention needs to be proved for the ADRVs of evasion and refusal. If so, is it the Article 10.2.3 definition of “intentional” that applies? This has further implications for Articles 10.4 and 10.5.2 – can either of these Articles apply in evasion, refusal or intentional failure cases? The Code needs to be clearer in this respect, as currently the comment to Article 10.5.2 leaves room for misinterpretation.

More guidance on the difference between an intentional failure and a refusal would be helpful. Further guidance on what constitutes an evasion would also be helpful.

### Article 2.5 (14)

#### World Rugby

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby agree with the new Comment to Article 2.5 and Articles 10.3.11 and 10.7 regarding fraudulent conduct and support the revised definition of Tampering

#### Union Cycliste Internationale

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

The UCI would suggest clarifying the concept of "misconduct which occurs during the results management and hearing process" to avoid triggering litigation which will require the relevant ADO to spend resources in vain.

As pointed out in the decisions CAS 2013/A/3080, CAS 2015/0/4128 and UCI ADT Decision, UCI v. Mr. Jure Kocjan, 28 June 2017, subversive conduct qualifies under 2.5 “only where the administration of justice is put fundamentally in danger by the behavior of the athlete”. We would therefore make the following addition to the comment of 2.5.

For example,(....) Tampering includes misconduct which occurs during the results management and hearing process and which fundamentally puts in danger the administration of justice.(....) .

#### Canadian Olympic Committee

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

We agree with such provisions and further emphasize that investigation and “intelligent” detection and deterrence is critical. Stronger measures against those that attempt to weaken or mislead via false information is important.

### United States Olympic Committee

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

Expanding Tampering to include “misconduct which occurs during the results management and hearing process” may be unnecessary with the reintroduction of Aggravating Circumstances and could lead to confusion if both proposed revisions are carried through to the Final version of the Code. Accordingly, the USOC is supportive of either (i) the retention of the revised Tampering provisions (2.5 and 10.3.1.1) and complete removal of the proposed Aggravating Circumstances provision (10.7) or (ii) the reversion to the 2015 Code version of the Tampering provision and adoption of a curtailed Aggravating Circumstances provision, which is focused solely on fraudulent conduct engaged in or occurring during the Results Management or hearing processes.

Further, the Tampering language could be considered so vague as not to give proper notice of what actions constitute an offense. Section 2.5 amends the definition of what could be included as a violation for tampering to include “any aspect of *Doping Control*.” Also, misconduct is an undefined term, raising issues of how it will be interpreted. Possibly, some thought could be given to tightening this language.

### Ministry of Culture

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED  
SUBMITTED BY WADA

### Comment to WADC article 2.5:

It follows from the comment in the foot note to article 2.5 that offensive conduct towards a Doping Control official or other Person involved in the Doping Control which does not otherwise constitute tampering shall be addressed in the disciplinary rules of sports organisations. It has furthermore been specified that tampering includes misconduct which occurs during the results management and hearing process.

It is however unclear, when offensive conduct constitutes tampering, i.e. what types of offensive conduct subverts the *Doping Control* process.

It could be specified, that “Tampering includes misconduct which occurs during testing, results management and hearing process.”

### Secretaria de Estado da Juventude e Desporto

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

The new definition might be too generic and could cause divergence on sanctioning amongst signatories. A description of the sanctioned interferences with which aspects of Doping Controls should be included in order to provide coherence to code application.

### Gouvernement du Canada

Francois Allaire, Agent Principal de Programme (Canada)  
Public Authorities - Government

SUBMITTED

oThe Government of Canada agrees with the CCES and the COC as well as several stakeholders that **Article 2.5 - Tampering** of the current draft of the 2021 Code should be expanded beyond sample

collection (Doping Controls) to include Result Management and the Therapeutic Use Exemptions (TUEs) process as tampering also occurs in these instances.

In the 2015 Code, sanctions for an anti-doping rule violation involving complicity (**Article 2.9**) range from 2 years to a maximum of four years sport ineligibility. However, given the seriousness of recent large scale doping scandals, violations involving complicity can be very similar to violations involving the “administration” of doping substances (**Article 2.8**) where the current sanction is four years to life ineligibility. Sport Canada therefore agrees with the proposal to increase the range of ineligibility for complicity to two years to lifetime ineligibility.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Art. 2.5

Despite the fact that offering or receiving a bribe have been included into Definitions section of the new Code version as falling under Tampering, it would be expedient to specify this one more time in the bulk text of the document (in Article 2.5).

### NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

Review wording of Article 2.5.

If the doping-control personnel might abort the testing-procedure due to offensive conduct, the testing authority might classify this as an anti-doping rule violation towards the athlete or any other involved person.

Definition could be as follows:

“Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization or intimidating or attempting to intimidate a potential witness.

(NEW wording:) Intimidation of Sample Collection Personnel includes but is not limited to offensive conducts, Insults, invectives, psychological and physical threats by the Athlete or any person linked to the Athlete.“

### Anti Doping Denmark

SUBMITTED

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

ADD appreciates the proposals concerning Fraudulent Conduct During Results Management and Hearing Process (New Comment to Article 2.5, and New Articles 10.3.1.1 and 10.7) and that an additional sanction of 0-2 years ineligibility may be imposed for this misconduct.

We would like to mention that such fraudulent behaviour may not be done by the athlete himself but by other persons bound by the Code, such a trainers or other support personnel, in order to support the athlete in a fraudulent way. It should be made absolutely clear that such behaviour is covered by article 2.5 and might institute a separate ADRV.

### RUSADA

SUBMITTED

Tatyana Galeta, Head of the Results Management Department (Russia)

**NADO - NADO**

Despite the fact that offering or receiving a bribe have been included into Definitions section of the new Code version as falling under Tampering, it would be expedient to specify this one more time in the bulk text of the document (in Article 2.5).

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

Tampering includes misconduct during the results management phase. Here it should be specified that this also includes tampering during the hearing phase. This is included in the definition of aggravating circumstances, but for the avoidance of doubt, it could be included under the comment on article 2.5.

**CITA**

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

SUBMITTED

Fraudulent Conduct During Results Management and Hearing Process (New Comment to Article 2.5, and New Articles 10.3.1.1 and 10.7)

CITA would also point out the need to better define and clarify the role of an athlete Support Personnel with knowledge of a committed an anti-doping rule violation by his/hers athlete.

CITA is of the opinion that liability of the support personnel must be strict, especially in regard to the personnel with knowledge of an attempted or committed anti-doping rule violation that is trying in any way to impact the result management and hearing process, even only through contact with the witness to the procedure. This is important to stress because of the responsibility of an Athlete Support Personnel to encourage their Athlete not to dope i.e to use his or her influence on athlete values and behavior to foster anti-doping attitudes. This should clearly be stated in the comment section.

In this respect, we also support increasing the Upper End of the Sanction for Complicity (Article 2.9)

**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Tampering should also include behaviour which relates to investigations into breaches of periods of ineligibility. It needs to be explicit that the offence of tampering can occur where it relates to such investigations. This must be the intent yet it has been a complicated process for CAS to reach that conclusion. This should not be buried in CAS case law but made explicit within the Code that "any aspect of Doping Control" includes investigations not only into potential breaches of Article 2 but also breaches relating to 10.13.1.

**Article 2.6 (5)****Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

**Article 2.6.2**

Footnote 11 last part reads: "*Tampering includes misconduct which occurs during the results management and hearing process. See Articles 10.3.1 and 10.7.2. However, actions taken as part of a Person's legitimate defense to an anti-doping rule violation charge shall not be considered Tampering.*"

The last sentence is an exception, and we ask WADA to consider lifting the sentence from the comment and place it in the article.

We also suggest including the content of this part of the footnote in ISRMA.

### Department of Health - National Integrity of Sport Unit

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia suggests that WADA make allowances for situations where a doctor, who is defined as an athlete support person, would be required to carry medication such as adrenaline or morphine, for an emergency situation. The Code should be amended to exclude such situations.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Article 2.6

In the Draft of the Code the Comments, which previously allowed athlete's personnel (doctor) to carry Prohibited Substances for dealing with acute and emergency situations have been removed from Article 2.6. At the same time, doctor in sports medicine, in case if it is necessary to provide emergency medical assistance, should be able to do it in shortest period (as calling an ambulance and/or requesting medical aid at a specialized medical institution might take a lot of time), which is unacceptable and which might create hazard for athlete's life and health. Also, it is necessary to take into account the fact that a doctor is entitled to carry Prohibited Substances for his/her personal use (under the condition of have medical documents which confirm the diagnosis and the need of using the Prohibited Substances). Thus, this provision violates the norms of The Universal Declaration of Human Rights of December 10, 1948, The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 and The Constitution of the World Health Organization, which stipulate the right of an individual to receive medical care on a timely basis.

Add a comment to Article 2.6.2 : Acceptable justification would include, for example, a team doctor carrying Prohibited Substances for dealing with acute and emergency situations, or an Athlete Support Person possessing a document proving a chronic/acute condition

Comments have been removed from Article 2.6, which previously allowed athlete's personnel (doctor) to carry Prohibited Substances for dealing with acute and emergency situations. At the same time, doctor in sports medicine, in case if it is necessary to provide emergency medical assistance, should be able to do it in shortest period (as calling an ambulance and/or requesting medical aid at a specialized medical institution might take a lot of time), which is unacceptable and which might create hazard for athlete's life and health. Also, it is necessary to take into account the fact that a doctor is entitled to carry Prohibited Substances for his/her personal use (under the condition of have medical documents which confirm the diagnosis and the need of using the Prohibited Substances). Thus, this provision violates the norms of The Universal Declaration of Human Rights of December 10, 1948, The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 and The Constitution of the World Health Organization, which stipulate the right of an individual to receive medical care on a timely basis.

### RUSADA

SUBMITTED

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

Comments have been removed from Article 2.6, which previously allowed athlete's personnel (doctor) to carry Prohibited Substances for dealing with acute and emergency situations. At the same time, doctor in sports medicine, in case if it is necessary to provide emergency medical assistance, should be able to do it in shortest period (as calling an ambulance and/or requesting medical aid at a specialized medical institution might take a lot of time), which is unacceptable and which might create hazard for athlete's life and health.



Also, it is necessary to take into account the fact that a doctor is entitled to carry Prohibited Substances for his/her personal use (under the condition of have medical documents which confirm the diagnosis and the need of using the Prohibited Substances). Thus, this provision violates the norms of The Universal Declaration of Human Rights of December 10, 1948, The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 and The Constitution of the World Health Organization, which stipulate the right of an individual to receive medical care on a timely basis.

### Freelance journalist

SUBMITTED

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

Can anti-doping authorities search the bags of the athletes at training or competition venues without seeking the help of the law-enforcement authorities? it may not be possible to seek police assistance if a tip-off comes just before the athlete competes or finishes his/her training session. What should authorities do in such cases?

## Article 2.9 (9)

### International Cricket Council

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The ICC understands the need to increase the current sanction for complicity from 2-4 years to 2 years-lifetime in order to ensure serious violations involving complicity that can be very similar to 'administration' (which currently attracts a 4year – lifetime sanction) are dealt with appropriately.

### World Rugby

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby agree with the proposal to increase the upper end of the sanction for Complicity

### World Curling Federation

SUBMITTED

Susan Keith, Anti-Doping Administrator (Great Britain)  
Sport - IF – Winter Olympic

Increasing the Upper End of the Sanction for Complicity (Article 2.9):

Where do lifetime bans sit in the legal sense eg violation of Article 8 of the European Convention of the Human Rights (ECHR)?

### Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

## Article 2.9 Complicity

The use of the word "complicity" in the Article is a bit troublesome as the Article itself reads "complicity". If the title of the heading remains unchanged, the word "complicity" in the Article should be changed to "conduct" or a synonym.

### Canadian Olympic Committee

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

We agree with the suggested changes made here.

### United States Olympic Committee

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

This change appears to account for those Complicity violations that are similar to "Administration" violations, where the current sanction is 4 years to Lifetime ineligibility. Increasing the maximum sanction from 4 years to Lifetime ineligibility for the sole purpose of capturing conduct that is similar to "Administration" seems unnecessary when that conduct can be adjudicated by using the Administration provision.

### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

As stated in the Code, fairness in sanctions prevails, and the same AAF should be subject to the same sanction in different cases. However, the periods of eligibility in **Article 2.9** "Complicity" and **Article 2.11** "Other Anti-Doping Rule Violations" range from two years to lifetime. The vast flexibility and wide range of sanctions enables the anti-doping organizations to have much too large discretion, resulting in inconsistent sanctions in practical application, which will prejudice fairness of sanctions. It is recommended to develop detailed rules and regulations for such sanctions and refine the levels and extent of these sanctions.

### Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

Australia agrees with the proposed increase to the upper sanction for complicity from up to 4 years, to up to a lifetime.

### NADO Flanders

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

NADOF would suggest to insert the following wording after "intentional complicity involving an anti-doping rule violation": "including fraudulent conduct or tampering during the results management or hearing process which is considered to be an aggravating circumstance of the anti-doping rule violation in accordance with article 10.3.1.1 and 10.7.2".

This implicates that for example providing with false testimony on behalf of an athlete charged with an ADRV, is not an act of individual tampering but complicity to tampering by the athlete that was charged with an ADRV.

## Article 2.10.3 (18)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED

SUBMITTED BY WADA

The ICC does not perceive 'Prohibited Association' to be a serious issue in cricket and will continue to provide cricketers with advance notice where possible. However, we do understand that for certain anti-doping organizations this would assist in the fight against doping.

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support the modifications to Prohibited Association

### Union Cycliste Internationale

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

We believe the burden should be on the athlete to establish that he could not avoid the association.

Also, both of the concepts as currently drafted require the ADO to prove actual knowledge (whether of the status or the risk of status), whereas “*should have known*” encompasses constructive knowledge.

We also corrected a typo. Here is our amendment proposal

#### 2.10 Prohibited Association

Association ~~which could reasonably be avoided~~ by an *Athlete* or other *Person* subject to the authority of an *Anti-Doping Organization* in a professional or sport-related capacity with any *Athlete Support Person* who:

(...)

To establish a violation of Article 2.10, an *Anti-Doping Organization* must establish that the *Athlete* or other *Person* knew, or should have known, of the *Athlete Support Person's* disqualifying status, ~~or knew that there was a significant risk should have known that the *Athlete Support Person* had a disqualifying status.~~

The burden shall be on the *Athlete* or other *Person* to establish that any association with *Athlete Support Personnel* described in Article 2.10.1 or 2.10.2 is not in a professional or sport-related capacity and/or that the *Athlete* or other *Person* could not reasonably avoid the association.

As far as user friendliness of the Code is concerned, why not take the opportunity to refer always to “burden” instead of using “must establish”.

From a formatting point of view, it might be a good idea to make a standalone article for the paragraph where it is explained how the violation is established.

### Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

#### Article 2.10.3

The last three paragraphs of this Article, starting with “To establish a violation of Article 2.10», should be moved to the left to prevent them from appearing as sub-paragraphs to Article 2.10.3.

### Canadian Olympic Committee

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

A risk highlighted with the suggested new provision is that the onus is now on the athlete to validate a person’s “disqualifying status”.

It is recommended that the WADA Code drafting team verify the enforceability of such provision affecting persons not subject to a Code-compliant set of rules, perhaps through an opinion from the European Court of

## Human Rights.

In addition, a list of Persons under a Code sanction should be made publicly available by WADA.

Further, there should be clear guidelines communicated to athletes, when engaging with third party professionals that do not fall under WADA's jurisdiction (e.g. professionals, pharmacists, lawyers, etc). Such guidelines would provide reasonable precautionary measures that athletes should take (how to determine the disqualifying status) before engaging with third party professionals that may not be subject to Code compliance.

### **United States Olympic Committee**

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

The 2015 Code language provides that it is an anti-doping rule violation for an athlete to associate with an *Athlete Support Person* who is under suspension, who has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of an anti-doping rule or who is serving as a front or intermediary for such a person. However, before a violation can occur, an ADO needs to provide notice to the athlete to refrain from any involvement. This notice requirement allowed athletes who may not know that they are associating with an undesirable individual the opportunity to cease interaction prior to potentially being charged with a violation.

The proposed language of Section 2.10.3 eliminates the notice requirement. Instead, the burden is placed on athletes to investigate and know the background of each and every person that they may have contact with. Further, association with such person is quite broad. As set forth in Comment 14, it includes, "obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the *Athlete Support Person* to serve as an agent or representative." Also, the prohibited association need not involve any form of compensation. Additionally, the burden is placed on the athlete to establish that any association with the undesirable individual is not in a professional or sport-related capacity.

Although the USOC understands the reasoning behind this change, it is important that revisions to this Article do not result in a rule in which Athletes are sanctioned for conduct that is innocent or unknowing. The USOC suggests this provision be amended to read as follows: "To establish a violation of Article 2.10, an Anti-Doping Organization must establish the Athlete or other Person knew of the Athlete Support Person's disqualifying status, knew that associating with the Athlete Support Person was prohibited, and that the Athlete or other Person could reasonably have avoided the association."

Further, Section 2.10.3 states that *Anti-Doping Organizations* that are aware of *Athlete Support Personnel* who are undesirable shall submit that information to WADA. If the names of such individuals are to be submitted to WADA, then WADA could be required to publish the names of those individuals, thereby informing athletes of individuals they should not associate with.

### **Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

While Australia questions whether this amendment prevents any association going underground, there are administrative efficiencies in removing the requirement for ADOs to provide an athlete with advanced notice before issuing a prohibited association violation. We suggest however this violation should only proceed if the athlete knew it was a violation to associate with the disqualified person.

### **Ministry of Culture**

SUBMITTED

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED BY WADA

### Comment to WADC article 2.10:

On an editorial note, article 2.10 could be edited in terms of numbering. The current version may suggest that the final three paragraphs regarding burden of proof etc. are part of sub-article 2.10.3, which, we assume, is not the intention.

Hence, we propose the following structure of the article in terms of numbering:

#### “2.10 Prohibited Association

2.10.1 Association by an *Athlete* or other *Person* subject to the authority of an *Anti-Doping Organization* in a professional or sport-related capacity with any *Athlete Support Person* who:

2.10.1.1 If subject to the authority of an *Anti-Doping Organization*, is serving a period of *Ineligibility*; or

2.10.1.2 If not subject to the authority of an *Anti-Doping Organization*, and where *Ineligibility* has not been addressed in a results management process pursuant to the *Code*, has been convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if *Code*-compliant rules had been applicable to such *Person*. The disqualifying status of such *Person* shall be in force for the longer of six years from the criminal, professional or disciplinary decision or the duration of the criminal, disciplinary or professional sanction imposed; or

2.10.1.3 Is serving as a front or intermediary for an individual described in Article 2.10.1.1 or 2.10.1.2.

2.10.2 To establish a violation of Article 2.10, an *Anti-Doping Organization* must establish the *Athlete* or other *Person* knew of the *Athlete Support Person's* disqualifying status, or knew that there was a significant risk that the *Athlete Support Person* had a disqualifying status, and that the *Athlete* or other *Person* could reasonably avoid the association.

The burden shall be on the *Athlete* or other *Person* to establish that any association with *Athlete Support Personnel* described in Article 2.10.1.1 or 2.10.1.2 is not in a professional or sport-related capacity.

*Anti-Doping Organizations* that are aware of *Athlete Support Personnel* who meet the criteria described in Article 2.10.1.1, 2.10.1.2, or 2.10.1.3 shall submit that information to *WADA*.”

Alternatively, we suggest that the line indent in connection to the final three paragraphs following article 2.10.3 (i.e. the paragraphs regarding burden of proof, that apply to all of the articles 2.10.1-2.10.3) is removed so that these paragraphs are aligned with the main body of the initial text of the article (“Association by an *Athlete* ...”).

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### Article 2.10

It is necessary to extend the concept "Prohibited Association" as in the current version of the Code and in the draft Code the definition of the concept "Prohibited Association" is about athlete's association with disqualified athlete support person. Literally, this article implies that such individual should be a disqualified athlete support person. Taking into account the risks that disqualified athletes, who are not officially registered as coaches (as it is prohibited pursuant to paragraph 10.12) can render professional services to current athletes, and the current athletes will not bear any responsibility for this, it is expedient to extend (and to directly state this in the Code) as follows: “Association is prohibited by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Person who.”

In addition, we request to add to this article (as it should be transferred into the rules in full, without changes), one more type of investigations and responsibility, to which the person was held accountable – administrative responsibility.

### Article 2.10.3

A new wording was introduced regarding the fact that ADOs should establish that certain persons have a disqualified status, as well as having the understanding that communication with such persons could be avoided. The provisions to be introduced require justification and assessment in terms of their consequences. At present, the need for such changes is not obvious.

#### NADA

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### Article 2.10

It is necessary to extend the concept "Prohibited Association" as in the current version of the Code and in the draft Code the definition of the concept "Prohibited Association" is about athlete's association with disqualified athlete support person. Literally, this article implies that such individual should be a disqualified athlete support person. Taking into account the risks that disqualified athletes, who are not officially registered as coaches (as it is prohibited pursuant to paragraph 10.12) can render professional services to current athletes, and the current athletes will not bear any responsibility for this, it is expedient to extend (and to directly state this in the Code) as follows: "Association is prohibited by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Person who."

In addition, we request to add to this article (as it should be transferred into the rules in full, without changes), one more type of investigations and responsibility, to which the person was held accountable – administrative responsibility.

#### NADA Austria

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

In our view it is almost impossible to establish the fact that an Athlete knew about the Support Person's disqualifying status. There must be a clarification of the term "*or knew that there was a significant risk that the Support Person had a disqualifying status*" as well. Besides this fact in our legal system a criminal conviction is principally not announced publicly. That means that an Athlete could always use this fact as a justification in a trial.

#### RUSADA

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

SUBMITTED

It is necessary to extend the concept "Prohibited Association" as in the current version of the Code and in the draft Code the definition of the concept "Prohibited Association" is about athlete's association with disqualified athlete support person. Literally, this article implies that such individual should be a disqualified athlete support person. Taking into account the risks that disqualified athletes, who are not officially registered as coaches (as it is prohibited pursuant to paragraph 10.12) can render professional services to current athletes, and the current athletes will not bear any responsibility for this, it is expedient to extend (and to directly state this in the Code) as follows: "Association is prohibited by an Athlete or other Person subject to

the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Person who..."

In addition, we request to add to this article (as it should be transferred into the rules in full, without changes), one more type of investigations and responsibility, to which the person was held accountable – administrative responsibility.

### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

Although EADA supports the efforts to explain the principle and the proof of prohibited association better, it still remains doubtful, if it would work in practice.

### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

In the new paragraph it should refer to both the Athlete Support Personnel's disqualifying status and Ineligibility to capture both situations described in subsections 1 and 2 immediately preceding. Disqualifying status as a term is just found with reference to clause 2.10.2. CCES believes both the disqualifying status and Ineligibility (if the person is subject to the Code) must be included.

### **UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**2.10** Drafting point in respect of the mental element for this ADRV is that "...the Athlete or other Person knew of the Athlete Support Person's disqualifying status, or knew that there was a significant risk that the Athlete Support Person had a disqualifying status..."

This is plainly drafted to be consistent with the way the second limb of the definition of "intentional" is drafted in Article 10.2.3. However, it seems to be somewhat artificial and inappropriate to assess whether there was a significant risk that the ASP was disqualified, and so also whether or not an athlete or other person knew this. The first question, to establish an ADRV, is whether or not the Athlete Support Person is in fact disqualified. We would suggest that the next question should be of the Athlete or other Person's knowledge of that disqualified status – not of the risk that the Athlete Support Person was disqualified.

We would therefore suggest that it would be more appropriate for the ADRV of prohibited association to apply to situations where the Athlete "knew or ought to have known" of the ASP's disqualifying status

### **Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

Article 2.10.3 This change is welcome. However, Sport Ireland would suggest that as a matter of policy WADA and ADOs would publish lists of individuals with whom Athletes cannot associate and directly notify Athletes in certain cases (e.g. if there is a known history or relationship between the parties), as this would go a long way to proving that an Athlete knew the person was disqualified or knew there was a significant risk the person was disqualified.

We would also suggest the following amendments to the syntax of the Article (amendments underlined).

"To establish a violation of Article 2.10, an *Anti-Doping Organization* must establish that the *Athlete* knew of the *Athlete Support Person's* disqualifying status, or knew that there was a significant risk that the *Athlete Support Person* had a disqualifying status, and that the *Athlete* or other *Person* could reasonably have avoided the association."

**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)

Other - Other (ex. Media, University, etc.)

SUBMITTED

The amendment is supported.

**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)

Other - Other (ex. Media, University, etc.)

SUBMITTED

It is not clear why the 'warning off' wording has been removed. The revised text says that a violation is committed if the Athlete/Person knew that there was a 'significant risk' that an Athlete Support Person (ASP) had a disqualifying status. This is a particular problem if Article 2.10.2 is relevant: an Athlete/Person is unlikely to know that there is a 'significant risk' that an ASP falls within Article 2.10.2 unless notified by the ADO. The 'letter before action' approach envisaged in the current (2015) text removes any doubt and places an Athlete on notice that there is a problem. Indeed, the best evidence to support a violation charge under Article 2.10 is that an ADO advised an Athlete/Person that an ASP was disqualified, and that Athlete/Person ignored that advice. The Comment acknowledges this.

**Article 2.11 (21)****International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)

Sport - IF – IOC-Recognized

SUBMITTED

SUBMITTED BY WADA

The ICC has noted that WADA has no anti-doping rule violation addressing 'failure to report', however, this article refers to a new violation for threatening a person to discourage that person from reporting of a violation in good faith. The ICC would therefore suggest that combined with the introduction of this new offence, WADA should also introduce a new offence of failure to report.

**World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)

Sport - IF – Summer Olympic

SUBMITTED

World Rugby support the proposed new Article 2.11 providing protection for individuals reporting violations

**FIBA (International Basketball Federation)**

Natalie St Cyr Clarke, Legal Affairs Manager (Switzerland)

Sport - IF – Summer Olympic

SUBMITTED

FIBA submits that offences under article 2.11 should require intention on the part of the alleged perpetrator. Otherwise, the provisions could be open to abuse and used improperly.

**ISU**

Christine Cardis, Anti-Doping Administrator (Switzerland)

Sport - IF – Winter Olympic

SUBMITTED

**CODE 2.11 Other Anti-Doping Rule Violations**

**2.11.1.2** Retaliation against a *Person* who has reported in good-faith an anti-doping rule violation, non-compliance with the *Code* or other doping activity to *WADA*, an *Anti-Doping Organization*, law enforcement or a professional disciplinary body.



**ISU Proposal:**

It must be made clear by the wording or through commentary that retaliation cannot be seen in applying criminal law on a person who reported an anti-doping rule violation where this person was involved and, thereby, committed a crime under national criminal law.

**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We agree with such principle and recommend expending s. 2.11.1.1 to say “Any act to encourage, condone or threaten another Person for the purposes of discouraging the Person from the good faith ...”

**United States Olympic Committee**

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

The USOC is supportive of including Retaliation as a Code violation. However, Article 2.11.1.2 could benefit from making “Retaliation” a defined term. For example, “Retaliation: Any adverse action taken by a Person who is bound by the Code against another Person because he or she reported in good-faith an anti-doping rule violation, non-compliance with the Code or other doping activity to WADA, an Anti-Doping Organization, law enforcement or a professional disciplinary body.”

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

**Article 2.11 Other Anti-Doping Rule Violations**

Article 2.11.1.1 should read:

*“Any act which threatens another Person for the purpose of discouraging the Person from the good-faith reporting of a potential anti-doping rule violation, non-compliance with the Code or other doping activity to WADA, an Anti-Doping Organization, law enforcement or a professional disciplinary body.”*

We also ask WADA to clarify what “or other doping activity” includes.

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

As stated in the Code, fairness in sanctions prevails, and the same AAF should be subject to the same sanction in different cases. However, the periods of eligibility in **Article 2.9** “Complicity” and **Article 2.11** “Other Anti-Doping Rule Violations” range from two years to lifetime. The vast flexibility and wide range of sanctions enables the anti-doping organizations to have much too large discretion, resulting in inconsistent sanctions in practical application, which will prejudice fairness of sanctions. It is recommended to develop detailed rules and regulations for such sanctions and refine the levels and extent of these sanctions.

**EU and its Member States**

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

SUBMITTED

### ***Protection of individuals reporting violations (whistleblowers)***

The EU and its Member States fully support the objective of protecting individuals reporting violations against retaliation and encourages any efforts in that direction. They therefore welcome the addition of a new anti-doping rule violation aiming at providing protection for individuals reporting violations.

#### **Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

The proposed violations appear to overlap with tampering (Article 2.5). Australia would like to know if WADA has done an assessment of whether Article 2.5 can be amended to include the behaviour captured in proposed Article 2.11 without the need to introduce a new violation. Also, has there been any consideration of the potential implications of such a change on the UNESCO International Convention Against Doping in Sport?.

#### **Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### **Article 2.11**

Article 2.11 introduces new doping violations (Acts to Discourage or Retaliate Against Reporting).

The Article should be proved again by WADA:

The grounds for exclusion are:

1. This paragraph and the changes to the WADA Code do not contain provisions that provide for liability for defamation and perjury. The indication of good faith is not enough.
2. Issues of informing of the existence of doping violations, which in some cases are criminal offenses, should be regulated exclusively by national legislation or by an international treaty. The "soft law" act is not suitable for this.
3. The initiation of a criminal case against a person can be objectively connected with a direct violation of national legislation and is in no way connected with the fact that he acted as a whistleblower. However, these provisions can be used as an instrument of pressure on the state, bringing the informant to justice for a criminal offense or, for example, firing a whistleblower from work. Thus, this contradicts the principle of international law contained in the UN Charter, namely, non-interference in the internal affairs of the state.
4. The mechanism of the person who is supposed to assess the existence of such violations proposed in this paragraph is completely unclear.
5. At this stage, the items in the paragraph need to be substantially refined also because the WADA Code is an act of "soft law" and in its legal force is incompatible with an international treaty.

#### **Article 2.11.1**

Drafting point. Instead of referring to the reporting of an ADRV, non-compliance or other doping activity, this Article should refer to reporting a suspected ADRV, non-compliance or other doping activity.

#### **Atypical findings / example: clenbuterol (Art. 2.14, 7.4)**

Fair and legally acceptable methods of analysis - Due to the steadily increasing measurement accuracy and detection capabilities by the WADA accredited laboratories, the "standard of discharge" for athletes must also be increased.

**Irish Sports Council**

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

Article 2.11 The wording of this violation should also refer to the good-faith reporting of 'possible' or 'potential' anti-doping rule violations and 'possible' or 'potential' non-compliance with the Code and perhaps information 'relating to' same.

**NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

Art. 2.11

Violation of the Prohibition of Participation during ineligibility should systematically be an element of a violation and

removed from its current position. It should rather be included as a concrete new element / violation.

**Anti-Doping Norway**

SUBMITTED

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

Anti-Doping Norway support the new article 2.11

**NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

Any amendment of the catalogue of ADRVs must be implemented into national law, which is based on the principle of legal certainty. The terms "threaten" and retaliation" in this context do not fulfill this obligation. There must be a clarification what exactly these terms are standing for.

**UK Anti-Doping**

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

**2.11.1** - Drafting point. Instead of referring to the reporting of an ADRV, non-compliance or other doping activity, this Article should refer to reporting a suspected ADRV, non-compliance or other doping activity.

**Anti-Doping Authority Netherlands**

SUBMITTED

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Protection for Individuals Reporting Violations (Article 2.11)

· This type of 'whistle blowing' is also anchored in various national legislations, and obviously the Code should not interfere with these. We recommend that this is explicitly mentioned in this article.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

This article can only apply to persons or instances that fall under the jurisdiction of Code signatories. For NADOF, acting under an Antidoping Legislation that also sees ADRVs as criminal offenses, this could create additional problems when the acts of threatening or discouraging also constitute a separate criminal offense.

It is unclear how it should be assessed that a reporting of a possible ADRV, thereby accusing a person, has been done in good faith. If someone is charged with an ADRV which is reported by a third party, he has the right to defend himself. An athlete subsequently investigated for an ADRV has the right to claim the reporting is false, and can see the accusation as an act of slander or defamation. The legal right to press charges for defamation or slander is provided by internal legislation. The WADC can't limit this right.

**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The addition of 2.11 is supported.

**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

This new Article carries with it a host of jurisprudential and legal issues that doubtless will be raised by a number of stakeholders.

Although the policy aim of deterring and punishing people who try and make sure that evidence of doping is suppressed, there does not appear to be an obvious necessity for this Article. Pressuring another not to disclose the existence of a violation is anathema to the values of the Code, but is conduct is anticipated to be covered by this violation that already caught by Article 2.9?

Article 2.11.1.2 creates some obvious complications. If A reports B 'in good faith', but is mistaken, and B takes legal action against A to obtain compensation, that cannot be 'retaliation' warranting action against B. The term 'good faith' is in this context a very light standard.

**International Paralympic Committee**

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The Code should make it clear that any ineligibility should begin from the date of the decision and cannot be backdated to the date of the offence without a provisional suspension having been served.

**Article 3.1 (5)****Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

Where the Prohibited List only governs certain routes of administration or imposes certain limits, it should (as it does for salbutamol) provide for the burdens and standards associated, for example:

WADA should clarify who has the burden of proof in terms of the route of administration of glucocorticoids (assuming that the status of glucocorticoids does not change).

WADA should clarify the evidentiary burdens and thresholds pertaining to the ADRVs of use and possession of a prohibited method insofar as infusions of 100 ml/ within 12 hours are concerned

### United States Olympic Committee

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

It is unclear what this modification accomplishes as the Comment to Article 3.2.2 provides that the standard of proof is a balance of probability and there is no indication from Article 3.2.3 that a different standard of proof would apply in that situation.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Art. 3 Burden of Proof

“Objectivity at all stages of the case” is defined in the ISTI today (comment to Article 12.3.3.) Anti-Doping Norway believe that this important principle should be expressed in the Code itself relating to burden of proof, and not only in a comment in the ISTI.

The ISTI 12.3.3 further require that Investigations “*should seek to gather not only any available evidence indicating that there is a case to answer but also indicating that there is no case to answer.*” Anti-Doping Norway believe that this important principle should also apply for Results Management and Prosecution.

### Comment 16 to Article 3:

Examples are given of what can be used as evidence in the investigation.

In particular, witness statements, documentary evidence, conclusions from the profile and other analytical information.

These provisions should be deleted in order to exclude the formulation of wording in the WADA Code that will later allow the use of untested and substandard information as evidence of the use of doping.

The provision needs to be improved.

### Anti-Doping Norway

SUBMITTED

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

Anti-Doping Norway suggest emphasizing principles securing an athletes rights by due process within the Code. “Objectivity at all stages of the case” is defined in the ISTI today (comment to Article 12.3.3.) Anti-Doping Norway believe that this important principle should be expressed in the Code itself relating to burden of proof, and not only in a comment in the ISTI.

The ISTI 12.3.3 further require that Investigations “*should seek to gather not only any available evidence indicating that there is a case to answer but also indicating that there is no case to answer.*” Anti-Doping Norway believe that this important principle should also apply for Results Management and Prosecution.

### Irish Sports Council

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

**Article 3.1.** Sport Ireland notes that this amendment is intended to clarify that the standard of proof in cases where an Athlete or other Person seeks to rebut the presumption that there has been no departure from the ISL or other International Standards. However, in Sport Ireland's view the amendment has the potential to confuse matters.

In this context an Athlete or other Person has to establish two things, (i) that there was a departure from the ISL or other International Standard and (ii) that that departure could reasonably have caused the Adverse Analytical finding or other anti-doping rule violation. Clearly, (i) must be established on the balance of probability. The standard of proof in relation to (ii) is that it must be shown that it could reasonably have caused the violation. This speaks for itself and Sport Ireland does not see any need for WADA to amend this Article at all.

While the amendment to Article 3.1 could be read as maintaining the status quo and simply clarifying the position, it could also be read as meaning that the standard of proof in respect of establishing that a departure from the ISL or other International Standard occurred, is not the balance of probability.

An alternative wording should be considered.

### Article 3.2.1 (4)

#### Union Cycliste Internationale

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

"Has been established" could indicate that it is up to the ADO/WADA to establish the presumption. The UCI therefore suggests "whether the conditions for such presumption have been met"

The UCI believes that "Consultation within the relevant scientific community" and "Peer Review" should be defined.

The Code should clarify that a challenge may occur during the results management phase and first instance proceedings, not just at CAS. Alternatively, there should, at a minimum, be an obligation for WADA to assist the ADO to defend the analytical methods and decision limits where a challenge is brought during the results management phase of the first instance proceedings. Please see below possible wording:

#### 3.2.1 (...)

CAS or the relevant hearing body on ~~its~~ their own initiative, may also inform WADA of any such challenge.

At WADA's request, the CAS panel or relevant hearing body shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae or otherwise provide evidence in such proceeding.

If any challenge under this Article 3.2.1 is raised during results management, WADA shall assist the Anti-Doping Organisation by providing all relevant evidence necessary to establish that the conditions for the presumption are fulfilled and that the relevant analytical method or decision limit is scientifically valid.

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 3.2.1.** This Article refers only to CAS panels. Should this Article perhaps also refer to other anti-doping hearing panels and cases in relation to which WADA may wish an expert to be appointed?

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

The proposed wording seems odd. If WADA has approved the presumption it certainly exists and has been established. It is appropriate to have an athlete challenge the validity of an assumption that WADA has already approved.

**International Paralympic Committee**

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The determination of “decision limits” or “thresholds” should benefit from the same presumption as other Prohibited List decisions, for example by adding a provision to the presumptions under Code Article 3.2.1.

**Article 4.2.2 (8)****United States Olympic Committee**

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

It is recommended that Article 4.2.2 be expanded to include “Specified Methods.” Proposed amended language for Article 4.2.2 follows:

“Specified Substances and Methods

For purposes of the application of Article 10, all Prohibited Substances shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. In addition, all Prohibited Methods shall be Specified Methods except for those methods specifically excluded from that category on the Prohibited List.”

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 4.2.2**

Article 4.2.2 of the new Code version includes Prohibited Methods in Specified Substances. At the same time, Prohibited Methods, specified in all the sections of the current Prohibited List, except for M2.2, in terms of their hazard and intentional nature of use for enhancing performance in sport, may basically not be considered as equal with use of Specified Substances with the respective scale of imposing minimal and maximum sanctions.

However there are some particular Prohibited Methods that should not be treated in the same way as Specified Substances; in particular M2.1 on the Prohibited List.

### Article 4.3

Add the wording to the section:

«The procedure of the inclusion of substances and methods in the WADA Prohibited List including the publication of the results of the research confirming the need for such inclusion on the WADA website should be public. The results of such researches should be passed to the signatories for the appropriate review and discussion. The inclusion of substances and methods in the WADA Prohibited List shall be provided upon approval by the signatory parties on the basis of consensus».

### Article 4.4 (“TUEs”)

Add the wording to the section:

For all substances that can be licensed for use during the competition period, studies based on the principles of evidence-based medicine should be conducted and it must also be confirmed that this substance or method does not enhance the sport performance, except for the raising associated with the health improvement. The results of the research should be provided to interested parties for discussion.

It is proposed to consider the possibility of introduction of amendments to the Prohibited List by selecting substances which usage can lead to an additional improvement in the sporting result, in addition to the expected improvement in the health status of the athlete. These and similar substances can be combined into a separate group indicating that if an athlete is required to take these substances, he/she cannot participate in competitions under the auspices of National or International Federations in the mentioned sports.

An anti-doping organization that has decided to issue a therapeutic use exemption (TUE) for such prohibited substance must also specify the period during which the athlete is not eligible to participate in the competition, as well as the conditions under which such restriction will be lifted.

### NADA

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### TUE

#### Art. 4.4

International Federations should be responsible for granting TUEs not only for International-Level Athletes but also for other athletes, e.g. non-testing pool athletes, who take part in international competitions.

Due to the national regulations, a German 'non-testing pool athlete' does not need to apply for a TUE in advance. He is able to participate in competitions if he provides a medical certificate, which demonstrates the medical necessity for the use of the prohibited substance due to an acute or chronic medical condition.

In case the athlete would start internationally, the International Federation (event organizer) could impose stricter rules (such as a need for a TUE). Therefore, the International Federation (!) must be responsible for granting (or denying) the TUE and needs to have an applicable TUE system in place.

The NADO cannot be responsible since its system differs and the NADO would have to act against its own rules.

Currently these athletes start without a valid TUE and are left with the insecurity of a retroactive TUE approval.



**RUSADA**

SUBMITTED

Tatyana Galeta, Head of the Results Management Department (Russia)

NADO - NADO

Article 4.2.2 of the new Code version includes Prohibited Methods in Specified Substances. At the same time, Prohibited Methods, specified in all the sections of the current Prohibited List, except for M2.2, in terms of their hazard and intentional nature of use for enhancing performance in sport, may not be considered as equal with use of Specified Substances with the respective scale of imposing minimal and maximum sanctions.

**NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

There must be a clarification in WADC and explicitly in the prohibited list, that all drugs, regardless of whether they are banned at all times or only in competition, are only permitted in therapeutically indicated dosages. Currently this is implemented only for some drugs such as beta-2-agonists, glucocorticosteroids and (pseudo) ephedrine or by analytical thresholds.

In addition there should be a clear and unmistakable statement that each and every medical treatment, drug intake or substance use is strictly prohibited if it is not medically indicated and prescribed by a medical specialist.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)

NADO - NADO

**Anti-Doping Authority Netherlands**

SUBMITTED

Olivier de Hon, Scientific Manager (Netherlands)

NADO - NADO

## 4.2.2: Specified substances

[On behalf of Anti-Doping Authority the Netherlands]

Draft Article 4.2.2 proposes to delete the provision that the category of Specified Substances shall not include Prohibited Methods. This proposal is not explained. Taking into consideration (a) the performance enhancing benefits of most Prohibited Methods and (b) the fact that the use of most Prohibited Methods implies the application of sophisticated doping practices, support and expertise, we assume that it is not the aim of the 2021 Code to grant athletes who use Prohibited Methods the sanction flexibility that applies to specified substances. Yet, the exact meaning of the change to Article 4.2.2 is unclear to us. Doping Authority Netherlands proposes that the 2021 Code explicitly states that Prohibited Methods shall not be treated as Specified Substances.

**Kamber-Consulting**

SUBMITTED

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

**4.2.2 Specified Substances<sup>19</sup>**

For purposes of the application of Article 10, all Prohibited Substances shall be Specified Substances except substances in the classes so identified on the Prohibited List.

This is easier managaqble. In case of a new class of substances that is not a specified substance, the Code itself has not to be changed, only the IS Prohibited List

**Article 5.4 (4)****China Anti-Doping Agency**

SUBMITTED

Zhaoqian LUAN, . (China)  
Sport - Other

**1. Coordination on the number of testing**

In general, testing and analysis are still the most direct and deterrent means in the anti-doping work. However, the number of annual testing conducted by the anti-doping organizations varies greatly, some of which do not match the scale and strength of their competitive sports, resulting in unfairness among countries and sports and disciplines. In order to promote the harmonization of global anti-doping work, it is recommended that WADA increase the requirement for the annual testing and scale conducted by the anti-doping organizations in the Code, International Standard for Testing and Investigation or TDSSA. For example, the national anti-doping organizations should be required to conduct a reasonable assessment of the annual number of testing, which should correspond to the number of athletes participating in the comprehensive international games such as the Olympic Games, the results achieved in international competitions, the history of doping use, and the number of AAFs and ADRVs. Similar requirements should be made for the International Federations.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Article 5.2**

It is unclear whether an ADO has jurisdiction to test an athlete who has not retired but no longer holds a license to compete in their sport. An example of this is professional boxing, as athletes can apply for a license shortly before a fight. During the period in which they do not hold a license, it is unclear whether an ADO would be able to test them (if they have not retired and are not in a testing pool).

Whilst some International Federation rules include a specific provision around this, not all do, and so we propose that this article be amended to give ADOs authority to test for a set period after a licence has expired, if the athlete has not retired.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

**5.4 Test Distribution Planning**

AEPSAD considers that a great amount of work and economic resources are being wasted in the planning and execution of ineffective controls, due to very poor WADA risk analysis, which are not based on evidence.

It should be stated in article 5.4, that the Technical Document that determines, (by means of a risk assessment based on clear medical or scientific evidence, pharmacological effect or experiment) which Substances and / or Prohibited Methods are more likely to be abused in particular sports and sports disciplines, and ADO's must implement its own risk assessment, not needing to use the TDSSA.

Since each ADO must implement its own risk assessment and technical document as a reference, WADA technical document should be a guide and should not be mandatory.

So the Article 5.4.1 and the article 5.4.1 would read as follows: 5.4.1 Anti-Doping Organizations must apply a risk assessment of minimum levels of analysis to sports and sport disciplines for certain Prohibited Substances and/or Prohibited Methods, which are most likely to be abused in particular sports and sport disciplines.

5.4.2 Starting with a risk assessment, each *Anti-Doping Organization* with *Testing* authority shall develop and implement an effective, intelligent and proportionate test distribution plan that prioritizes appropriately between disciplines, categories of *Athletes*, types of *Testing*, types of *Samples* collected, and types of *Sample* analysis, all in compliance with the requirements of the *International Standard* for Testing and Investigations. Each *Anti-Doping Organization* shall provide *WADA* upon request with a copy of its current test distribution plan

### **Kamber-Consulting**

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

5.4.1 WADA, in consultation with International Federations and other Anti-Doping Organizations, will adopt has adopted a Technical Document for Sport Specific Analysis under the International Standard for Testing and Investigations that establishes by means of a risk assessment which minimum levels of analysis that Anti-Doping Organizations must apply to sports and sport disciplines for certain Prohibited Substances and/or Prohibited Methods, which are most likely to be abused in particular sports and sport disciplines, unless an Anti-Doping Organization can show scientifically or intelligent based approaches that are better suited to fulfill a risk based TDP.

## **Article 5.6 (6)**

### **China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

"Anti-Doping Organizations may, in accordance with Article 4.8 of the International Standard for Testing and Investigations, collect whereabouts information from Athletes who are not included within a Registered Testing Pool". It is recommended that the Code should clearly state whether these athletes are subject to Article 2.4, "Whereabouts Failures" and what the consequences would be if these athletes not included in the Registered Testing Pool fail to provide whereabouts information.

### **Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

## **Article 5.6**

There must be a clear definition of "Whereabout Information for Lower Level Athletes". How much "whereabout information" is proportionate and appropriate in relation to OOC testing by ADOs?

In addition, it must be determined who is responsible and responsible for the application of these criteria.

The requirements for Lower Level Athletes must not lead to RTP athletes being disadvantaged.

Many stakeholders have already established their own test pool system for "lower level athletes". The experiences and insights of the stakeholders should be taken into account when determining the Whereabout Information for Lower Level Athletes.

## **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### **Whereabouts Information from Lower Level Athletes**

NADA supports the review of Article 5 concerning target testing

Purpose: Allow NADOs short-termed in-competition target testing in order to dismantle "testing--free" zones (International Events) within a country or to act on intelligence received on short notice or due to national (criminal) law.

Wording could be as follows:

#### **Article 5.2.1**

"Each National Anti-Doping Organization shall have In-Competition and Out-of-Competition testing authority over all Athletes who are nationals, residents, license-holders or members of sport organizations of that country or who are present in that National Anti-Doping Organization's country

(new wording:) explicitly but not limited to in- and out-of-competition activities."

#### **Article 5.3.1**

"Except as otherwise provided below, only a single organization should be responsible for initiating and directing Testing at Event Venues during an Event Period. At International Events, the collection of Samples shall be initiated and directed by the international organization which is the ruling body for the Event (e.g., the International Olympic Committee for the Olympic Games, the International Federation for a World Championship, and the Pan-American Sports Organization for the Pan American Games). At National Events, the collection of Samples shall be initiated and directed by the National Anti-Doping Organization of that country.

(new wording:) At the request of the ruling body for an Event, a for any Testing during the Event Period outside of

the Event Venues, the National Anti-Doping Organization of that country is permitted but shall inform be coordinated with that the ruling body of the Event. The ruling body of the Event is obliged to support the National Anti-Doping Organization of that country in those cases."

#### **Article 5.3.2**

"If an Anti-Doping Organization which would otherwise have Testing authority but is not responsible for initiating

and directing Testing at an Event desires to conduct

(new wording:) in-competition Testing of Athletes at the Event Venues during the Event Period, the Anti-Doping Organization shall first confer with the ruling body of the Event to obtain permission to conduct and coordinate such Testing. If the Anti-Doping Organization is not satisfied with the response from the ruling body of the Event, the

Anti-Doping Organization may, in accordance with procedures published by WADA, ask WADA for permission to conduct Testing and to determine how to coordinate such Testing. WADA shall not grant approval for such Testing before consulting with and informing the ruling body for the Event.

(new wording:) If an Anti-Doping Organization desires to conduct in competition target-Testing at the Event during the Event Period, the Anti-Doping Organization should contact the ruling body of the Event as early as possible in order to coordinate such Testing. If the ruling body is not planning any Testing or denies cooperation for such Testing during the Event, the Anti-Doping Organization is permitted to perform the desired in-competition target Testing. The ruling body of the Event is obliged to support the Anti-Doping Organization in any case."

### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

EADA supports the wording proposed in the Second Code Draft.

### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

CCES suggests adding the words "more limited" between "collect" and "whereabouts" in the last sentence. It clarifies that some information can be collected but not the full scope required for an RTP athlete.

### **Turkish Anti Doping Commission**

Mehmet YOGURTCUOGLU, Deputy General Coordinator / Legal Advisor (Turkey)  
NADO - NADO

SUBMITTED

Article 5.6: The term "Lower Level Athletes" can be changed as "Non-RTP Athletes" so that Anti-Doping Organizations can have the flexibility to determine which athletes to collect whereabouts information from based on the priority placed on testing these athletes irrespective of their levels in accordance with ISTI Article 4.8.3.

## **Article 5.7 (4)**

### **Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

We did not find the further guidance in the new version of the ISTI but we understand it will be added at a later stage

### **Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

## **Article 5.7.1 and 5.7.1**

Retired athletes returning to 'active participation in sport' - does this Article apply to a return to any sport (ie not just the one the athlete retired from). If so, could this be made explicit?

### NADA Austria

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

The level of re-entry to active participation in sport should be defined. Otherwise, for example, a former Olympic champion in skiing has – after his retirement - to wait 6 months before he can take part in a golf tournament on a national level (where you need also a license and you are an athlete as well according to the applicable rules). Proposal: If an International- or National-Level Athlete in a Registered Testing Pool retires and then wishes to return to active participation in sport at a “*comparable level*” ...

Furthermore there must be a solution for athletes entering the WADC framework after a doping carrier outside the WADC framework. In theory, these athletes could use doping since they are not part of the system. After they (re-) joined the system, they might still profit from their doping use without a sufficient provision to prevent this.

### UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**5.7.1 & 5.7.2** - More clarity about 'active participation in sport' would be helpful. Firstly, if these Articles apply to a return to any sport (ie not just the one that the Athlete retired from), this could be made explicit. Secondly, we would welcome more flexibility around the requirement that Athletes must be available for testing for six months prior to a return to competition. Whilst exemptions can be granted, this is for exceptional cases. We are in favour of, as a minimum, making Recreational Athletes (however that comes to be defined) exempt from this requirement, and consideration of making other Athletes competing at lower levels similarly exempt.

## Article 6.4 (3)

### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

### 1. Retroactivity of the Prohibited List and limit for further analysis

When a sample has been declared negative, there is no limitation imposed on either the anti-doping organization that initiated and directed sample collection or WADA conducting further analysis on the sample. Although the anti-doping organization and the laboratory have the right to conduct an unlimited number of tests on the sample, the subsequent AAF should be dealt with in accordance with the spirit of law and fairness, the principle of [non-retroactivityoflaw](#) and taking into account the balance between clean sport and protecting the legitimate rights and interests of athletes.

In particular, the use of substances which were not explicitly identified on the Prohibited List would not constitute an ADRV against the current standards. Although this substance was added to the Prohibited List later, [non-retroactivityoflaw](#) is the basic spirit of the rule of law. As we cannot use today's rules to evaluate people's past behavior, we cannot use the present Prohibited List to impose sanctions on the athletes in the past. If it is required to use the current Prohibited List to direct the athletes who is subject to further analysis or assert the athlete, then a question should be answered: If a substance has been removed from the Prohibited List (e.g. alcohol, caffeine), or the TD of a substance has been adjusted (eg, [Boldenone](#), higenamine), then, with the consent of the athletes or the hearing body, the anti-doping organization requires the laboratory to re-analyze the sample in accordance with the current Prohibited List and technical standards, and the results is negative. Does it mean the athlete didn't constitute an ADRV? We believe that it is necessary to make clear restrictions on the retroactivity of the Prohibited List.

In addition, it is hoped that WADA could specify how to coordinate and solve the disagreements arising from the anti-doping organization that initiated and directed sample collection, WADA and other anti-doping organizations. It is recommended that WADA develop a standardized operational guideline to provide guidance on further analysis of samples.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

As it has been proposed before, we think that Anti-Doping Organizations must apply a risk assessment of minimum levels of analysis not using mandatorily any WADA Technical Document for the risk assessment, due to the lack of evidence of these documents.

**6.4.2. WE PROPOSE TO TAKE IT OUT****Kamber-Consulting**

SUBMITTED

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

6.4.2 Anti-Doping Organizations may request that laboratories analyze their Samples using less extensive than the minimal levels of analysis described in the Technical Document for Sport Specific Analysis only if they have obtained permission from WADA to do so as provided in the Technical Document for Sport Specific Analysis. For athletes not in the Registered Testing Pool, an Anti-Doping Organization may request laboratories to analyse for substances that seem fit for purpose of adequate deterrence.

**Article 6.5 (6)****International Cricket Council**

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The ICC would suggest that WADA explains in Article 6.7 its intention for wanting to take possession of stored samples without notice, for example by way of a comment.

**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support this proposal - Further Analysis of Sample Prior to or During Result Management or Hearing Process

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

The concept of an *asserted* ADRV is not always entirely clear. There are occasions on which ADO seeks an explanation prior to asserting the violation. Perhaps the use of "potential" instead of "asserted" would be better.

The UCI would suggest regulating the situation where an athlete requests further analysis. It would be recommended amending this provision so that:

-

It is clear that an ADO is not obliged to conduct further testing of a sample when requested by an athlete; however, an ADO can be compelled to conduct further analysis by a relevant hearing body after a request from an athlete.

Regarding the title of the article, the UCI would suggest "Further Analysis of a Sample after it has been reported as negative"

Moreover, the UCI fails to understand why the approval of the athlete or of a hearing body should be required to conduct further analysis after the athlete has been notified.

### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

It is important that retesting be coordinated and approved by WADA to minimize any attempts to use up samples for cover ups or attempts to destroy evidence (e.g. in anticipation of future science that may enable subsequent detection).

### Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

The specific wording of this Article could leave the seconded ADO out of pocket. If WADA facilitates the engagement of another ADO, the costs incurred by that ADO should be covered by WADA, Australia suggest this article be re-worded.

### Anti-Doping Authority Netherlands

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

Article 6.5: Further Analysis of a Sample Prior to or During Results Management or Hearing Process

[On behalf of Anti-Doping Authority the Netherlands]

There is an added sentence here that reads as follows:

*There shall be no limitation on the authority of a Laboratory to conduct repeat or additional analysis on a Sample prior to the time an Anti-Doping Organization notifies an Athlete [...]*

It appears inconsistent with the principles of the Testing Authority, the Results Management Authority and Sample Ownership to give a laboratory the authority to do whatever it wants with a Sample prior to notification by an ADO to an Athlete. Usually, the TA and the RMA will be the same ADO and this ADO will have ownership of the Sample. This ADO must control the process of notification. The added sentence to this Article creates a risk in terms of the management of that process: the lab does not know when the ADO will report the analytical result to the Athlete, which automatically means that the lab in itself cannot have the freedom to continue analysis until such notification takes place (because it does not know when that moment occurs).

Also, if the ADO at some point in the process prior to notification wishes to conduct an additional test (e.g. IMRS) it cannot be confronted with a scenario in which there is no more urine left because the lab at its own discretion already used all the remaining urine. Therefore this Code Article should instead refer to the authority of the TA/RMA, or at the very least contain language about the lab obtaining prior approval from the TA/RMA for additional tests. Another option is to grant the laboratories a certain degree of authority until the lab submits its analytical report to the ADO (i.e. before notification of the Athlete by the ADO).



**Article 6.6 (4)****World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support this proposal - Further Analysis of Samples After a Sample has Been Reported as Negative.

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

Article 6.6 should also deal with the question of the designation of the results management authority in the event further analysis are not conducted by the Testing Authority.

Replacing the "ADO that initiated and directed sample collection" by the "Testing Authority" (as defined in the ISTI) and including the definition of Testing Authority in the WADC could also make sense.

The UCI understands that "further analysis" includes "retesting". If not, specific reference to retesting should be added.

Possible wording

"6.6 Further Analysis of *Samples* After a *Sample* has Been Reported as Negative

After a Laboratory has reported a *Sample* as negative, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time at the direction of either the ~~Anti-Doping Organization that initiated and directed Sample collection~~ Testing Authority or WADA. Any other *Anti-Doping Organization* that wishes to conduct further analysis on a stored *Sample* may do so with the permission of the Testing Authority ~~Anti-Doping Organization that initiated or directed Sample collection or WADA~~. In such case, the *Anti-Doping Organization that conducts the further analysis shall be the results management authority, unless agreed otherwise*. Any *Sample* storage or further analysis initiated by WADA or another *Anti-Doping Organization* shall be at WADA's or that Organization's expense. Further analysis of *Samples* shall conform with the requirements of the *International Standard* for Laboratories and the *International Standard* for Testing and Investigations."

Adding article 10 of the ISTI in the WADC would clarify the question of ownership of these samples.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 6.6 Further Analysis of Samples After a Sample has Been Reported as Negative**

The Article should read:

*"6.6 Further Analysis of Samples After a Sample has Been Reported as Negative*

*After a Laboratory has reported a Sample as negative, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time exclusively at the direction of either the Anti-Doping Organization that initiated and directed Sample collection or WADA. (Any other Anti-Doping Organization that wishes to conduct further analysis on a stored Sample may do so with the permission of the Anti-Doping Organization that initiated or directed Sample collection or WADA. Any Sample storage or further analysis initiated by WADA or an Anti-Doping Organization shall be at WADA's or that Organization's expense.) Further analysis of Samples shall conform with the requirements of the International Standard for Laboratories and the International Standard for Testing and Investigations”*

**RUSADA**

SUBMITTED

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

Article 6.6 in its new version allows *other Anti-Doping Organization* to conduct further analysis on Samples which were collected by an Anti-Doping Organization. We consider as expedient if the right to request to conduct further analysis is given only to the Anti-Doping Organization, which has the authority to test this particular Athlete (that is, both the international federation on that particular sport would have the right to request additional analysis of the samples collected by the National Anti-Doping Organization, and the National Anti-Doping Organization would have the right to request additional analysis of the samples collected by the international federation from the Athletes who fall under the jurisdiction of the National Anti-Doping Organization.

**Article 6.7 (12)****International Cricket Council**

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The ICC would suggest that WADA explains in Article 6.7 its intention for wanting to take possession of stored samples without notice, for example by way of a comment.

**International Shooting Sport Federation**

SUBMITTED

Doris Fischl, ISSF (Germany)  
Sport - IF – Summer Olympic

This new provision which reads *“WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any Sample stored by a Laboratory or Anti-Doping Organization”*.

ISSF assumes that this refers only to negative samples that are being stored long term. But this is not expressly stated in the provision. Perhaps it should be.

If this assumption is correct, while ISSF certainly understands the necessity for such a provision, we are afraid that it might over-extend WADA's rights without due process or notice.

Considering ADOs have paid for sample collection, analysis and storage, if WADA is to take possession of an ADO's samples, it would be judicious for WADA to provide a justification for the same prior to doing so. Without this step, an argument might be made that legally, WADA has no rights the samples.

Perhaps WADA should not be permitted to take such action unless consent is given by the ADO (which could be given *de facto* in accordance with a new compliance obligation that would grant WADA such a right in certain circumstances) or unless a reasonable justification is given (on a balance of probabilities or other) as to why such physical possession is warranted.

**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)

Sport - IF – Summer Olympic

World Rugby support this proposal - WADA's Right to Take Possession of Samples

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 6.7 WADA's Right to Take Possession of Samples**

WADA should consider rewording the Article and delete *"stored by a Laboratory or Anti-Doping Organization"* as WADA should be able to take physical possession at any stage of the Doping Control process, also prior to such storage.

**China Anti-Doping Agency**

SUBMITTED

Zhaoqian LUAN, . (China)  
Sport - Other

**Article 6.7** states that "WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any Sample stored by a Laboratory or Anti-Doping Organization" and **Article 22.2** provides that each government should not restrict transport of urine and blood Samples. However, it should be noted that athletes' samples including blood, urine and other genetic contents concerns about major national interests such as national genetic safety and biosafety. Therefore, many countries have strict restrictions or prohibitions on the entry and exit of blood samples. This Article may conflict with the laws of many countries and may involve disputes with the customs and law enforcement agencies of those countries during implementation. Therefore, it is recommended to delete it.

**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia questions the process for WADA to take possession of any stored samples. We suggest including a requirement for WADA, after utilising proposed Article 6.7, to provide a report to the Executive Committee outlining the basis for taking possession of the sample.

**Secretaria de Estado da Juventude e Desporto**

SUBMITTED

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

WADA should consider that there are circumstances where other more relevant matters could require the action of for example national judicial bodies and so these should supersede WADA powers.

An alternative redaction could be:

WADA may, given it respects national legislation, take physical possession of any Sample stored by a Laboratory or Anti-Doping Organization.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Article 6.7**

The Council of Europe is not against the new Art. 6.7 WADC. However, the following points should be taken into consideration by WADA for the right application and interpretation of the Art.

- It must be ensured that the chain of custody is not affected if WADA makes use of this "new right".

- Likewise, a mandatory obligation of WADA should be included to inform the responsible Testing and Result Management Authority without delay in writing of the assertion of the right to take possession of the samples.

- Anti-Doping Organizations are allowed to conduct further analysis on Samples which were collected by an other Anti-Doping Organization. The right to request to conduct further analysis should be given only to the Anti-Doping Organization, which has the authority to test the particular Athlete (that is, both the international federation on that particular sport would have the right to request additional analysis of the samples collected by the National Anti-Doping Organization, and the National Anti-Doping Organization would have the right to request additional analysis of the samples collected by the international federation from the Athletes who fall under the jurisdiction of the National Anti-Doping Organization.

The right to request samples should remain only with WADA. Other anti-doping organizations, including foreign NADO, should not participate in this issue and question the results of doping tests of other NADO.

This rule is subject to exclusion, since there is no mechanism for resolving organizational and technical issues related to the entry into physical possession of samples. In particular, organizational and technical issues may include the need for visas, permits for import / export of samples, as well as aspects related to the working day of laboratory staff and so on. In fact, no state is able to enforce this item without appropriate elaboration.

### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

Basically, the NEW Art. 6.7 is good to underline WADA`s Right as the Regulator and Clearing house. But the article must taken into account which ownership structure based on civil law ist created and how WADA could unilaterally "break through" that ownership.

### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

At the very least, WADA should justify this beforehand and the respective ADO should have the right to appeal to CAS.

### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

NADOF would request some clarification to be certain that WADA will only exercise this right if the samples are still in physical possession of the NADO or the Laboratory. In rare cases, access to the samples might be required by law enforcement or justice when a criminal investigation is pending (this when an ADRV can also be seen as a criminal offense).

### **Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

6.7: WADA's Right to Take Possession of Samples

[On behalf of Anti-Doping Authority the Netherlands]

1. This Article should include that WADA is required either beforehand or afterwards to inform the relevant ADO about having taken possession of the Samples. Of course situations may occur where providing *prior*

notice is out of the questions, but then notice should be provided at a prudent later stage. However, it cannot be that the ADO is left completely oblivious.

2. What appears to be missing here is that (a) ADOs and WADA-accredited laboratories should be required to grant WADA access and enable WADA to take possession of Samples and (b) that failure to grant WADA the required access results in non-compliance with the Code (or similar language to the same effect).<sup>[1]</sup> This element should be included.

3. It is of key importance to create such a clear link between the actual granting of the access and Code compliance. Moreover, it is needed to expand this link to other consequences: i.e. possible non-compliance with other instruments. In the case of the Moscow lab it is not a Code Signatory which is responsible for the refusal of access to Samples. In the case of the Moscow laboratory the persistent refusal to grant access is comes from one or more third parties (i.e. non-Signatories). Such a refusal – and the consequences of this refusal: in the Moscow case serious doubts about the conditions under which the 2876 Samples are stored, maintained and protected, chain of custody issues, etc. which make it doubtful that those Samples can ever be analysed and reported in accordance with the ISL – cannot go unpunished.

This aspect could be addressed in Part Three or Four of the 2021 Code.

<sup>[1]</sup> Failure to grant access to Samples should also include the destruction of Samples.

## Article 7.1 (23)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC agrees with the proposed change in this Article.

### International SAMBO Federation

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized SportAccord

SUBMITTED

**Article 7.1.1.** – we suggest modification. In circumstances where the National Anti-Doping Organization is not an authority over an Athlete or other Person who is not a national, resident, license holder, or member of a sport organization of that country, the results management shall be conducted by the applicable International Federation or by a third party as directed by the rules of the International Federation.

Reason: RM shall be conducted only by organization which affiliates the athlete (it means his/her NADO or IF/WADA)

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support the changes proposed to Article 7.1 and await the draft of new International Standard for Results Management and Hearings

### Union Cycliste Internationale

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

When an ADO delegates disciplinary proceedings to another body, the initial ADO remains ultimately responsible of the follow up and outcome. This should be expressly stated. The UCI has encountered a few situations whereby a NADO was TA and RMA for an AAF, but delegated the disciplinary proceedings to a NF pursuant to the national legislation in place. In turn, in some limited instances, the NF did not carry out the proceedings in compliance with the WADC, for various reasons. The NADO then argued that it was not liable for the non-compliant decision as per the initial delegation, which is inaccurate.

It should also be clarified that if an Anti-Doping Organization conducts further analysis or retesting on samples that were collected by another Anti-Doping Organization, it shall be responsible for the results management of such analyses

Amendment proposal:

#### 7.1 Responsibility for Conducting Results Management

Except as provided in Articles 7.1.1 and 7.2 below, (...). If an Anti-Doping Organization conducts further analysis on samples collected by another Anti-Doping Organization, it shall be responsible for the results management of such analyses. Regardless of which organization conducts results management or hearings, (.....)

#### **FIBA (International Basketball Federation)**

Natalie St Cyr Clarke, Legal Affairs Manager (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

FIBA reiterates its prior position on article 7.1.1. Experience continues to demonstrate that an International Federation is oftentimes better equipped and more effective in handling the results management for players that are no longer resident in the country in which the AAF was detected.

FIBA therefore again proposes the following text (second and third sentences are proposed by FIBA):

7.1.1 In circumstances where the rules of a National Anti-Doping Organization do not give the National Anti-Doping Organization authority over an Athlete or other Person who is not a national, resident, license holder, or member of a sport organization of that country, or the National Anti-Doping Organization declines to exercise such authority, results management shall be conducted by the applicable International Federation or by a third party as directed by the rules of the International Federation. In circumstances where the rules of a National Anti-Doping Organization would otherwise give the National Anti-Doping Organization authority over an Athlete or other Person but such Athlete or other Person is not a citizen of the country of the National Anti-Doping Organization, the International Federation shall be granted Results management over such Athlete or other Person should the International Federation make such a request in writing to the National Anti-Doping Organization within fifteen (15) days of notification of the anti-doping rule violation and absent any objection by WADA. Should WADA object within seven (7) days of the written request, Results management shall remain with the National Anti-Doping Organization. Results management and the conduct of hearings for a test conducted by WADA on its own initiative, or an anti-doping rule violation discovered by WADA, will be conducted by the Anti-Doping Organization designated by WADA. Results management and the conduct of hearings for a test conducted by the International Olympic Committee, the International Paralympic Committee, or another Major Event Organization, or an anti-doping rule violation discovered by one of those organizations, shall be referred to the applicable International Federation in relation to Consequences beyond exclusion from the Event, Disqualification of Event results, forfeiture of any medals, points, or prizes from the Event, or recovery of costs applicable to the anti-doping rule violation

#### **ISU**

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

SUBMITTED

#### **CODE 7 Results Management**

**7.1.1** new last para: “WADA may direct an Anti-Doping Organization with results management authority to conduct results management in a particular case. If that Anti Doping Organization refuses to conduct results management **without justified reasons** within a reasonable deadline set by WADA, WADA may direct another Anti-Doping Organization, that is willing to do so, to take results management responsibility in place of the refusing Anti-Doping Organization. In such case, the refusing Anti-Doping Organization shall reimburse the costs and attorney’s fees of conducting results management to the other Anti-Doping Organization designated by WADA **unless it had justified reasons not to conduct results management**. Failure to conduct results management as directed or failure to reimburse costs and attorney’s fees shall be considered an act of non-compliance. “

#### ISU Proposal:

The provision goes too far. An Anti-Doping Organization may have reasonable grounds for not conducting results management. Thus, the wording shall be amended **as shown above**.

#### Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

#### Article 7.1 Responsibility for Conducting Results Management

##### Article 7.1.1

Attorney’s fees are “costs”. Superfluous words should be omitted; hence, we suggest deleting “attorney’s fees” in this Article.

#### Canadian Olympic Committee

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

Article 7: While in support of the intended improvements, we reserve comments to future draft reflecting such changes in the new International Standard for Results Management and Hearings.

Section 7.1.1: The language in that section should be revised to reflect WADA’s authority to intervene in the early stages, and as applicable: (i) appoint another entity to conduct results management with costs, and (ii) declare non-compliance.

#### United States Olympic Committee

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

The USOC is supportive of moving portions of Article 7 into a new International Standard for Results Management and Hearings. The USOC is a strong advocate for and believes that it is important to have uniformity in results management across ADOs, in particular with the international federations.

#### Ministry of Culture

SUBMITTED

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED BY WADA

#### Comment to WADC article 7.1.1:

Last sentence is unclear: "Failure to conduct results management as directed or failure to reimburse costs and attorney's fees shall be considered an act of non-compliance."

Is a failure to conduct results management but instead reimburse cost and attorney's fees also considered an act of non-compliance? We propose following sentence:

*"Failure to conduct results management as directed shall be considered an act of non-compliance, irrespective of whether the Anti-Doping Organization in question fulfills its subsequent obligation to reimburse costs and attorney's fees. In addition, the failure to reimburse costs and attorney's fees shall, in itself, be considered as an act of non-compliance."*

### **Secretaria de Estado da Juventude e Desporto**

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

The circumstances that render the reimbursement of expenses should be better clarified and financial limits should be set to avoid escalation.

### **Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### **Article 7.1.1**

There is a need for a specification of article 7.1.1. so that it is clear that failure to conduct results management is an act of non-compliance as well as the failure to reimburse costs.

*"Failure to conduct results management as directed shall be considered an act of non-compliance, irrespective of whether the Anti-Doping Organization in question fulfills its subsequent obligation to reimburse costs and attorney's fees. In addition, the failure to reimburse costs and attorney's fees shall, in itself, be considered as an act of non-compliance."*

### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### **Art. 7.1.1**

The wording "has refused" must be clearly defined. Otherwise it will be difficult to distinguish between a "refusal" based on intent or negligence or based on legal restrictions, application of rules and responsibilities between NADOs, national federations, Major Event Organizers and international federations.

### **Anti-Doping Norway**

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

Art. 10.7 Anti-Doping Norway agree that "Aggravating Circumstances" may increase the period of Ineligibility. WADA is encouraged to provide some typical examples that can be aggravating during the results management or the hearing process, allowing for a collective understanding of this article.

### **SA Institute for Drug-Free Sport**

khalid galant, CEO (South Africa)  
NADO - NADO

SUBMITTED

The principle of independent hearing panels and/or adjudication needs to be emphasised in Results Management



**RUSADA**

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

Article 7.1.1. Not every Anti-Doping organization has sufficient significant resources (human, scientific and financial resources) for conducting results management, hearings and appeals on technically complex cases. However, taking into account that this article assumes the possibility of stating that an Anti-Doping Organization is non-compliant, because of refusing to conduct result management procedure or reimburse the costs to the other Anti-Doping Organization, obviously, every effort will be made to reimburse such costs. It is necessary to take into account that funds for reimbursing such costs, will be taken from the most sensitive part of the budget of an Anti-Doping Organization – testing, which will, naturally, reduce the quantitative and will deteriorate the qualitative indicators of testing, which also might result in recognizing an organization as non-compliant. Thus, anti-doping organizations risk to find themselves in a dead end situation, when any of the actions they choose, will affect their compliant status.

In connection with the above, it is expedient either to remove the proposed rule or to replace it with an alternative – establishing a Working Group of several anti-doping organizations which have the jurisdiction over the case, with WADA acting as Chair, with the purpose of distribution of powers on results management, exchange of experience, technical, scientific and legal capabilities for working with every particular case, and for dividing the financial obligations on the case.

**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

Nous souhaitons attirer l'attention de l'équipe de rédaction quant à la difficulté voire l'impraticabilité juridique dans laquelle on pourrait se trouver si d'aventure, l'AMA décidait, dans un cas déterminé, qu'il reviendrait à une seconde organisation antidopage de mener une gestion de résultat parce que l'organisation antidopage, compétente en principe, ne mènerait pas à son terme cette gestion de résultat.

**Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

**7.1: Responsibility for Conducting Results Management**

[On behalf of Anti-Doping Authority the Netherlands]

Regarding the following additions to Article 7.1 and Article 7.1.1:

*Any Anti-Doping Organization seeking to conduct results management outside of the authority provided in this Article 7.1 may seek approval to do so from WADA.*

*WADA may direct another Anti-Doping Organization, that is willing to do so, to take results management responsibility [...]*

it is preferable to include a reference to an ADO 'with jurisdiction over the Athlete or other Person' (or similar wording), because the current proposal (unintentionally) seems to suggest it could be any random ADO with a willingness to take on a results management role.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

A NADO can be bound by compelling legislation which determines the jurisdiction to take up results management. Although for NADOF we consider the legal provisions to provide sufficient ground to take up results management in all case where NADOF acts as testing authority or is being asked to take up results

management over subjects that have a connection with NADOF, we would not have legal grounds to take up results management over cases that have no territorial (such as the place where the test took place) or personal (such as nationality, membership of a club or federation, place of residence) link with the jurisdiction of NADOF. In more general terms, a NADO whose jurisdiction is governed by national legislation and that acts as a public body, cannot act upon request of WADA to take up results management, in will not be able to be found "willing" to do so.

### UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

**7.1.1** - Where a NADO (1) initiates and directs sample collection of a non-national athlete (for example an athlete visiting NADO (1)'s country to compete in a one-off event), if the athlete's national NADO (2) will not agree to assume results management responsibility in the event of an asserted ADRV, NADO (2) should be required to provide reasonable assistance to the NADO (1) conducting results management. For example, NADO (2) could assist with locating the athlete in his / her home country for the service of documents or facilitation of an interview, or with the translation of documents, or the explanation of the results management procedure to the athlete.

### Irish Sports Council

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

**Article 7.1.1.** If a NADO does not have authority over an Athlete or declines to exercise such authority, this Article provides that results management shall be conducted by the applicable International Federation or by a third party as directed by the rules of the International Federation. It appears that the rules of some International Federations circumvent this by providing in their rules that it may direct who may conducts results management in such scenarios, including the ADO which has already declined to exercise results management authority.

### International Testing Agency

SUBMITTED

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

General comment to Art. 7.1: ADOs find the instrument of the 'agreement between parties' of paramount importance when managing disciplinary cases. Such process of "plea bargaining" (within the boundaries of the Code) allows to avoid costly and time-consuming proceedings. The Code does not provide for any form of incentive to encourage - where appropriate - athletes to accept a proposed sanction (as opposed to Prompt Admission for instance). Normally, every judicial system (including criminal jurisdictions) stipulates great means of reduction or mitigation to the applicable sanctions, just for the fact of withdrawing a hearing process. It would be worth exploring potential avenues in this regard, even just a mitigation of symbolic entity (e.g. up to 1/6 of the otherwise applicable sanction). The mere possibility of concluding an agreement does not always offer enough leverage - an incentive would serve the purpose of (1) establishing a more transparent and consistent regime for all athletes (2) decreasing the cost of legal proceedings to be borne by ADOs (and eventually by WADA) (3) speeding up the anti-doping justice; (4) possibly reducing the real or perceived abuse of the provisions re Prompt and Timely Admission.

Comment to Art. 7.1.1 Consider the addition below (in bold): WADA may direct an Anti-Doping Organization with results management authority to conduct results management in a particular case. If that Anti-Doping Organization refuses to conduct results management within a reasonable deadline set by WADA, WADA may direct another Anti-Doping Organization **or a third party**, that is willing to do so, to take results management responsibility in place of the refusing Anti-Doping Organization (...).

### GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

It appears that the policy underlying the new text is to avoid a situation where an anti-doping case is not prosecuted, because the ADO with the relevant jurisdictional basis to conduct that case declines to do so.

Leaving aside the complications that might arise from one ADO applying the ADR of another ADO, it is clearly desirable that Persons who have contravened the Code should not avoid Consequences simply because the relevant ADO chooses not to take the case.

However, the wording creates a number of issues –

a)The reference to ‘results management’ is ambiguous (‘results management’ is not a Defined Term). ‘Results management’ can encompass an ADO, for example, reviewing the results of analysis, considering a Presumptive AAF and deciding that no case needs to be brought forward. It can also encompass an ADO taking one of the decisions referred to as appealable decisions in Article 13.2. There are a number of behaviours that fall outside the expression ‘refuses to conduct results management’. It might therefore be made rather clearer as to what ‘refusing to conduct results management’ means. For example, it is not the same as ‘conducting results management in a debateable manner’.

b)The term ‘attorney’ is imprecise. The term ‘attorney’ means different things in different jurisdictions. The reference could work just as well be referring to the reimbursement of ‘all reasonably incurred and proportionate costs’.

c)The failure to reimburse should not be expressed to be an act of non-compliance. The Independent CRC decides what is, and what is not, non-compliance. An unreasonable or unjustified failure to reimburse costs might constitute non-compliance, depending on the CRC’s independent analysis. The word ‘shall’ should be replaced by ‘may’.

d)One of the most common reasons for an ADO adopting a limited approach to results management is likely to be that it lacks sufficient resources. Non-public authority ADOs have finite resources, whereas many public authority ADOs have access to resources that dwarf those of private ADOs. If an ADO has \$x in its bank account, and results management in a particular case will cost \$x+y, there is an obvious and unavoidable problem. Calling the ADO non-complaint and forcing it to pay a sum that may ultimately exceed \$x+y will not result in \$x+y appearing in the ADO’s bank account, but rather limit the ability of the ADO to carry out any meaningful anti-doping work. Making beggars of ADOs and calling them out as non-compliant because they cannot afford to do everything the Code requires will achieve little.

## Article 7.4 (7)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC welcomes WADA’s proposal to permit labs to report a sample as an atypical finding not just for results involving endogenous substances, but also for other substances that may require investigations and assist with potential meat contamination cases.

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby agree with this proposal in reference to Articles 2.1.4 and 7.4. Interest will be in the proposed list of substances and WADA’s new International Standard for Results Management and Hearings.

### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We agree with the suggested changes made to provisions 2.1.4 and 7.4.

**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Agree with the proposed amendment (as well as the proposed amendment to Article 2.1.4 which is of a similar nature). Australia would be interested in reviewing the proposed Technical Document when available.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Atypical findings / example: clenbuterol (Art. 2.14, 7.4)**

Fair and legally acceptable methods of analysis - Due to the steadily increasing measurement accuracy and detection capabilities by the WADA accredited laboratories, the "standard of discharge" for athletes must also be increased.

**CITA**

SUBMITTED

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

Expansion of Laboratory Reports for Atypical Findings Beyond Endogenous Substances – (Articles 2.1.4 and 7.4)

CITA welcomes the approach to harmonize the treatment of contaminated Products and Food Contamination. In this regard it should clearly be stated that the burden of proof should be met by the Athlete in these categories:

- Proof of source
- Proof of lack of intent
- No Fault or negligence

No Fault or negligence should be left as a general principle because of the many different types of cases that could arise it is exceptionally difficult to codify such a broad term. This general principle of No Fault or negligence should be explained through CAS jurisprudence and existing rulings in the matter.

**International Paralympic Committee**

SUBMITTED

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

Regarding ATFs- If an athlete has not been contacted as a part of an investigation and the ATF does not result in an AAF, it should not be required to notify the athlete (such as for an LH finding).

**Article 8.1 (16)****International Cricket Council**

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The ICC supports the need to expand and clarify the 'impartial hearing panel' in the new International Standard for Results Management and Hearing.

**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support more rigorous standards for Fair Hearings and await the draft of new International Standard for Results Management and Hearings

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**ARTICLE 8: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISIONS****Article 8.1 Fair Hearings**

Please confer our comments to “GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY”. For the sake of good order, it is repeated below:

***“The complexity of the Code requires further emphasis on the protection of legal rights***

*The Code and the Standards are increasingly becoming more extended and complex with detailed wording. The complexity itself requires further emphasis on the legal rights of persons being accused of an ADRV. This may be mitigated by WADA implementing more detailed requirements on the hearing process and other means to guarantee due process. We believe this would safeguard and further strengthen the efforts of protecting fair play and clean sport. Considering this, we are pleased that a new International Standard for Results Management and Hearings (ISRMA) is being developed and will be circulated for stakeholder consultation during both the third phase of the Code review and the second phase of the Standard review.”*

We commend WADA for establishing ISRMA. This is line with the concerns and suggestions presented in our last submission, and we hope WADA will consider our proposals for inclusion in the new standard. Please confer below where our last submission is repeated.

Regarding the proposed amendment to Article 8 in the WADC 2021 version 1.0, we find it unclear if WADA intends to propose independent hearing panels and public hearings as requirements in the new standard. Either WADA should limit the Article to a simple reference to ISRMA (alternative 1), or all the requirements found in the ECHR Article 6 must follow from Article 8 (alternative 2); As Article 8 is the fundamental guarantee for ensuring fair hearings, the reference should include all the guarantees enshrined in ECHR Article 6. The hearings must be public and the hearing panel must be independent.

Alternative 1:

“Fair Hearings

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide a hearing in compliance with the *WADA International Standard for Results Management and Hearings*.”

Alternative 2:

“Fair Hearings

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide, at a minimum, a fair and public hearing within a reasonable time by an independent and impartial hearing panel in compliance with the *WADA International Standard for Results Management and Hearings*. A timely reasoned decision specifically including an explanation of the reason(s) for any period of *Ineligibility* shall be *Publicly Disclosed* as provided in Article 14.3. “

For the sake of good order, please find in the following our last submission on this subject:

### ***“Requirements of the hearing bodies***

*The Code and the Standards are increasingly becoming extended and complex with detailed wording. The complexity itself requires further emphasis on the protection of the legal rights of persons being accused of an ADRV. Hence, these persons’ fundamental right to legal protection and due process must be further strengthened. Legal protection is secured through several means and methods such as ensuring transparent processes, independence and competent hearing bodies.*

*According to Article 8, “each anti-doping organization with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair and impartial hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of Ineligibility shall be Publicly disclosed as provided in Article 14.3.”*

*Firstly, we recommend that the Code uses the accurate phrasing found in the ECHR Article 6.1., cf. “fair and public hearing within a reasonable time by an independent and impartial tribunal.” We strongly believe that public hearings secure transparency which is crucial to provide legitimacy to the judicial procedures. Hence, we suggest that hearings should be public unless there are exceptional circumstances that justify a non-public hearing, and that this is introduced as an added requirement. Article 14.3.3 must in this case be amended accordingly. Furthermore, we suggest that the Code should require that dissents are publicly disclosed.*

*Secondly, the mechanism of the disciplinary process is left largely to the ADOs under the Code, provided that these minimum procedural safeguards are met. We urge WADA to strengthen these safeguards by implementing more specified requirements. In the following we will present additional examples of safeguards that are currently enshrined in our Statutes, and we ask WADA to consider implementing similar requirements in the Code:*

- Every case shall be decided as quickly as possible. The hearing body shall ensure that the case is not unduly delayed and may set deadlines, exclude evidence and carry out other preparatory proceedings. Every case shall be thoroughly considered before a decision is made.*
- If oral statements are taken from parties or witnesses, the parties shall be notified and be entitled to be present with an advisor if necessary.*
- The decision shall be based exclusively on the evidence submitted in the case and of which both parties have been informed.*
- If the athlete or person charged needs an interpreter, this shall be provided by the hearing body.*
- If the hearing body has decided on a provisional suspension, the hearing body shall, for the further handling of the case, if possible be set with other members than the ones who decided the provisional suspension.*
- No person in the hearing body may participate in the preparation of, or deciding the case if he or she is an interested party, has submitted a complaint or participated in the proceedings at a lower level, previously has publicly made known his or her opinion on the case, or if there are other reasons likely to undermine confidence in his or her impartiality.*
- In addition, according to our Statutes, judicial competence for members of the hearing bodies is required, the hearing bodies may appoint expert witnesses, and the reasoned decision is public unless the hearing body decides otherwise due to special circumstances.”*

### **CAS’ procedural rules**

In our last submission, we pointed out that since CAS is the final hearing body and it is of utmost importance for the athletes how these proceedings are managed, the Code should contain rules for the proceedings before CAS. CAS has its own procedural rules. We emphasized the importance for the athletes that also the procedural rules are found in the Code, and advised WADA to ensure that the procedural rules of appeals to CAS in accordance with the Code, was integrated into the Code. With the new ISRMA, we repeat our suggestion to WADA, that the procedural rules in the hearings before CAS are integrated into the new standard.

### First instance hearing bodies

Although the Code explicitly states that it has been drafted giving consideration to the principles of proportionality and human rights, it makes use of non-flexible regulations and allows only some mitigation of sanctions based on the degree of fault. The use of non-flexible regulations may be based on a general concern and caution regarding the quality of the first instance hearing bodies. We fully understand and support the need for harmonization of the rules and the jurisprudence, however the absence of discretionary assessment is likely to contravene basic legal principles such as equal treatment and proportionality. Hence, in our last submission we suggested that WADA would consider establishing a similar arrangement in all doping cases as was done during the PyeongChang 2018 Olympic Winter Games, with CAS acting as a first-instance hearing body and as an appeal body. In our readthrough of the submissions from the stakeholders we find a number of stakeholders addressing the same issue and the need for more flexibility, hence we allow ourselves to suggest once again to establish a two-instance body within the CAS, as we trust that once established the Code can be amended providing more room for discretionary assessment for the athletes' subject to the Code, i.e. International Level Athletes and National Level Athletes.

#### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

There is an interest in increasing the quality of 1st level hearing globally. Currently, there are concerns vis-a-vis 1st level hearing processes and standards as those need to be most robust and consistent internationally. The system is premised on 1st level tribunal making decisions that often lack proper standards for a fair hearing.

In relation thereto, one minimum requirement would be for a mandatory process for declaration of conflicts of interest to be incorporated into the Code, or at the very least in the WADA International Standard for Results Management and Hearings.

#### United States Olympic Committee

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

The USOC is supportive of expanding the fair hearing requirement, now set forth in Article 8 and placing those provisions in a new International Standard for Results Management and Hearings. All Signatories must provide a fair hearing conducted by an impartial hearing panel, otherwise the process and those involved will lose faith in the anti-doping system. There must also be consistency in the hearing processes employed, while taking into account the laws and practices of various countries. The USOC looks forward to providing comments on new hearing requirements when those are available for comment.

#### Norwegian Ministry of Culture

Eva Cathinka Bruusgaard, Senior adviser (Norway)  
Public Authorities - Government

SUBMITTED

### Art. 8 - Right to a fair hearing and notice of hearing decision

The Norwegian Ministry of Culture is supportive of the introduction of Results Management and Hearings in a new International Standard.

We strongly encourage the drafting team to include the principles in the recommendations from the CoE Monitoring Group "Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases" (T-DO/Rec (2017) 01) in this new standard.

### FAIR TRIALS

With reference to our previous, phase one, submission regarding Article 8.1 we reiterate and urge the drafting code to set down the principle of fair and independent hearing panels in the World Anti-Doping Code article 8.1 itself, with further explanations and details in the new standard for Results Management and Hearings. The principles of fair and independent hearing panels and their importance in relation to Article 6 of the European Convention on Human Rights, justifies them to be included and codified in the Code itself.

Thus we reiterate our proposal and contribution for WADC art 8.1 as follows:

"For any Person who is asserted to have committed an anti-doping rule violation, each Anti-Doping Organization with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by an **independent** and impartial hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of ineligibility shall be Publicly Disclosed as provided in Article 14.3.45

In relation to Fair Hearings, we again propose the following to be added:

**All hearings to be open and public.**

### Secretaria de Estado da Juventude e Desporto

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

The definition of impartial hearing should be included in the code and not on the Standard.

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Art. 8 Fair Hearing - The Council of Europe proposes to rename and redraft this Article. Below is a concrete drafting proposal:**

#### ARTICLE 8 RIGHT TO A FAIR TRIAL

##### 8.1 Fair Hearing

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair, impartial and independent (in accordance with Art. 6 ECHR (1) hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of *Ineligibility* shall be *Publicly Disclosed* as provided in Article 14.3.

##### 8.2 Event Hearings

Hearings held in connection with *Events* may be conducted by an expedited process as permitted by the rules of the relevant *Anti-Doping Organization* and the hearing panel. Any person who is asserted to have committed an anti-doping rule violation should have the following minimum rights (2):

- a) Composition of the hearing panel (body) and impartiality of its members (3)
- b) Right of access to a hearing (4)
- c) Right to effective defence and equality of arms (5)

##### 8.3 Waiver of Hearing

The right to a hearing may be waived either expressly or by the *Athlete's* or other *Person's* failure to challenge an *Anti-Doping Organization's* assertion that an anti-doping rule violation has occurred within the specific time period provided in the *Anti-Doping Organization's* rules.



#### 8.4 Notice of Decisions

The reasoned hearing decision, or in cases where the hearing has been waived, a reasoned decision explaining the action taken, shall be provided by the *Anti-Doping Organization* with results management responsibility to the *Athlete* and to other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 as provided in Article 14.2.1.

#### 8.5 Right to appeal - Single Hearing Before CAS

Anti-doping rule violations asserted against *International-Level Athletes* or *National-Level Athletes* may, with the consent of the *Athlete*, the *Anti-Doping Organization* with results management responsibility, WADA, and any other *Anti-Doping Organization* that would have had a right to appeal a first instance hearing decision to CAS, be heard directly at CAS, with no requirement for a prior hearing.

[(1) COMMENT: Operational independence of the hearing panel (body) – The hearing panel (body) should be operationally independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation. There should be no interference from these actors on decisions made by the hearing panel (body) and on the conduct of the hearing proceedings.”

(2) COMMENT: In accordance with article 6, par.5 of the ECHR and the content of the T-DO/ REC (2017) 01.

(3) COMMENT: Insert as Comment: The hearing panel (body) should be composed of at least a chair and two members. The chair should have a legal background and experience of practising law, but in all cases at least one member of the hearing panel (body) should be a person with a legal background. The other members of the hearing panel should provide a collective expertise in relevant fields, such as science, medicine or sport. [They should be appointed for at least a renewable 4-years terms of office.]

Members of the hearing panel (body) should have no direct or indirect relation, both personally and professionally, with the parties to the proceedings or any organisations of which the parties are members. They also should have no prior involvement in the case.

The athlete or other person who is asserted to have committed an anti-doping rule violation should be authorised to request the replacement of a member of the hearing panel (body) in case of doubts on his/her impartiality.

(4) COMMENT: Each athlete or other person who is asserted to have committed an anti-doping rule violation should have an effective access to a hearing panel (body) to present his/her case, in person or in writing.

Procedural fees should not prevent a person from accessing to the hearing.

When necessary, States Parties should consider establishing a legal aid mechanism in order to ensure this access.

(5) COMMENT: Effective defence and equality of arms

(i) Each athlete or other person who is asserted to have committed an anti-doping rule violation should have a right to defend him/herself and to present his/her arguments. The athlete or other person shall have a right to be represented by a legal advisor and assisted by an interpreter.

(ii) The athlete should have the right to request for witnesses or experts. The hearing panel (body) shall have complete discretion regarding the admissibility and appreciation of the evidence, depending on the circumstances of the case.

(iii) Sanctions should be imposed in a proportionate manner depending on the circumstances of the anti-doping rule violation and in accordance with international anti-doping rules, such as the World Anti-Doping Code.

(iv) All parties to the hearing should have access to the relevant documents and evidences.

**NADA**

Regine Reiser, Result Management (Deutschland)

NADO - NADO

SUBMITTED

## ARTICLE 8 RIGHT TO A FAIR TRIAL

## 8.1 Fair Hearing

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair, impartial and independent (in accordance with Art. 6 ECHR[1]) hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of *Ineligibility* shall be *Publicly Disclosed* as provided in Article 14.3.

## 8.2 Event Hearings

Hearings held in connection with *Events* may be conducted by an expedited process as permitted by the rules of the relevant *Anti-Doping Organization* and the hearing panel. Any person who is asserted to have committed an anti-doping rule violation should have the following minimum rights[2]:

- a) Composition of the hearing panel (body) and impartiality of its members[3]
- b) Right of access to a hearing[4]
- c) Right to effective defence and equality of arms[5]

## 8.3 Waiver of Hearing

The right to a hearing may be waived either expressly or by the *Athlete's* or other *Person's* failure to challenge an *Anti-Doping Organization's* assertion that an anti-doping rule violation has occurred within the specific time period provided in the *Anti-Doping Organization's* rules.

## 8.4 Notice of Decisions

The reasoned hearing decision, or in cases where the hearing has been waived, a reasoned decision explaining the action taken, shall be provided by the *Anti-Doping Organization* with results management responsibility to the *Athlete* and to other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 as provided in Article 14.2.1.

## 8.5 Right to appeal - Single Hearing Before CAS

Anti-doping rule violations asserted against *International-Level Athletes* or *National-Level Athletes* may, with the consent of the *Athlete*, the *Anti-Doping Organization* with results management responsibility, WADA, and any other *Anti-Doping Organization* that would have had a right to appeal a first instance hearing decision to CAS, be heard directly at CAS, with no requirement for a prior hearing.

[1] COMMENT Operational independence of the hearing panel (body) – The hearing panel (body) should be operationally independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation. There should be no interference from these actors on decisions made by the hearing panel (body) and on the conduct of the hearing proceedings.”

[2] COMMENT: In accordance with article 6, par.5 of the ECHR and the content of the T-DO/ REC (2017) 01.

[3] COMMENT: Insert as Comment: The hearing panel (body) should be composed of at least a chair and two members. The chair should have a legal background and experience of practising law, but in all cases at least one member of the hearing panel (body) should be a person with a legal background. The other members of the hearing panel should provide a collective expertise in relevant fields, such as science, medicine or sport. [They should be appointed for at least a renewable 4-years terms of office.]

Members of the hearing panel (body) should have no direct or indirect relation, both personally and professionally, with the parties to the proceedings or any organisations of which the parties are members. They also should have no prior involvement in the case.

The athlete or other person who is asserted to have committed an anti-doping rule violation should be authorised to request the replacement of a member of the hearing panel (body) in case of doubts on his/her impartiality.

[4] COMMENT: Each athlete or other person who is asserted to have committed an anti-doping rule violation should have an effective access to a hearing panel (body) to present his/her case, in person or in writing.

Procedural fees should not prevent a person from accessing to the hearing.

When necessary, States Parties should consider establishing a legal aid mechanism in order to ensure this access.

[5] COMMENT: Effective defence and equality of arms

(i) Each athlete or other person who is asserted to have committed an anti-doping rule violation should have a right to defend him/herself and to present his/her arguments. The athlete or other person shall have a right to be represented by a legal advisor and assisted by an interpreter.

(ii) The athlete should have the right to request for witnesses or experts. The hearing panel (body) shall have complete discretion regarding the admissibility and appreciation of the evidence, depending on the circumstances of the case.

(iii) Sanctions should be imposed in a proportionate manner depending on the circumstances of the anti-doping rule violation and in accordance with international anti-doping rules, such as the World Anti-Doping Code.

(iv) All parties to the hearing should have access to the relevant documents and evidences.

### SA Institute for Drug-Free Sport

khalid galant, CEO (South Africa)  
NADO - NADO

SUBMITTED

Change "fair" to "independent"

8.1 ... a fair hearing within a reasonable time by an independent and impartial hearing panel, ...

8.5 This clause should only apply to international level athletes. It places an unnecessary financial and legal burden on NADOs to prosecute national level athletes/persons at CAS if that level of athlete decides to have a first level hearing at CAS.

### NADA Austria

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

Include the word "Independent" into Article 8.1 so that a hearing body is required to be both independent and impartial.

### Anti-Doping Norway

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

Anti-Doping Norway supports that Results Management and Hearings will be identified in a new International Standard.

We refer to our previous submission and strongly encourage the drafting team to include the principles in the recommendations from the CoE Monitoring Group "Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases" (T-DO/Rec (2017) 01). Such principles should be mandatory for all hearing and appeal panels and should also be included in the Code itself.

The principles in article 6.1 of the Convention for the Protection of the Human Right should also be included in terms of independence.

### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

Since the International Standard is still to be drafted, it is not clear what will be required from the ADO.

### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

Include the word "Independent" into Article 8.1 so that a hearing body is required to be both independent and impartial.

### **Kamber-Consulting**

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

#### **8.1 Fair Hearings**

For any Person who is asserted to have committed an anti-doping rule violation, each Anti-Doping Organization with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair and impartial hearing panel ~~in compliance with the WADA International Standard for Results Management and Hearings.~~ A timely reasoned decision specifically including an explanation of the reason(s) for any period of Ineligibility shall be Publicly Disclosed as provided in Article 14.3.4  
One should not refer to IS that is not yet established

### **GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

A 'fair and impartial hearing' cannot be solely calibrated according to whether there is compliance with the (as yet unpublished) Standard for Results Management and Hearings. In other words, whether a hearing is fair and impartial does not depend on whether that Standard is complied with. In practice, of course, one would expect that the two objectives would complement each other. But the notion of fairness and impartiality are not pegged to the Standard, but the broader jurisprudence of bodies such as the European Court of Human Rights.

As far as the Standard is concerned, WADA will note that the Council of Europe Monitoring Group for the Anti-Doping Convention has approved a Recommendation concerning hearing panels.

## **Article 10.2 (23)**

### **International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The proposed changes to Code Article 10.2.1 in support of minors is supported by the ICC.

**International SAMBO Federation**

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized SportAccord

SUBMITTED

**Article 10.2.1.1** – Is there any clarification of Minor age – it is below 18?

**Article 10.2.1.2.** – Our panel had several discussions related to point if ADO can establish that ADRV was intentional in case of specified substance (again mostly furosemide). The rule is written in the way that if the athlete become silent receives always 2 years of ineligibility. If the athlete tries to explain or clarify the origin of the prohibited substance it easily helps us to establish that ADRV was intentional. Especially in sports like SAMBO with weight categories should be diuretics taken seriously, but unfortunately, we do not have legal background.

**International Triathlon Union**

Leslie Buchanan, Anti-doping Director (Canada)  
Sport - IF – Summer Olympic

SUBMITTED

**Establishing the origin of the AAF and lack of intention at 10.2.1.1**

ITU is pleased that WADA has now rightly clarified that it is possible for an athlete to establish that an ADRV was not intentional even if she or he is unable to determine and establish to the required standard how the substance entered his or her system.

While it is agreed that this could only be possible in very limited circumstances, ITU believes that the use of the wording "*it is unlikely in the extreme*" in the proposed comment to article 10.2.1.1 is a dubious embellishment and exaggerated terminology.

Also, this new Code comment offers little in terms of guidance for Hearing Panels and ADOs as to how to determine if the circumstances of a specific case may be sufficient to be the exception to the rule and that even if an athlete cannot establish how a prohibited substance entered his system, the ADRV could still be unintentional.

## Comments:

- Perhaps we should revise the wording (possibly to something like a simple clarification like article 4.1.b of the ISTUE which now reads "*highly unlikely* to produce any additional enhancement").

- Although we appreciate that WADA is inclined to let case law direct the application of this provision going forward, an additional suggestion is for WADA to provide examples of certain basic benchmarks an athlete would need to have fulfilled prior to the doping control that resulted in the ADRV to show that extensive precautions were taken to avoid the inadvertent use of a prohibited substance. This could be done in the Annexes where we provide scenarios of the application of art 10.

- o Minimal benchmarks could include proof of online searches, proof of manufacturer's certificates, emergency circumstances etc.

- Also in the same Annex, we could provide some examples of credible evidentiary elements that could assist a hearing panel in making the determination as to whether or not the Athlete's ADRV was in fact not intentional "to the Panel's comfortable satisfaction" of the athlete providing sufficient evidentiary elements, in addition to his or her word, that he or she is not in a position to establish the source of the prohibited substance.

- o e.g. proof of other contaminated supplements from the same producer, testing history, ABP history, credibility, etc.

- ITU believes that given the differing ways hearing panels have interpreted and applied the current article 10.2.1.1 (although there now seems to be a consensus at CAS) it might be judicious to offer some clearer guidelines in this regard. This is notably even more important now that we have taken the word "cheater" out of our definition of intentional at article 10.2.3.

**International Shooting Sport Federation**

Doris Fischl, ISSF (Germany)  
Sport - IF – Summer Olympic

SUBMITTED

**Establishing the source of the AAF and lack of intention at 10.2.1.1**

ISSF notes that WADA has confirmed that it is theoretically possible for an athlete to establish that an ADRV was not intentional even if she or he is unable to determine and establish to the required standard how the substance entered his or her system.

While it is agreed that this could only be possible in very limited circumstances, ISSF believes that the use of the wording "*it is unlikely in the extreme*" in the proposed comment to article 10.2.1.1 is oddly embellished.

ISSF suggest revising the wording along the lines of your clarification to article 4.1.b of the ISTUE which as of a few years ago reads ..."*highly unlikely* to produce any additional enhancement".

Also, although we understand that WADA is inclined to let case law direct the application of this provision going forward, to assist those athletes who did not intentionally commit an ADRV but are unable to determine the origin or cause of an AAF, an additional suggestion is for WADA to provide examples of certain basic benchmarks an athlete would need to fulfill, prior to the doping control that resulted in the AAF, to show that extensive precautions were taken to avoid the inadvertent use of a prohibited substance. This could also be provided in your Annexes to Article 10.

Considering the contradictory jurisprudence on the topic to date (until the CAS Villanueva award) it might be judicious to offer some clearer guidelines in this regard. ISSF believes this to be even more important since the word "cheater" was taken out of your definition of "intentional" at article 10.2.3.

**Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

Regarding the Comment to article 10.2.1, this concerns the assessment of the evidence and it is difficult to understand that the regulator gives indications to the hearing body in this respect.

**World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby are happy to see the removal of the word "cheat" in Article 10.2.3 as was suggested in the first round consultation.

**United States Olympic Committee**

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

Although the acknowledgement that an athlete can establish lack of intent without identifying the source of a Prohibited Substance is a positive development, the additional commentary that it is "unlikely in the extreme" an athlete can establish lack of intent without identifying the source of a Prohibited Substance could be moderated by providing examples of some factors that ADOs and Hearing Bodies should take into consideration when faced with that situation; e.g., the Athlete's complete testing history, the concentration level of the Prohibited Substance detected in the Sample, the likelihood that the Prohibited Substance would be used by an Athlete to gain an unfair advantage over his/her competitors, etc.

**IFIA**

Viktor Dok, CEO (UK)  
Sport - Other

SUBMITTED

1) in the part 10.2.1.1. of the Article 10.2.1. after the words "Special Substance" add the words "or Para athlete with special disability ";

2) in the part 10.2.1.2. of the Article 10.2.1. after the words "Special Substance" add the words "or Para athlete with special disability ";

This is especially actual for Para athletes with extremely severe Physical impairments, with Intellectual Impairments and totally blind athletes whose legal capacity is limited by the severity of their impairments.

In addition, Para athletes with severe impairments often are not independent in the choice of their personnel (accompanying personnel, parents, doctor, and others) and can not have a significant impact on the process of timely authorization for TUE.

The presence of objective and significant differences and features of Paralympic sports from the sport of able-bodied athletes in the possibility of obtaining benefits for athletes from the use of Prohibited Substances. For example, comparison the specificity of the Paralympic sport - Boccia and Olympic sports - Weightlifting and Athletics

Peculiarities of life of Para athletes with severe impairments, and often the lack of the possibility for Para athlete of choosing a trainer, a doctor, an accompanying personnel, the impossibility of independent control over food, drink, prescription and medications use

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**Article 10.2.1:** The definition of minors is newly added, but it is in conflict with national laws on the age of minors and may cause unnecessary trouble for doping control. For example, for a 17-year-old natural person, the testing agency only knows his/her age, but may not know whether he/she meets the definition of a minor, and whether the testing should be carried out in accordance with the standards for minors? It is recommended to be revised as: a natural person who has not reached the age of sixteen years; a natural person who has not reached the age of eighteen years at the time of the ADRV and is not included in any Registered Testing Pool and had never competed in any international Event in the open category, shall be subject to the anti-doping rule violation proceeding by applying the same standard as that for minors.

**Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

**Note Comments on Article 10.5.1.3**

It appears the Drafting Team's amendment to include minors in Article 10.2.1.2 exposes the minor to the

possibility of a four year sanction if a violation was intentional. Seems to contradict the other amendments

### Gouvernement du Canada

SUBMITTED

Francois Allaire, Agent Principal de Programme (Canada)  
Public Authorities - Government

The Government of Canada supports the CCES' suggestion that under **Article 10 – Contaminated Products**, whenever an athlete has the onus to prove how a substance entered his or her body, that only a single route of ingestion and the associated circumstances in which the inadvertent administration occurred must be conclusively and persuasively established. Under the current 2015 Code, athletes may provide multiple routes of ingestion to explain the presence of a prohibited substance, which tends toward a lengthier and onerous doping appeal process.

The Government of Canada supports the added flexibility for minors and the proposed modifications under the first draft of the 2021 Code. In the vast majority of legislation in the world, minors are not subject to the same responsibilities and consequences as adults and legal systems consider them to not yet have the capacity to act freely and according to their own will. The Code needs to reflect this principle, which is also addressed under the United Nations' Declaration of Children's Rights.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Article 10 Sanctions on Individuals

*It is proposed to add a subsection:*

#### **Revision of the decision on newly discovered/new circumstances**

*The anti-doping organization should have the authority to begin the review of the case on newly discovered/new circumstances, if it recognizes that they are of significant importance for a particular doping case.*

It is proposed to insert into WADA Code Article 10 the following changes:

Add the following amendments in the Article 10 of the WADA Code:

1) in part 10.2.1.1. of the Article 10.2.1. after the words "involve a Specified Substance" add the words "or Para athlete";

2) in part 10.2.1.2. of the Article 10.2.1. after the words "involve a Specified Substance" add the words "or Para athlete";

3) in Article 10.3.1. after the words "the anti-doping rule violation was not intentional (as defined in article 10.2.3)" add the words "or the violation is committed by a Para athlete,";

4) in Article 10.3.3. after the words "violation involving a Minor" add the words "or in relation to a Para athlete,";

5) in the Comment to Article 10.4. after the words "he or she was sabotaged by a competitor" add words "or the Para athlete, was able to prove that he had no real opportunity to independently control the intake of drugs, food, beverages, and other ways of penetrating forbidden substances into their bodies"

6) in the title of Article 10.5.1. After the words "Reduction of Sanctions for Specified Substances or Contaminated Products", add the words "or Para athletes"

7) Article 10.5.1 shall be supplemented with a new part 10.5.1.3 as follows:

"10.5.1.3. Violation of anti-doping rules by Para athletes.



In cases where the violation of anti-doping rules by Para athletes is due to a violation of articles 2.1, 2.2, 2.3, 2.4, 2.6 of the WADA Code, and a Para athlete or other Person will be able to prove Minor fault or negligence, the period of Disqualification should constitute, at a minimum, warning without the actual disqualification, and, as a maximum, two years of Disqualification, depending on the degree of Guilt of the Para athlete or other Person. "

For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system. As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

### **Art 10.1 and Art. 9 Disqualification of results**

It would be helpful to clarify who it is that makes the determination of whether and which results are to be disqualified following an ADRV, pursuant to Articles 9 and 10 e.g. the ADO with results management, or the relevant tournament organiser(s).

### **Art. 10.2.2.**

For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system.

As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

We propose to include the text of Comment 51 directly in Art. 10.2.1.1. WDC

### **Anti-Doping Norway**

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

Art. 10.2.1 Anti-Doping Norway supports that "Minors" are clearly expressed in the Article itself.

### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### **Art.10.2**

For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system.

As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the

prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

**NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

## Comment 49:

There is a need for more information to be provided to ADOs from WADA to give effect to the proposed comment/definition (e.g. guidelines for disciplinary panels and presentation of case law) to enable panels to make harmonised decisions

## Lack of intent: Art. 10.2.3

Is proof of source required in every case to enable an accurate evaluation of the athlete's mental state? It should be expressly stated in Article 10.2.3 that in a Presence ADRV it should be required when evaluating intent for an Athlete to prove how the substance entered their body. Without knowing what has happened and how the substance entered the body it is effectively impossible to evaluate the Athlete's intention (or the Athlete's fault)

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 10.2.1.** While Sport Ireland welcomes the additional flexibility as regards the sanctioning of Minors, we believe that the burden of establishing that a violation in relation to the presence, use, or possession of a non-specified substance was not intentional, should remain on a Minor.

**RUSADA**

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

SUBMITTED

For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system. As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

**Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

EADA supports the wording proposed in the Second Code Draft Article 10.2.1

**Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

## 10.2.1.1 &amp; Article 10.2.3: Intent

[On behalf of Anti-Doping Authority the Netherlands]

The proposed change to Article 10.2.3 is a (significant) improvement over the current Code.

However, the proposed comment to Article 10.2.1.1 (comment no. 51) does not sufficiently address the issue of whether an Athlete may establish the lack or absence of intent without proving how the prohibited substance entered his body. As a result varying (and possibly conflicting) CAS case law on this subject may continue to exist.

A possible way to improve this aspect (or at least to provide more guidance) without making the application of this Article 10.2 either too broad, too narrow or too complicated is to specifically state (i.e. not in a comment) that 'only in cases that are truly exceptional an Athlete may establish that the anti-doping rule violation was not intentional without establishing how the prohibited substance entered his body' (or similar wording). This reference to (truly) exceptional cases has been used in previous versions of the Code (vis-à-vis Fault/No Significant Fault).

In addition to such a provision (or similar wording) it is recommended that Article 10.2.3 specifies that unless such truly circumstances exist, an Athlete shall (always) be required to establish how the prohibited substances entered his/her body in order to establish the absence of intent (for non-specified substances/Article 10.2.1.1).

**UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**10.2.1** - Reversal of burden of proof for minors on the issue of intention. In our view this does not meet the issue of the effect of the current sanctioning regime on minors. If a minor has purposefully committed an ADRV then the burden of proof should not be applied in a way that gives them the best chance of avoiding such a finding being made. Minors should be subject to the same rules on the burden of proof, but different rules on sanction so that there is an emphasis on rehabilitation, as there is in criminal law. For example, suspensions could be a standard one year or a maximum of two years, with completion of a mandatory education module before a return to competition. This education module could be undertaken on-line, with content to be approved by WADA.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

The proposed amendment under 10.2.1. suggests a minor is always considered to act without intent. Even merely reversing the burden of proof in cases concerning of ADRV by minors with non specified substances, could in fact make it virtually impossible to sanction a minor for an intentional violation. This could be more effectively addressed in lowering the standard of proof for minors (already minors do not have to prove how the substance entered their system), by taking into account the specific situation of the minor. He could be socially, legally or morally incapable of making an informed decision on taking the specified substance. But this should remain a factual discussion where the minor or his legal representative should have at minimum the obligation to present at least some elements that prove he acted without intent. If lower sanctions for minors or alternative sanctions should be considered, this should be done in a different way.

In addition, on the other end of the sanctioning scheme, it could be considered to have the possibility of a no fault finding where the minor is legally, mentally or socially incapable of refusing the administration of the prohibited substance. If a minor is receiving treatment by his own doctor, national legislation (patient law) can make it impossible for a minor to make decisions on the treatment he or she receives. Parental consent is in those cases necessary. Without the legal capacity to decide on a medical treatment, how can a minor bear any fault? At least in those cases, if it has been established by a balance of probability that the minor was incapable of refusing treatment, a no fault finding should be possible even when the prohibited substance was administered by his own doctor in the course of a regular medical treatment. A no fault finding only eliminates the period of ineligibility but has no effect on the finding of an ADRV, except that under the multiple violations rule, the ADRV for which a no fault finding is established, is not considered a prior violation.

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

In Article 10.2.3, with respect to how to prove a lack of intent, the issue, of course, is whether proof of source is required in every case to enable an accurate evaluation of the athlete's mental state. We believe it should be made express in 10.2.3 that in a Presence violation it should be required when evaluating intent for an Athlete to prove how the substance entered his/her body. Without an accurate understanding of what has occurred it is most difficult (if not impossible) to evaluate the Athlete's subjective knowledge regarding the athlete's intent. This assessment of the Athlete's subjective knowledge is needed to evaluate intent – just as it is absolutely needed to evaluate an Athlete's fault. Without knowing what has happened and how the substance entered the body it is effectively impossible to accurately evaluate the Athlete's intention (or the athlete's fault).

CCES is mindful of the CAS jurisprudence whereby a "theoretical possibility exists" that an athlete can prove a lack of intent while not proving the source of the substance. The Comment in the first draft seems to address this scenario as being "unlikely in the extreme". CCES prefers to make proof of source a clear requirement – applicable to all.

**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

## 10.2.1

Leaving aside the questionable notion that a Minor cannot commit an intentional anti-doping rule violation (the fact that an Athlete is a Minor is a matter that most obviously relates to Fault, not intention: a 17 year old Athlete is perfectly capable of understanding that using steroids is a doping offence, but can be at reduced Fault in that they lack the maturity and judgment to make a fully informed decision), the drafting is hard to follow.

An alternative wording would be (deleting the references to Minors in 10.2.1.1. and 10.2.1.2) –

## 10.2.1.3

With regards to both Article 10.2.1.1 and 10.2.1.2, if the Athlete is a Minor the Anti-Doping Organisation bears the burden of proof in establishing that the anti-doping rule violation was intentional.

## 10.2.3

There is a grammatical inconsistency to this Article at the start.

The Comment [51] is not really a comment, but a precis of the CAS decisions on this point. The Comment might observe that the key evidential matter is 'the conduct': establishing 'the conduct' is key to establishing the lack or otherwise of intent. CAS has confirmed that if an Athlete cannot establish 'the conduct' in an Article 2.1 case, then only the narrowest of windows exists for the Athlete to establish that the conduct was not intentional.

The Comment would be more helpful if it stated that direct, rather than circumstantial, evidence as to how a banned substance came to be in a urine sample will in the vast majority of Article 2.1 cases be required in order to establish a lack of intent.

The deletion of the reference to 'cheating' suggests that a different policy approach is now being taken to the imposition of four-year sanctions. The policy behind the 2015 Code provision was that 'real cheats' should receive more severe sanctions. The drafting solution to this policy aim was, in Article 2.1 cases, to require any Athlete that tested positive for a Non-Specified Substance to establish an absence of intent according to the test set out in Article 10.2.3. This test was not a 'cheating test', and plenty of athletes who are not 'cheats' in the loose sense of the word have received four-year bans (see, for example, CAS 2016/A/4512). 'High fault/high negligence' has replaced 'cheating' as the basis for receiving a four-year ban. Through a corpus of

decisions, CAS has remoulded Article 10.2.3 from a provision that was intended to punish 'Athletes who cheat' to a provision that punishes Athletes for failing to avoid conduct that results in a significant risk of a doping violation.

By way of example, the original policy was intended to ensure that an Athlete who uses a Selective Androgen Receptor Modulator ('SARM') as a doping substitute for steroids will receive a four-year ban, because that Athlete is 'cheating'. An Athlete who claims to use a SARM for therapeutic reasons (without managing the risk of a positive test) will also receive a four-year ban, because using a SARM carries a significant risk of committing a doping violation. But the second Athlete is not cheating. As a matter of policy, as 10.2.3 is now drafted, this does not matter.

The policy communication, information and guidance to Athletes concerning sanctions will need to be very clear in this respect. Athletes and anti-doping stakeholders understood that four-year bans were established to deter and punish cheats. Athletes who are demonstrably not cheats, or whom CAS has not believed were cheats, have still received this severe sanction. In retrospect, the focus on 'cheats' was perhaps unhelpful as 'cheating' is an abstract concept that requires a panel to be satisfied as to the motivation for conduct, rather than the conduct itself. Four-year bans are now to be imposed in cases where an Athlete cannot disprove that the conduct was 'significant plus' in terms of Fault.

## Article 10.3 (15)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The additional sanction of 0-2 year's ineligibility for fraudulent conduct during the results management and hearing process is supported by the ICC.

### Union Cycliste Internationale

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

Article 10.3.6: It is not entirely clear if the "violation" is the ADRV of 2.11 or the ADRV that should have been reported.

### ISU

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

SUBMITTED

## CODE 10.3 Ineligibility for other Anti-Doping Rule Violations

**10.3.4** "For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two years, up to (four years) **lifetime Ineligibility**, depending on the seriousness of the violation."

**10.3.6** "For violations of Article 2.11.1, the period of Ineligibility shall be a minimum of two years, up to lifetime Ineligibility, depending on the seriousness of the violation."

### ISU Proposal:

In both cases, the lifetime penalty might cause issues of proportionality, at least in the view of the European Commission (see Icederby Case), but also in the view of the European Court of Human Rights

**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We agree with such provisions and further emphasize that investigation and “intelligent” detection and deterrence is critical. Stronger measures against those that attempt to weaken or mislead via false information is important.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

**Article 10.3 Ineligibility for Other Anti-Doping Rule Violations****Article 10.3.2.4**

According to this Article, the period of Ineligibility imposed shall be a minimum of two years, up to lifetime ineligibility, depending on the seriousness of the violation, however no guidance is provided on how to apply this Article within this broad span.

**IFIA**

Viktor Dok, CEO (UK)  
Sport - Other

SUBMITTED

in the Article 10.3.1. after the words "the anti-doping rule violation was not intentional (as defined in article 10.2.3)" add the words "or the violation was committed by a Para athlete with special disability "

in the Article 10.3.3. after the words "involving a Minor" add the words "or involving a Para athlete with special disability "

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**Article 10.3.6:** “For violations of Article 2.11.1, the period of Ineligibility shall be a minimum of two years, up to lifetime Ineligibility, depending on the seriousness of the violation.” This Article is only for individuals who violate Article 2.11.1. If the signatory of the Code violates this Article, it should be subject to proper sanction.

**Secretaria de Estado da Juventude e Desporto**

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

Lifetime sentences are not possible under the Portuguese Legal Regime

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 10.3**

Art. 10.3.3 The period of Ineligibility starts at 4 years. This is reasonable if “intent” is required in art. 2.7 and 2.8.

If “negligence” is a pre-requisite, however, it appears to harsh to start the period of ineligibility at 4 years. If someone unintentionally, with some degree of negligence, violated article 2.7 or 2.8, he/she should benefit from a more flexible sanction with the possibility to reduce the period of ineligibility below 4 years.

WADA proposal:

Article 10.3.4: «For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two years, up to four years lifetime Ineligibility, depending on the seriousness of the violation».

At present, the responsibility for this violation is a disqualification for up to 4 years. This item needs the most serious discussion. It seems advisable to at least maintain the current level of responsibility.

WADA proposal:

Article 10.3.6: «For violations of Article 2.11.1, the period of Ineligibility shall be a minimum of two years, up to lifetime Ineligibility, depending on the seriousness of the violation».

This paragraph needs an unconditional exception, as well as paragraph 2.11.

#### **Comment to 10.4**

Cocaine will not benefit from the “cannabinoids exception” re No Significant Fault or Negligence, except in the case of a minor or recreational athlete. This seems arbitrary, as the exception relates to the nature of the drug, not the consumer. More widely the Code would benefit with more clarity on whether this exception is applicable to all social drugs, or any other ones than just cannabis.

#### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

Art. 2.5; 10.3.1.1 and 10.7 NEW

It seems to be legally problematic to create an "additional sanction" for misconduct during the Result Management.

This point should be better taken into account in measuring the degree of fault in the case-by-case szenario.

#### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

The extent of the period of ineligibility for a violation of Art. 2.11.1 is to be welcomed. Nevertheless there should be a clarification at least in the comments which are the decisive circumstances for sanctions between 2 years and a lifelong ban.

#### **Anti-Doping Norway**

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

Art. 10.3.3 The period of Ineligibility starts at 4 years. This is reasonable if “intent” is required in art. 2.7 and 2.8.

If “negligence” is a pre-requisite, however, it appears to harsh to start the period of ineligibility at 4 years. Anti-Doping Norway believe that someone that unintentionally, with some degree of negligence, violated article 2.7 or 2.8 should benefit from a more flexible sanction with the possibility to reduce the period of ineligibility below 4 years.

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 10.3.1.** It is not clear to Sport Ireland why Article 10.3.1.1 is necessary, as it appears to be sufficiently provided for in Article 10.7.2.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

In the definition of aggravating circumstances, tampering during the results management or hearing process is included. In 10.3.1.1, there is only mention of the results management process. Hearing process should be included here. Also, 10.3.1.1. refers to article 2.5, and 2.5 itself refers to tampering. This should be addressed in a more transparent and coherent way. It could be solved by leaving the tampering during the results management process out of the definition of aggravating circumstances, since it is explicitly stated that tampering as described in 2.5 during the process, is in fact considered an aggravating circumstance by referring to 10.7.2.

**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

**10.3.1**

The sanctioning of 2.3 and 2.5 violations is not in every case proportionate.

**Tampering**

There is a spectrum of misbehaviour within the Definition of Tampering. At the extreme end, there is wilful manipulation of a sample to avoid the detection of banned substances. At the other end, there is temporary misconduct by an Athlete who behaves poorly for 45 minutes when notified by a Doping Control Official.

The existence of this spectrum is not an issue in itself: Article 2.1 cases concern substances ranging from the very soft, non-performance relevant recreational substances to powerful steroids, but the sanction is the same whatever the substance. But crucially the sanction can be mitigated in Article 2.1 cases according to Fault. That is not the case with Tampering.

Tampering has an 'all or nothing' sanction. Because it requires intent, if proven it attracts a four-year sanction. Article 10.5.2 is excluded by the Comment to Article 10.5.2. This means that every proven case of Tampering attracts a four-year sanction despite the fact that different cases will involve very different degrees of Fault. That is not fair or proportionate.

**Evasion, Refusal and Failure to Comply**

There is an institutional problem with having three very different violations lumped together. The only common feature is that for each, an ADO has set out to obtain a sample, but has failed to do so.

Evasion is a straightforward violation. An Athlete knows that an ADO wishes to obtain a sample and takes steps to avoid that possibility. It is a serious (although difficult to prove) violation.

Refusal and Failing to Comply are less straightforward in that the violation is simply defined by the outcome, that is, the non-provision of a sample. The factors that determined why the sample was not provided are inadequately provided for as far as sanctioning is concerned. The reference to the sanction for Failing to Comply being two years if the violation was not 'intentional' is counter-intuitive. A Failure to Comply can only arise once an Athlete has been notified, and once that has happened, it is highly unlikely that an Athlete can fail to appreciate that a failure to provide a sample will result in a violation. Even if there was any logic to the measure, why does it not equally apply to a Refusal?



An alternative wording of Article 10.3.1 is set out below, which it is suggested provides a more proportionate sanction –

For violations of Article 2.3 and 2.5, the period of Ineligibility shall be four years, subject to reduction to a minimum of one year, depending on the Athlete's degree of Fault.

[Comment: both Article 2.3 and Article 2.5 violations involve the undermining of the Doping Control process and will ordinarily attract a period of Ineligibility of four years. A reduction of sanction should only be considered by a hearing panel if it is satisfied that the Athlete's Fault warrants such reduction and the Athlete satisfies the hearing panel that there was no attempt to subvert the Doping Control process.]

### 10.3.2

An Athlete is allowed to make changes to whereabouts information, and in effect has a licence to be a nuisance. The term 'last-minute' is colloquial language and should be avoided. The words 'serious suspicion' are otiose – changing whereabouts information to avoid being tested is 'Evasion'. If there is a serious suspicion that an Athlete has been behaving in this way, then the issue should be left to a hearing panel to decide if there has been evasion. What constitutes a 'serious suspicion' is not quantified (or quantifiable) but in any event will be different depending on who is doing the suspecting! It also overlooks the fact that unnecessarily late changes to whereabouts information can in themselves amount to Filing Failures.

An Athlete who does behave in this way is at much greater risk of committing a Whereabouts violation, because at some point the Athlete will slip up. It is bad practice that is actively discouraged by WADA and ADOs. An Athlete is at Fault if they make a lot of late changes and end up missing a test or filing incorrect information as a result.

Wording that reflects the intention of this provision might be –

Any reduction of sanction based on Fault shall take account of the frequency, timing and nature of changes made by the Athlete to whereabouts information.

## Article 10.5.1.3 (20)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The proposed change to Code Articles 10.5.1.3 in support of minors is supported by the ICC. Does the proposed flexibility in the imposition of consequences for 'recreational athletes' relate to all anti-doping rule violations or only those that result from testing? The ICC is very pleased with the proposed approach of raising reporting limits for prohibited substances known as contaminants rather than attempting to modify the rule. This will save a lot of time and money for both the anti-doping organisation and the player. Once again, the ICC strongly supports the proposal to set thresholds for certain substances which are only prohibited in-competition but which, after an out-of-competition ingestion, may appear in trace amounts in in-competition tests e.g. a cocaine AAF based on the biologically inactive metabolite.

### International Shooting Sport Federation

Doris Fischl, ISSF (Germany)  
Sport - IF – Summer Olympic

SUBMITTED

## Contaminated supplements 10.5.2

ISSF agrees with the plethora of comments that were made in the first round of consultations regarding contaminated supplement cases.

Increasing the laboratory's minimum reporting limit for certain substances more prone to contamination cases is an important start.

To assist ADOs and Hearing Panels in the RM and disciplinary process, as well as athletes who may not have the funds to get their supplements analysed, basic evidentiary benchmark minimums could be established by WADA to assist athletes, ADOs and Hearing Panels navigate alleged contamination cases and more specifically determine the athlete's degree of fault.

For example: Has the athlete had A-D education? Were manufacturers certificates obtained? Were online searches conducted? Was the product bought from a reputable vendor? Was the product recommended by a registered nutritionist? Was the product natural? Was the contamination environmental? What are the estimated concentrations? etc.

WADA might consider adding such examples in a comment or in the Annexe to article 10.

### **World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support this introduction - Minors or Recreational Athletes

### **Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

**Minors:** In general, we support greater flexibility for minors. That said, some minors in international sport are not really "minors" (i.e. very unaware/innocent) when it comes to doping and, as is the case in criminal matters (by analogy only), in certain cases it should be possible that minors can be treated as adults when they are asserted to have committed a doping violation. Whoever is bringing the case forward should have some discretion as to how the case should proceed when it involves a minor (with approval from the Doping Tribunal in each case). This way, not every minor will receive the greater flexibility that may not be warranted. Flexibility in this regard is a good idea.

**Recreational Athletes:** While agreeing with the principle, we note a few challenges in interpretation and application for "recreational athletes" that may require to be further considered. For instance, what would happen where an individual (recreational athlete) is sanctioned and makes a national/international team, say 14 months later (shortly after the 1-year ban)? Would NCAA athletes fall into such a category? We believe a determination of an ADRV should follow an athlete if they become a national level athlete within the normal sanction period.

### **Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

## **Article 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

### **Article 10.5.1.3**

Please confer the definition of "Athlete". For the sake of good order, it is repeated below:

*"According to this definition, the Code applies only to international level athletes and national level athletes. ADOs have full discretion to apply the Code to lower level athletes, however, by doing so and these athletes take part in competitions, there is no discretion in terms of the application of consequences, cf. "However, if an Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any Athlete over whom an Anti-Doping Organization has authority who competes below the international or national level, then the Consequences set forth in the Code (except Article 14.3.2) must be applied."*

*The definition of an athlete is a key point in the Code. We find the definition of “athlete” problematic, complicated and the proposed amendment in version 1.0 does not resolve these issues.*

*In Norway, NIF, has chosen to apply anti-doping rules to athletes on all levels under our authority. In our last submission, we called on WADA to amend the definition thus recognizing that anti-doping work is organized differently in each country and provide the necessary flexibility to ADOs that want to apply the Code on lower level athletes that compete under its authority. For this group of athletes, the current use of non-flexible regulations could easily lead to i.a. unproportionate sanctions. Several other stakeholders have submitted similar opinions.*

*ADOs have full discretion to leave the lower level athletes outside the scope of the Code. Any logical consequence would be that ADOs deciding to apply anti-doping rules on this group of athletes, would have full discretion to establish their own anti-doping rules without being forced to apply the consequences set forth in the Code.*

*We commend WADA for addressing the issue of lower level athletes in version 1.0, cf. Article 10.5.1.3, however we do not find the amendment sufficient to solve the problem of non-flexible regulations. The flexibility should apply not only to reduction of sanctions for specified substances/contaminated products for violations of Article 2.1, 2.2 or 2.6. but should be reflected in other part of the Code as well, i.a. violations of other Articles, and appeals to CAS. Instead of assessing, and considering amending, each and one of the Articles in the Code, simply amending the definition of “athlete” will, in our opinion, provide the flexibility asked for by the stakeholders.*

*In addition, we find that a lot of the text in the definition does not serve the purpose of defining “athlete”, and should be deleted.*

*Finally, athletes do not represent a country when participating in an international event, but a NOC/NPC, national sports federation etc.*

*In line with the above, we propose the following definition:*

*“Athlete: Any Person who*

- *competes in sport at the international level as defined by each International Federation (International Level athlete) or the national level as defined by each National Anti-Doping Organization (National Level Athlete),*
- *for the prior five years has competed in sport as an International Level Athlete or a National Level Athlete,*
- *for the prior five years has participated in an International Event either as an individual or team member,*
- *at the time of the anti-doping rule violation*
- *was ranked in the top fifty (50) in the national rankings as an individual or team member in any Competition category, or*
- *was included in any Registered Testing Pool or other whereabouts information pool maintained by an International Federation or National Anti-Doping Organization.”*

**United States Olympic Committee**

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

The USOC is supportive of this new provision pertaining to minor and recreational athletes.

Concerning minor athletes, regardless of the level of their athletic accomplishments, those who compete at an elite level are still reliant, to some extent, on the guidance and supervision of others, and thus potentially susceptible to violations resulting from a trusted advisor's corrupting influences or mere inattention to the rules. While there may be instances in which a 16 or 17-year-old athlete intentionally violated the rules, the USOC cautions against a blanket exclusion of all 16 and 17-year-old elite athletes from the benefits of this provision.

As to recreational athletes, the USOC endorses the flexibility in consequences between those athletes who are elite level athletes with anti-doping education versus those are recreational athletes with limited anti-doping experience. This doesn't mean that ADOs shouldn't pursue as strict actions against those who "cheat," but rather afford some leeway for the inadvertent uses by the recreational athletes.

**IFIA**

SUBMITTED

Viktor Dok, CEO (UK)  
Sport - Other

1) in the Comment to the Article 10.4 after the words "he or she was sabotaged by a competitor" add the words "or a Para athlete with special disability could prove that he had no real opportunity to independently control the use of medicine, food, beverages, and other ways of penetrating Prohibited Substances into their bodies"

2) in the title of the Article 10.5.1. after the words "Reduction of Sanctions for Specified Substances or Contaminated Products" add the words "or Para athletes with special disability "

3) in the Article 10.5.1 add a new part 10.5.1.3 of the following content:

"10.5.1.3. Anti-doping rule violation by Para athlete with special disability.

Where the anti-doping rule violation by Para athlete with special disability is related to the violation of the Articles 2.1, 2.2, 2.3, 2.4, 2.6 of the WADA Code and the Para athlete with special disability or other Person can establish No Significant Fault or Negligence then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Para Athlete's with special disability or other Person's degree of Fault.

**EU and its Member States**

SUBMITTED

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

***Protection of minors***

The EU and its Member States would like to emphasize the objective of the protection of minors to the primary consideration of the best interests of the minor for all actions and decisions concerning minors. In this respect, the EU and its Member States welcome the aim to implement more flexibility in the scale of the sanctions.

The EU and its Member States suggest keeping the definition of minors as all human beings below the age of 18, as defined in the UN Convention on the Rights of the Child. For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### Department of Health - National Integrity of Sport Unit

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

The drafting team may wish to consider whether this article should only apply to violations involving a Prohibited Substance or Method or whether it should apply to all violations. Given this wording, recreational athletes and minors would remain exposed to the full force of the Code sanctioning provisions for violations such as tampering and complicity.

How does Article 10.5.1.3 work in conjunction with Article 10.2.1 - is it intended that where a recreational athlete or minor cannot establish no fault or no significant fault, they may receive a four year sanction?

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

#### Art. 10.5.1.2 and Comment 56 and 57

It is suggested that the example cases regarding possible "contaminated products" are binding and e.g. legally based on current CAS case law.

It is to be feared that the softening of Art. 10.5.1.2 by the commentaries 56 and 57 will lead to an unwanted gateway for unclear legal situations. The fact that it is a "contamination" of supplements and / or food, water, etc. is currently a commonly used (and not proven) claim by the athletes involved.

Article 10 should therefore provide a clear case scenario in which both the disciplinary bodies and the athletes, as well as the competent anti-doping organizations, can clearly differentiate between an attributed fault and a missing responsibility concerning the anti-doping rule violation.

see Art. 10.5.1.2 and comment 56/57

No further comments, unless they are listed and specified in the "General Comments" section to this article

#### Art. 10.5.1.3

Any change to the proposed 10.2.1 would also need to be made here.

#### Article 10.5.1.3: Additional flexibility for sanctioning Minors/Recreational Athletes

How can an athlete who is a Minor/Recreational Athlete who:

- a) tests positive for non-specified substance; and
- b) bears No Significant Fault (as opposed to No Fault at all),

receive only a reprimand and return immediately to competition without this posing a serious threat to protecting a level playing field?

If the Adverse Analytical Finding concerns a steroid, such a Minor/Recreational Athlete could still be benefiting from the performance enhancing substance in his system. Allowing such an athlete (who acted with a certain degree of fault) an immediate return to competition would be detrimental to creating a level

playing field and be manifestly unfair to his clean competitors. This cannot be the objective of the very Code which is designed to protect clean athletes.

Under the current (2015) Code an athlete cannot go below a 1-year period of ineligibility for a non-specified substance unless (i) the contaminated product rule applies, or (ii) the athlete bears No Fault. That is fair and protects clean athletes from competing against athletes who may have performance enhancing substances in their system.

#### **Art. 10.5.2**

Further clarification (in addition to the comment at 10.4) of what will be regarded as No Significant Fault or Negligence would be helpful, as it is difficult to discern consistent principles in the case law.

Also, more specifically re 10.5.2 (Current drafting: Article 10.5.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault) - the Code should expressly clarify the position in relation to Art 2.3, in particular in light of decisions applying 10.5.2 (or 10.4) to Article 2.3 cases. Should Articles 10.4 and 10.5.2 apply to intentional breaches of Article 2.3?

This would help not only to clarify the application of no significant fault or negligence, but also with respect to whether intention (as defined in article 10.2.3) must be proved to establish an ADRV of evasion or refusal contrary to Article 2.3 (see further the comment on this below).

#### **Antidoping Switzerland**

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

ADCH supports this attempt to have reduced sentences for cases involving recreational athletes.

ADCH supports the raise of reporting limits for substances that are known contaminants. In the same way, it is a welcome initiative to consider thresholds for certain substances which are prohibited in-competition only but which may appear in trace amounts in in-competition tests (this should primarily apply to recreational drugs).

#### **Organizacion Nacional Antidopaje de Uruguay**

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

SUBMITTED

The possibility of being able to demonstrate non-negligence in the error must be implicit in totality in charge of the athlete in its totality. He is the one who must prove he has not been wrong. The periods to show this must be to the detriment of the athlete and thus have accelerated in the orders and reports to be presented suspended preventively

#### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

Minor:

The implementation of flexible sanctions for underage athletes into national law is very difficult. The current United Nations Convention on the Child defines the age limit of minors. Any deviation from this definition (reducing the age) would violate the Convention.

**Recreational Athletes:**

The definition of a 'Recreational Athlete' is not clear enough. 'Ranked in the top 50' is not precise enough for many sports. Smaller sports in smaller countries may have less than 50 top level athletes. Further, the definition is aimed at Olympic sports but does not provide a workable definition for many team based sports where there are well in excess of 50 National level athletes.

The definition of Athlete (which now refers to Recreational level athletes) focuses on testing and does not capture lower level athletes that are being detected through Intelligence and Investigations. This should be addressed.

**UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**10.5.1.3** - Drafting point. Any change to the proposed 10.2.1 in respect of minors would also need to be made here.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

**10.5 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence***

AEPSAD considers that antidoping violations consequences in relation to minors and athletes should not be treated in the same way.

Minors, in all legislations of the world, are by definition irresponsible because the legal system considers that they do not yet have the capacity to act freely and voluntarily. They are therefore irresponsible from the sanctioning point of view. It does not therefore seem very consistent with the Declarations of Human Rights or the Declaration of the Rights of the Child, sponsored by the UN, that only the Code foresees a mitigating circumstance in attention to the younger age of those responsible.

Any regulation must take into account a dignified and humane treatment of minors and an attention to the special circumstances that occur in them, when in the vast majority of cases the intake of substances or the use of doping methods are decided and administered by people who are criminally responsible.

In addition, as in the previous case, with an overly rigid approach, we may be also preventing minors from being seen in the practice of sports for the rest of their lives, due to the duration of the sanctions, the social stigma and pressure to which many times they are subject, when they are sanctioned by doping.

We consider that this differential treatment for minors should avoid, as much as possible, the sanctions that involve removing minors from sports, and that instead of that, corrective or educational measures should be established in order to try to recover these children for a clean and healthy sport that allows them to have a full life and helps them to have a proper personal and cognitive development.

So we propose a significative change of article 10.5.1 and a new 10.5.2.

**BUT IN ANY CASE WE WILL PREFER A NEW ARTICLE 11 FOR MINORS.**

**A new article 11 should be included for a specific treatment of minors. An expert group should develop a specific 'Minors antidoping plan'. It should content everything related to the minor's antidoping rule violations such as result management, test planning, consequences, etc.**

If it is not possible to include a new article 11, we propose the following wording:

10.5.1 Reduction of Sanctions for Violations of Article 2.1, 2.2 or 2 by Recreational Athletes. Where the anti-doping rule violation involves a *Prohibited Substance* or *Prohibited Method* and is committed by a *Recreational Athlete*, and if this *Recreational Athlete* can establish *No Significant Fault* or *Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years *Ineligibility*, depending on *Recreational Athlete's* degree of *Fault*.

10.5.1. 2 Reduction of Sanctions for Violations of Article 2.1, 2.2 or 2 by Minors. Where the anti-doping rule violation is committed by a *Minor* no period of *Ineligibility* shall be applied. The consequences can be a minimum of one month and a maximum of one year attending formative and preventive activities, following a program established according with parents or legal representatives of the *Minor* with the competent Antidoping Organization and with the approval of WADA and monitored by the competent Antidoping Organization and with the approval of WADA.

### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

EADA supports the wording proposed in the Second Code Draft.

### **Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

Article 10.5.1.3: Additional flexibility for sanctioning Minors/Recreational Athletes

[On behalf of Anti-Doping Authority the Netherlands]

In general Doping Authority Netherlands supports added flexibility for this group of athletes. However, one particular aspect of the proposed changes is not supported by us.

A Minor/Recreational Athlete who:

- a. tests positive for **non**-specified substance; and
- b. bears No Significant Fault (as opposed to No Fault at all),

should not be able to receive only a reprimand and be allowed to immediately to return to competition, because this would pose a serious threat to protecting a level playing field. Other Minors and Recreational Athletes could be adversely affected by the current proposal yet they are also entitled to compete on a doping free level playing field (per the fundamental rationale in the draft Code).

If the Adverse Analytical Finding concerns a steroid, such a Minor/Recreational Athlete could still be benefiting from the performance enhancing substance in his system. Enjoying the performance-enhancing effects of the anti-doping rule violation is considered an aggravating circumstance in the first draft of the 2021 Code.

Granting a Minor or Recreational Athlete - who has a non-specified substance in his or her system and who acted with a certain degree of fault - an immediate return to competition would be detrimental to creating a level playing field and be manifestly unfair to his clean competitors (regardless of age or level). This cannot be the objective of the very Code which is designed to protect clean athletes.

Under the current (2015) Code an athlete cannot go below a 1-year period of ineligibility for a non-specified substance unless (i) the contaminated product rule applies, or (ii) the athlete bears No Fault. That is fair and protects clean athletes from competing against athletes who may have performance enhancing substances in their system.

The proposed rule in Article 10.5.1.3 should therefore be amended to apply only to specified substances.

### **Institute of National Anti-Doping Organisations**

SUBMITTED



Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

Agree with this drafting.

### GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

#### Article 10.5

The comments made in the new Comment [56] do not address the issues associated with the requirement to establish means of ingestion. The problems with this rigidity will not be fixed by tinkering with thresholds.

Two examples illustrate the issue:

#### Supplements

An Athlete uses a supplement, and when it has all been consumed, disposes of the packaging. The Athlete is unimpressed by the supplement and does not repeat its use. Some weeks later, a Sample is collected that has a trace of a banned substance that the Athlete plausibly attributes to the supplement. However, the supplier of the supplement is no longer in business, or is not in a position to supply the supplement, or the batch that the original supplement formed part of is no longer on the market.

This presents very significant problems. An Athlete is facing a four-year ban if the supplement use cannot be proved. As noted in other comments, the Athlete is not going to be able to avoid a two-year ban, because any reduction below two years is contingent on the Athlete establishing No Significant Fault, which in turn requires the Athlete to prove how the substance was ingested. But in this situation, a four-year ban – despite the conduct being the use of a contaminated product – is likely. How are hearing panels supposed to manage this scenario in a consistent and fair way?

#### Re-testing

Re-testing of Samples is now common, and frequently identifies the presence of banned substances in Samples that were collected some years in the past. Whilst it is (in most cases) reasonable for an Athlete to explain the source of a finding if that finding is made not long after a Sample is collected, it is obviously not reasonable to expect this if a Sample was obtained months or even years prior to the finding being disclosed to the Athlete. It is unrealistic to expect Athletes to keep detailed records of what they eat and what supplements they use for years, especially (as is the case with re-tests) if their Samples have been found to be 'clean' in the interim.

Rather than try and prescribe for each situation, the Code might therefore include a provision (in Article 3) to the effect that any requirement on an Athlete to establish means of ingestion of a banned substance should be subject to the overriding principle of proportionality, and that the requirement may be waived if it is in the interests of justice and fairness to do so: or insert this into the Definition of No Significant Fault. Some guidelines by way of Commentary would provide a useful framework for such a provision, but one guideline might be that the Athlete has to provide a reasoned explanation as to why the Athlete cannot comply with the requirement.

#### 10.5.1.2

Re Comment [57], it is not 'highly significant' that a supplement is declared on a form. The ability to complete a form properly in a stressful, often novel situation is not an indication of Fault. Two Athletes who use the same supplement and test positive for a banned ingredient should not receive different bans because one puts the supplement down on a form and the other forgets to do so.

The Comment would be helpful if it simply stated that Athletes are reminded that it is always in their interests to check and declare the use of all supplements when they are tested.

### UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)  
Other - Other (ex. Media, University, etc.)

**10.5 Addressing the Problem of Common Contaminants in Supplements and Other Products**  
**The Problem of Substances Which are Not Prohibited Out-of-Competition Appearing, in Trace Amounts, in In-Competition Samples**  
This is a difficult area. We agree that it should allow for clean athletes who have inadvertently ingested a contaminated substance to be allowed leeway. Our concerns over setting levels for traces of common, known substances may be open to abuse by those timing their intentional use of these substances in larger amounts at times they feel confident they may not be tested. Are we running the risk of creating more ways for drugs cheats to beat the system?

### Article 10.6.1.1 (14)

#### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC agrees with this proposal of a reduced sanction, in particular for the assistance provided in relation to other types of sport integrity violations.

#### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support the expansion of the types of cooperation which justify a reduced sanction for Substantial Assistance

#### Union Cycliste Internationale

Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

The UCI would recommend lowering the threshold to grant credit for substantial assistance: this would enable ADOs to give incentives when athletes provide tips and substantial information (such as a doping protocol) which do not necessarily lead to an ADRV – all information helps and making the hurdle so high only contributes to the omerta.

Here is the addition we would make to article 10.6.1.3:

10.6.1.3 In the event the assistance provided by the Athlete or other Person is significant but does not meet the above criteria, the Anti-Doping Organization, with the approval of WADA, can suspend up to one quarter of the otherwise applicable period of ineligibility. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport.

#### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

While in agreement with the principle of cooperation, if such a change is made, we need to be sure that the assistance in question is, in fact, “substantial” considering this concerns persons who have already been convicted of an ADRV and who have cheated clean athletes.

#### China Anti-Doping Agency

SUBMITTED

Zhaoqian LUAN, . (China)  
Sport - Other

**Article 10.6.1** states that if an athlete provides substantial assistance after the final appellate decision, a part of the otherwise applicable period of ineligibility may be suspended with the approval of WADA and the applicable International Federation. Article 10.6.2 provides that the athlete may be treated more leniently with the consent of WADA. At present, the number of such cases is increasing, and it is recommended that appropriate provisions and guidelines be made on the procedures to seek the consent of WADA and relevant parties.

### Department of Health - National Integrity of Sport Unit

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia suggests the provision of substantial assistance should only be made available for doping related violations and intelligence. The Code's remit is doping and should not be expanded beyond this to broader integrity issues. We suggest that WADA clarify what it means by 'integrity'.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

#### Art. 10.6.1.1

Drafting point. It seems that point (iv) is already contained within point (ii). Also, it is not clear what effect widening an ADOs powers to suspend any Consequence, and not just the period of ineligibility, is supposed to have, when the Article is read as a whole – it appears to be inconsistent. Similarly, if this change is adopted, Article 13.2 will need to be amended to allow appeals relating to all Consequences, rather than just periods of Ineligibility.

#### Article 10.6.2

An athlete that voluntarily admits to a possible rule violation, irrespective of later proof, should be entitled to a reduction without WADAs consent in an art. 2.1 -case. The principle of a reduction is commonly applied because admittance will reduce the financial complications of a criminal procedure. The length of reduction should depend on at what time the admission was forwarded.

### RUSADA

SUBMITTED

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

Add the following: Person who provided the information could request confidential safety during providing information within the framework of substantial assistance. Preservation of confidentiality of the cooperating Person is coordinated with WADA and documented, as well as determination of the circle of individuals who know the name of the Person.

### UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

**10.6.1.1** - Drafting point. It seems that point (iv) is already contained within point (ii). Also, it appears that there may be references to "period of Ineligibility" that should be broadened to "Consequences", to reflect the fact that ADOs will be permitted to suspend any of the Consequences, not just the period of Ineligibility.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)

NADO - NADO

In relation with the article 10.6 about Elimination, Reduction, or Suspension of Period of *Ineligibility* or other *Consequences* for Reasons other than *Fault*, **AS STATED IN PARAGRAPH 5 OF THE GENERAL COMMENTS OF THE FUNDAMENTAL RATIONALE, THE PRIVATE AND FOREIGN ENTITIES SHOULD NOT HAVE AUTHORITY IN PUBLIC LAW MATTERS.**

10.6.1 *Substantial Assistance* in Discovering or Establishing Anti-Doping Rule Violations.

**THIS UNDERLINED PARAGRAPH SHOULD BE REMOVED FROM THE MANDATORY CONTENT OF THE RULES SINCE WE CAN NOT ADOPT OUR OWN INFRACTIONS AND SANCTIONS IN REGULATIONS AND EVEN LESS THAT IT IS AN AUTHORITY WHICH IS DIFFERENT FROM THE SPANISH COURTS.**

We propose the following wording: 10.6.1.1 An *Anti-Doping Organization* with results management responsibility for an anti-doping rule violation may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the *Consequences* imposed in an individual case where the *Athlete* or other *Person* has provided *Substantial Assistance* to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in: (i) the *Anti-Doping Organization* discovering or bringing forward an anti-doping rule violation by another *Person*,; or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another *Person* and the information provided by the *Person* providing *Substantial Assistance* is made available to the *Anti-Doping Organization* with results management responsibility; or (iii) which results in WADA initiating a proceeding against a *Signatory* or WADA-accredited laboratory for non-compliance with the *Code* or Technical Document; or (iv) that is otherwise proven that the results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of sport integrity violation. After a final appellate decision under Article 13 or the expiration of time to appeal, an *Anti-Doping Organization* may only suspend a part of the otherwise applicable period of *Ineligibility* with the approval of WADA and the applicable International Federation. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of *Ineligibility* may be suspended

**Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)

NADO - NADO

SUBMITTED

10.6.1.1: Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations

[On behalf of Anti-Doping Authority the Netherlands]

1. The drafting could be improved:

[...] *an Anti-Doping Organization, criminal authority or professional disciplinary body which results in: (i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person,; or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Anti-Doping Organization with results management responsibility; or (iii) which results in [...]*

Only the first reference to 'which results in' appears necessary.

2. Regarding the fourth option:

*(iv) with the approval by WADA, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of sport integrity violation.*

It is unclear what is meant by “with the approval by WADA”. Perhaps this is a drafting error and this part of the sentence should be deleted.

### **GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

It appears that sub-paragraph (ii) and (iv) are the same?

### **International Paralympic Committee**

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The importance of whistleblowers should be identified in the Code. Retaliation against or threatening whistleblowers could be an ADRV (for individuals and for organizations). All ADOs must have a whistleblower policy with minimum requirements for the encouragement and protection of whistleblowers. Clear guidance and access to resources is urgently required to assist ADOs to encourage and to protect whistleblowers.

### **UK Anti-Doping**

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Expansion of the Types of Cooperation Which Justify a Reduced Sanction for Substantial Assistance – (Article 10.6.1.1)

New Article Entitled “Prompt Admission of an Anti-Doping Rule Violation After Being Confronted with a Violation and Acceptance of Consequences” – Article 10.6.3

The general consensus from British Canoeing is that people are not comfortable with reduced sanctions for admitting guilt early or assisting in providing evidence. Progress has been made in increasing sanctions to 4 years. We believe most people who commit an anti-doping rule violation are not sorry they cheated, but sorry they got caught. It is understood what the motivation behind it is, but is there evidence to suggest that the information provided significantly reduces further ADRV's from occurring as a result? Two years out of competition for athletes who have taken a prohibited substance is not long enough, in many cases the rest of their career can still be enhanced as a result of the cheating they did. In an athlete's early career, many would take the risk of a two-year ban to get an edge that would be prolonged if they never cheated again. Whilst this may save time and money for anti-doping organisations, it sends the wrong message to drugs cheats.

## **Article 10.6.3 (22)**

### **International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC supports this proposed change.

### **International Triathlon Union**

Leslie Buchanan, Anti-doping Director (Canada)  
Sport - IF – Summer Olympic

SUBMITTED

### Prompt admission

ITU was happy to note that article 10.6.3 was modified to better clarify the actual process that needs to occur before a reduction in sanction can be considered based on prompt and/or timely admission.

However, we believe there is still insufficient clarity with regards to how the eventual consequences will be imposed on the athlete and are agreed to by the IF, the athlete and then WADA.

If WADA disagrees with the consequences that have been proposed by the IF (based on its appreciation of the athlete's fault) and accepted by the athlete (to avoid a hearing and costs etc.) Where do the parties go from there? Does a negotiation arise as to what consequences might be accepted by the athlete and WADA, like a plea bargain? Does the matter de facto have to proceed to hearing because WADA did not accept the agreed to sanction?

Comments:

- The modified provision is a great improvement from what it used to be, but, as it reads, it still does not sufficiently consider how these matters unfold in the practical and administrative reality of results management.

- ITU hopes it will be clarified further.

### International Shooting Sport Federation

SUBMITTED

Doris Fischl, ISSF (Germany)  
Sport - IF – Summer Olympic

ISSF believes attention needs to be given as to how an arbitral panel would get around the initial proposed sanction if the athlete was to invoke the principle of *non-ultra petita* after the ADO and athlete might have agreed on a reduced sanction and WADA does not give its consent.

Arguably if WADA does not consent, and the matter goes to hearing, the ADO will logically no longer seek out a reduced sanction knowing it would likely be subject to a WADA Appeal. Rather, the ADO will likely defer to the Hearing Panel or seek the maximum sanction as a relief since the time and cost of a hearing will not have been avoided.

Again, arguably, an athlete invoking *non-ultra petita* could then prevent the Hearing Panel from issuing a sanction higher than the initial sanction proposed by the ADO should the offer be made part of the case file.

ISSF believes that to counter the principle of *non-ultra petita*, a comment should be added to article 10.6.3 clearly stating that any proposed sanction, if not consented to by all parties as per the requirements of 10.6.3, seeks to be valid for the purposes of the hearing and the possible consequence to be imposed by the Hearing Panel.

Perhaps adding further clarity to the practical process that needs to occur in order for three-way consent to be given to a reduced sanction based on prompt and/or timely admission might be considered.

### World Rugby

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby agree with the rationale and removal of timely admission, however we are still unclear as to when the concept of backdating to the point of sample collection would be acceptable as opposed to the start of a provisional suspension. Our feeling is that a period of time when the athlete was freely competing and counting towards a suspension undermines the integrity and credibility of the sanction and is difficult for stakeholders in anti-doping (e.g. other athletes, teams, fans, media etc) to understand/accept. What may be

beneficial is if WADA could provide examples of when the use of backdating might be applicable or how this would work in practice.

**FIBA (International Basketball Federation)**

SUBMITTED

Natalie St Cyr Clarke, Legal Affairs Manager (Switzerland)  
Sport - IF – Summer Olympic

FIBA submits that prior approval from WADA for a reduction of sanction and/or date of commencement should not be sought. Instead of seeking approval from WADA, a provision to the effect that a sanction should not commence earlier than the date of the player's last official competition would be more proportional, whilst also ensuring the necessary safeguards against improper use.

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

The UCI believes it should be sufficient for an athlete not to challenge the existence of an ADRV to benefit from the reduction of prompt admission for two key reasons: (i) this acts as an incentive not to dispute the sample collection, sample analysis or scientific validity of the test/decision limit/etc (i.e. not just avoid a hearing in general but also avoid the significant costs associated with challenges/departures) and thus to finalize a case in a more efficient way; (ii) often an athlete who does not challenge the ADRV has no idea how the substance entered his or her body but does not dispute that it did, or, the ADO is not willing to agree to a sanction which might be upheld by a Panel but not accepted by WADA. If the sanction proposed by the ADO in those circumstances is not acceptable to the athlete, s/he should have the opportunity to ask a hearing panel to determine an appropriate sanction and should not be penalized for doing so.

In addition, it is precisely a hearing body who should decide the extent of the ultimate sanction/reduction, as it is only after a hearing that the level of fault and seriousness of the violation can be determined.

Also, the UCI believes that WADA should be required to either publish all decisions where prompt admission reductions were applied or at least disclose the specifics to ADOs in order to ensure harmonization of sanctions.

Finally, the UCI believes the athlete should serve at least one-half of the period of ineligibility, going forward from the date the athlete accepted the imposition of a sanction or from the date the athlete was provisionally suspended.

**International Ice Hockey Federation**

SUBMITTED

Adriaan Wijckmans, Junior Legal Counsel (Switzerland)  
Sport - IF – Winter Olympic

Prior to the consultation phases for the 2021 WADC, WADA published the following document: "2021 World Anti-Doping Code Review: Questions to Discuss and Consider" in which the following was stated with respect to the prompt and timely admission: "While there seems to be a consensus that some credit to mitigate a sanction should be considered when the Athlete "admits" a violation, there remains considerable debate over what that admission must include".

Under the new Article 10.6.3, a new regime is established which entails that the athlete has to agree with the consequences in order to benefit from a reduction of the sanction. This new article unfortunately does not

clarify to what the athlete has to admit in order to benefit from a reduction in accordance with Article 10.6.3, and therefore it does not clarify the abovementioned point of discussion.

In addition, Article 10.6.3 states that the athlete can only receive a reduction in the 4-year ban or the start date of the sanction going back to the moment of the sample collection if the athlete and anti-doping organization agree on the applicable consequence and if that agreement is approved by WADA.

The IIFH is however of the opinion that the anti-doping organization should be able to make an independent decision on the reduction or start date of the sanction without WADA's approval. WADA namely in any event reserves the right to exercise their right of appeal. Thus, the anti-doping organization should be allowed make that decision without WADA's involvement, as WADA can then decide to appeal in case it disagrees with the anti-doping organization's decision on the reduction or the start date of the sanction.

Therefore, in this context, the IIFH would like to request the following:

- a) IIFH requests WADA to clarify what such admission must include for an athlete to benefit from Article 10.6.3.
- b) IIFH requests WADA to adjust the wording of Article 10.6.3 so that the initial decision on the reduction or start date of the sanction in accordance with that article can be made by the anti-doping organization independently while WADA reserves the right to exercise their right of appeal.

### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We defer to comments raised by the Canadian Center for Ethics in Sport on this point.

### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**Article 10.6.3** interprets prompt admission as admitting an ADRV "before the Athlete competes again". It is recommended that the following questions be clarified: 1) there is no explanation as to when a prompt admission should be recognized in an ADRV committed by a person other than the athlete. 2) Whether it is recognized as a prompt admission before the athlete competes again, and whether it can be regarded as a prompt admission even if there is a defense before that. 3) It may be unfair for athletes with different time periods for consideration even if they are all going to compete again. 4) Will the request for B Sample analysis not be regarded as prompt admission?

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### Art. 10.6.3

The proposed Article 10.6.3 has clarified some aspects of the prompt admission process. An amendment would be helpful to set out that "promptness" is to be assessed on a case-by-case basis and that, for example, requesting B sample analysis would not exclude the application of this Article.

It does not make sense for an athlete to both ask for analysis of the B-sample and make a prompt admission. Analysis of the B-sample is technically an appeal of the analysis of the A-sample, and an admission is an acceptance of the analysis of the A-sample.

### Art. 10.6.4

It would be helpful for the Code to specify whether, in the case of multiple grounds for reduction under article 10.6.4 athletes can rely on Article 10.6.3 to go below a two-year suspension. Examples (now deleted) at the back of the 2015 Code suggest that they cannot.



**Anti Doping Denmark**

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

## 10.6.3 Prompt Admission:

The proposed amendment of article 10.6.3 about Prompt Admission effectively makes it impossible to use the article if the case is decided by a hearing.

As some ADOs (re. our comments to article 8.3) do not have a system of Waiver of Hearing, the proposed wording precludes such ADOs from using the article even if the particular circumstances of the case should speak for a reduced sentence based on prompt admission and even if the hearing body is acting promptly and cost-effectively so that the hearing will not destroy the point that a prompt admission should save time and money.

A prompt admission may still be saving time and money for an ADO when it comes to the investigation and prosecuting procedures of the ADO, even if the case is decided at a hearing.

An ADO not being able to use the prompt admission clause if the case is decided by a hearing is not fair on neither athletes nor ADOs and the proposed article should be amended to accommodate this.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

## 10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation and Acceptance of Consequences.

Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the *Anti-Doping Organization* and agrees to Consequences acceptable to the *Anti-Doping Organization* at its sole discretion, then: (a) an *Athlete* or other *Person* potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the *Athlete* or other *Person*'s degree of Fault., and (b) with respect to any anti-doping rule violation, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the *Athlete* or other *Person* shall serve at least one-half of the period of Ineligibility going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction.

**In relation with the following paragraph: 'The amount of the reduction to, and the starting date of, the period of *Ineligibility* are to be established by agreement of *WADA* and the *Anti-Doping Organization* and are not a matter for determination by a hearing body'., we consider that this proposal cannot be accepted in Spanish law since it would supposed to exclude the administrative acts of the Spanish administrative and judicial control. (This would exclude the Spanish Sport court decisions). *WADA* cannot intervene in sanctioning procedures.**

**Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Prompt Admission (article 10.6.3)

Where we support this new rule, the downside is that there is a risk that fact finding missions and the pursuit of the truth may be hampered by such prompt admissions. We recommend to stress this pursuit in the text itself or in a comment.

### Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

CCES suspects there will be fewer admissions with this system as an admission will demand both accepting the Anti-Doping Rule Violation and the proposed sanction so there will be no hearing (like a prompt admission in the current Code). CCES prefers the existing method whereby the Anti-Doping Rule Violation can be admitted (but not the sanction) and the hearing is merely to determine a sanction. It makes hearings shorter and cleaner.

### Korea Anti-Doping Agency

Sangmin LEE, Manager of international relations (Republic of Korea)  
NADO - NADO

SUBMITTED

In 2015 Code article 10.11.2 (Code 2021 article 10.6.3), it says that with Timely Admission, the period of ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. However, it doesn't state that if an Athlete participated Events during the "sample collection ~ AAF notification" period and takes Timely Admission right after he got noticed, can NADO count the period of Ineligibility as early as the date of sample collection? It's not clarified that if an Athlete participated Events without knowing that one's going to get AAF, and prohibited substances or methods somehow influenced the Play, other players would not take this as a fair play. Again, this connects to the question that is it appropriate to amend the Commencement of Ineligibility Period to the date of sample collection. Of course we would cooperate with WADA when this sort of situation occurs, but any standard or examples we could refer to would be necessary.

### Turkish Anti Doping Commission

Mehmet YOGURTCUOGLU, Deputy General Coordinator / Legal Advisor (Turkey)  
NADO - NADO

SUBMITTED

The difference between Timely Admission and Prompt Admission should be clarified and to what extent an admission can lead to a reduction should be specified. Since Prompt Admission covers both accepting the ADRV and the sanction by waiving the right to a hearing and also providing full cooperation, the name can be changed to "Absolute Admission" in order to minimize confusions.

### Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 10.6.3.** The amendments and clarifications to this Article are welcome. However, we would suggest that the Article requires further work and should perhaps be separated out into a number of sub-paragraphs.

It is important to encourage Athletes to admit violations where appropriate. This includes Athletes potentially subject to less than a four year ban. Avoiding hearings saves valuable resources for ADOs and a streamlined mechanism should be developed to facilitate this in cases where something less than a four year ban arises.

While it may be that a ban can be backdated in some cases (for what is currently called timely admission), this may offer little incentive to an Athlete in cases where he / she is Provisionally Suspended and the ADO has promptly notified him / her of the violation i.e. the benefit for prompt admission may be limited to a few weeks.

Sport Ireland appreciates there may be a reluctance to reduce the sanction of an Athlete serving 2 years, but perhaps the reductions available for two year bans and under could be limited to, for example, six months.

Sport Ireland would like to see the following issues addressed:

- The Article refers to an Athlete or other Person being 'potentially' subject to a four year sanction. All Athletes are 'potentially' subject to a four year sanction if intent can be established (or presumed as regards non-Specified Substances) and so Sport Ireland would suggest replacing the word 'potentially' with 'otherwise'.

- Prompt admission and/or the backdating of a ban only appear to be available where an Athlete admits before he or she competes again, irrespective of whether he/she has been notified of the violation (as the wording refers to 'in all events'). It may simply be a matter of chance that an Athlete competes again before being notified of an alleged violation and so the wording should specifically refer to competing again after notification of the alleged violation.

- WADA should take the opportunity to clarify the timeline for prompt admission. Is it 10 days, 14 days or longer?

Under the amendments, WADA would have to agree to reductions for what currently constitutes timely admission. Is WADA satisfied it has the capacity to manage the likely volume of these cases without causing delays? Also will a process be published as to how a decision will be made?

### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

NADOF in general agrees that acceptance of consequences is an essential part of prompt admission. However, timely admission did serve a certain purpose. The timely admission, even when consequences were not accepted, did save some time in bringing a case before a hearing panel, since the ADO had some degree of certainty that the analytical result was undisputed and the athlete admitted to the presence of a prohibited substance and in most cases provided with explanation how the substance entered his body. Some credit should still be given for such form of admission, without acceptance of consequences, thus preserving the flexibility in determining the starting point of the sanction.

### **UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**10.6.3** - The proposed Article 10.6.3 has clarified some aspects of the prompt admission process. UKAD is of the view that a comment would be helpful to set out that "promptness" is to be assessed on a case-by-case basis and that, for example, requesting B sample analysis would not exclude the application of this Article.

**10.6.4** - It would be helpful for the Code to specify whether, in the case of multiple grounds for reduction under Article 10.6.4, Athletes can rely on Article 10.6.3 to go below a two-year suspension. Examples (now deleted) at the back of the 2015 Code suggest that they cannot.

### **International Testing Agency**

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

We fully agree with the merits of the provision. However, we believe that WADA should be involved (at maximum) only for the reduction under proposed art. 10.6.3(a) - i.e. as in the current version of the Code. The decision as to the backdating of the start of the sanction (under proposed art. 10.6.3(b)) shall be a prerogative of the concerned ADO. WADA has the right to appeal any decision and hence should be involved to the least possible extent (i.e. only in exceptional cases) in the determination of the applicable sanctions.

Further, from an operational perspective, the amount of requests to be handled (in a swift manner) by the WADA RM team is not to be underestimated.

### Freelance journalist

SUBMITTED

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

It is pertinent to note that a near-repetition of 10.6.3 (prompt admission) through 10.11.2 (timely admission) is being avoided by removing the latter (10.11.2) in the proposed version of the 2021 Code. This 10.11.2 has been used by some authorities to bypass the requirement for seeking WADA's concurrence.

### GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

The changes to this provision have not fixed the problems that undermined the usefulness of what is potentially a very helpful Article.

A minor flaw is the reference to a 'prompt' admission. Why does it need to be 'prompt'? There is obvious value in there being an incentive to admit throughout the proceedings, even if (as in criminal cases, for example) the amount of credit is reduced over time.

A major flaw is that any reduction of sanction is based solely on the seriousness of the violation and Fault. Most of the violations covered by Article 10.6.3 are 'serious' and require an admission of intent. Admitting intent is the same as admitting a level of fault that is higher than 'significant'. There is nowhere to go. For example, in an ABP case where a longitudinal profile forms the basis of a case that an Athlete has doped with an ESA, say the Athlete admits doping with EPO. That is a very serious violation. He is at complete Fault. Article 10.6.3 gives virtually no possibility of a reduction and there is more or less zero incentive to admit. This is despite the fact that ABP cases are difficult and expensive, and there is an economic reason to agree a compromise.

Also – the text it makes it impossible to admit liability but not 'intent'. An Athlete might well admit to a Presence violation but dispute intent. The Athlete and ADO might want to 'settle' on a three-year sanction but cannot do that unless the Athlete admits intent – which for perfectly good reasons the Athlete may not want to do.

A suggested wording is –

Where the *Athlete* (or other *Person*) admits the commission of anti-doping rule violation that is potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 the Athlete may receive a reduction in the period of *Ineligibility* down to a minimum of two years, depending on one or more of the following factors:

- a) The timing of the admission, with a prompt admission receiving the greatest potential credit;
- b) The seriousness of the violation;
- c) The degree of Fault;
- d) Any other circumstances including any savings in resources and costs achieved by the early resolution of the matter.

The amount of the reduction to, and the starting date of, the period of *Ineligibility* is to be established by agreement of WADA and the *Anti-Doping Organization* and are not a matter for determination by a hearing body.

## Article 10.7 (15)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The additional sanction of 0-2 year's ineligibility for fraudulent conduct during the results management and hearing process is supported by the ICC.  
The ICC agrees with the re-introduction of 'aggravating circumstances'

### **World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support the reintroduction of Aggravating Circumstances

### **Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

#### Article 10.7.1:

The UCI believes that the breach of a provisional suspension should only be considered as Aggravating Circumstances where such breach was intentional.

Also, the use of "knowingly" could be relevant for, e.g., avoiding aggravating circumstances for unknowingly breaching a provisional suspension. However, the wording currently only refers to "knowingly commit the anti-doping rule violation" which does not seem to take into account knowingly breaching the provisional suspension. We would therefore propose the following addition at the end of Article 10.7.1:

"did not knowingly commit the anti-doping rule violation or breach of provisional suspension"

### **Canadian Olympic Committee**

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

We agree with such provisions and further emphasize that investigation and "intelligent" detection and deterrence is critical. Stronger measures against those that attempt to weaken or mislead via false information is important.

Also, we agree with the reintroduction of the concept of "Aggravating Circumstances".

### **Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

#### **Article 10.7 Aggravating Circumstances which may Increase the Period of Ineligibility**

We question how WADA can reintroduce aggravating circumstances, but no equivalent mitigating circumstances, as WADA, by introducing aggravating circumstances, is accepting that there are specific circumstances of the case that must influence on the period of ineligibility. For obvious reasons, such circumstances could be either aggravating or mitigating.

### **United States Olympic Committee**

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)

## Sport - National Olympic Committee

When the 2015 Code increased the standard period of ineligibility for intentional violations from 2 to 4 years, it was understood that the change was made, in part, because the aggravated circumstances provision that was included in the 2009 Code was an underutilized tool by ADOs and Hearing Bodies. From the USOC's perspective, the consensus is that a 4-year period of ineligibility is a sufficiently severe penalty for intentional doping violations and an effective deterrent to those athletes who may consider participating in a doping scheme. As such, it is not apparent what the justification is for the reintroduction of an Aggravating Circumstances provision which applies to conduct such as the use or possession of multiple Prohibited Substances, or the use of Prohibited Substances on multiple occasions.

The USOC is sensitive to Stakeholder concerns that the lack of an Aggravated Circumstances provision in the 2015 Code may incentivize athletes to engage in conduct designed to undermine the Results Management process through the introduction of fraudulent documents, testimony or other information; however, those concerns can be addressed in a more targeted manner than what is currently proposed. Accordingly, the USOC is in favor of either (i) the retention of the revised Tampering provisions (2.5 and 10.3.1.1) and complete removal of the proposed Aggravating Circumstances provision (10.7) or (ii) reversion to the 2015 Code version of the Tampering provision and adoption of a curtailed Aggravating Circumstances provision, which is focused solely on fraudulent conduct engaged in or occurring during the Results Management or hearing processes.

**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia agrees with the introduction of aggravated sanction in Article 10.7 (and also new Article 10.3.1.1, and amended Article 2.5).

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Art. 10.7**

WADA is encouraged to provide some typical examples that can be aggravating during the results management or the hearing process, allowing for a collective understanding of this article.

**NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

**Korea Anti-Doping Agency**

SUBMITTED

Sangmin LEE, Manager of international relations (Republic of Korea)  
NADO - NADO

**Irish Sports Council**

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

**Articles 10.7.1 and 10.7.2.** Surely, the length of the additional ban should be based on the seriousness of the Aggravating Circumstance rather than the seriousness of the underlying violation?

The same point also appears to arise in relation to an Athlete establishing that he or she did not knowingly commit the violation.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

**THE AGGRAVATING FACTORS ARE NOT FURTHER SPECIFIED AND THAT IS IN CONTRAVENTION OF THE LEGALITY AND PRIOR DEFINITION PRINCIPLES. IN ADDITION THIS PROVISION IS A PUNITIVE MEASURE AND IT IS NOT AN AGGRAVATING FACTOR.**

**AGGRAVATING FACTORS EXHAUSTIVE LIST SHOULD BE DEVELOPED.**

In relation with the article 10.7.1, **WE CONSIDER THAT THIS ARTICLE DOES NOT REFER TO ANY SPECIFIC AGGRAVATING CIRCUMSTANCE BUT IS A GENERAL RULE TO BE TAKEN INTO ACCOUNT IN THE AGGRAVATING CIRCUMSTANCES.** The text is the following: 10.7.1 If the *Anti-Doping Organization* establishes in an individual case involving an anti-doping rule violation other than violations under Articles 2.7 (*Trafficking or Attempted Trafficking*), 2.8, *Administration or Attempted Administration*) and 2.9 (*Complicity*) that *Circumstances* are present which justify the imposition of a period of *Ineligibility* greater than the standard sanction, then the period of *Ineligibility* otherwise applicable shall be increased by an additional period of *Ineligibility* of up to two (2) years depending on the seriousness of the violation unless the *Athlete* or other *Person* can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation.

In relation with article 10.7.2, **WE CONSIDER THAT THIS PARAGRAPH SHOULD BE DELETED.**

**WE CONSIDER THAT TAMPERING CANNOT BE SIMULTANEOUSLY AN ANTIDOPING RULE VIOLATION (CURRENT ARTICLE 5) AND AN AGGRAVATING FACTOR. WE PROPOSE TO REMOVE IT.**

**CITA**

SUBMITTED

zorán Manojlović, head of anti-doping department of CITA (Croatia)  
NADO - NADO

Clarifications Relating to Sanctions for Violation of a Provisional Suspension

CITA welcomes these clarifications, but questions if the implementation of Aggravating Circumstances Article (Article 10.7) in this matter as this infraction is minor compared to the other infractions where Aggravating Circumstances Article should be applied and in CITA's opinion getting no credit against the ultimate sanction because of the violation of the terms of a provisional suspension along with other consequences is a sanction itself because it in fact prolongs the effect of the sanction handed out.

**NADO Flanders**

SUBMITTED

Jurgen Secembaer, Legal Adviser (België)  
NADO - NADO

Not respecting a mandatory provisional suspension should not only be mentioned in the definition of aggravating circumstances, but should be a part of the Code article.  
It could also be considered to have a the disregard of a voluntary provisional suspension as an aggravating circumstances in cases where the athlete did not retract his previous acceptance of such as suspension. In the least, he should notify the ADO which results management that he will not be living up to his voluntary provisional suspension. Without such a provision, he can just speculate on the discovery of the fact he did not live up to his voluntary acceptance.

**Institute of National Anti-Doping Organisations**

SUBMITTED

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

Agree with wording of 10.7.2 but must also incorporate tampering in relation to breach of terms of ineligibility.

## Article 10.8 (14)

### International Cricket Council

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC supports the proposed improvements to Article 10.8

### Union Cycliste Internationale

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

Article 10.8.4.3: The UCI is surprised to see the concept of culpable intent and considers that the article is quite complex as drafted. The UCI believes it might be better to address this situation in the new article concerning aggravating circumstances.

---

Article 10.8.4.4: it may be better to state that “unless otherwise justified” or something to that effect, as depending on the nature of the second ADRV it may not be appropriate to increase the severity of the sanction by refusing to let it run at the same time. This would at least retain a degree of flexibility

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support the changes to Article 10.8. However, we note a new concept of “culpable intent” in 10.8.4.3. Can this be defined or further explained in the Comments to the Code?

### ISU

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

SUBMITTED

## CODE 10.8 Multiple Violations

**10.8.4.3** “If an Anti-Doping Organization can establish that the additional anti-doping rule violation resulted from a separate (**culpable**) intent from the first violation, the additional anti-doping rule violation may be considered a second violation for purposes of Article 10.8.1. A separate (**culpable**) intent may be established, among other means, by showing a significant passage of time between the violations and/or a clear separation in the types of violations involved. For purposes of this Article, a significant passage of time shall presumptively be established where 12 months or more separates the first violation and the additional violation.”

### ISU Proposal:

Any intent is culpable. It is proposed to delete the word „culpable“.



**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We strongly agree with this change and consider it essential.

**United States Olympic Committee**

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

**Article 10.8.4.3**

The USOC is supportive of changes intended to appropriately hold accountable individuals who have committed multiple violations; however, we believe some consideration should be given to ensuring that this provision is applied in a consistent manner. As such, we would encourage the drafting committee to provide additional guidelines to further delineate between separate violations. Consideration should also be given to whether the application of this provision can be avoided through the prompt disclosure of additional offenses when given notice of a violation, and disqualification of results dating back to earliest violation.

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**Article 10.8.4.3** states if an Anti-Doping Organization can establish that the additional anti-doping rule violation resulted from a separate culpable intent from the first violation and if a significant passage of time, for example, 12 months separates the first violation and the additional violation, then the sanction imposed shall be based on the violation that carries the more severe sanction. What is the definition of "culpable intent" here? Shouldn't the athlete be dealt with in accordance with this Article if he/she uses two different prohibited substances on two occasions for the same purpose of enhancing athletic performance? In that case, we do not think this revision is of much practical significance.

**Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

Throughout the history of the Code, the provisions around multiple violations have been among the most complex components of the Code. Unfortunately, the current wording of proposed 10.8 is lengthy and difficult to understand. To provide context, it would be beneficial if this Article could be simplified. The inclusion of clear examples in the revised Appendix B may also be helpful..

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Art. 10.8.4.3 and Art. 10.8.4.4.**

The supplementary regulation makes sense and closes regulatory gaps. However, examples should also be included in the comments or been listed as an Annex to Art. 10.8.4.

**NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

Art. 10.8: Multiple Violations

Adapt sentences for (multi-) violation by teams

Comment: a repeated violation of the prohibition of participation must lead to a team-sanction such as exclusion – even if this means that not more than two athletes violated rules

Example: Does an athlete fall under the scope of Art. 2.10 WADC if he is a member of a team in which another

athlete is convicted of a violation of Art. 2.1 WADC and is e.g. serving a four-year period of ineligibility, but is in the

meantime active as a team manager? What kind of sanction has a team to expect which hires (or continues to

employ) this suspended athlete as a manager, even though the manager/athlete has violated the prohibition of

participation?

Clarification of consequences for team sports?

A transparent regulation for a team which is losing its medals, points and prizes.

Further comment: Furthermore, does an individual participating in a team sport lose its status as e.g. world champion including his name be cleared from any participating lists.

### UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

**10.8.4.4** - Drafting point. Mistaken use of term “Anti-Doping Rule Organisation” instead of “Anti-Doping Organisation”.

### Irish Sports Council

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

**Article 10.8.4.3.** The period of 12 months appears much too long. 6 months or perhaps even 3 months would appear sufficient in Sport Ireland's view.

### Korea Anti-Doping Agency

SUBMITTED

Sangmin LEE, Manager of international relations (Republic of Korea)  
NADO - NADO

For an Athlete or other Person's second anti-doping rule violation, article 10.8 would be applied at the very first and article 10.6 would be followed when necessary. However, article 10.6.3 is for an Athlete or other Person potentially subject to a four-year sanction. How do we apply this article to an Athlete or other Person who are subject to more than a four-year sanction due to one's second ADRV? If yes, how much reduction could be applied?

Code 2015 article 10.8 (Code 2021 article 10.9)

- In the code, there are no certain explanation for the term of "unless fairness requires otherwise." What exactly this term means? We are not sure how would we consider this "fairness" and what factors should be included when we consider "fairness."

- Also, in article 10.1, it says "Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences is upon the decision of the ruling body of the Event." If so, do we not consider ruling body's decision on the case of an article 10.8?

### **GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

#### 10.8.4.3

This appears to have a proportionality issue.

The notion that a second offence carries a larger sanction than a first offence assumes that the Fault of someone who commits a second offence is greater than someone who commits a similar offence for the first time. Someone who breaks the rules again is 'worse' than someone who breaks them once, and so gets a bigger punishment.

This Article removes that distinction. But an Athlete cannot commit a second violation until a first one has been committed.

This provision will deter an Athlete who has been charged with an anti-doping rule violation from 'coming clean'. There is a clear policy advantage in having Athletes admit all previous violations, and the requirement to do so is reflected in the substantial assistance provisions. The policy advantage of 10.8.4.3 is untested and unproven.

## **Article 10.10 (12)**

### **International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

As a team sport the forfeiture of prize money is not as big an issue but is relevant nevertheless at ICC events and at domestic leagues. The ICC welcomes the proposal to allow the sporting body flexibility on the issue of rankings.

### **International SAMBO Federation**

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized SportAccord

SUBMITTED

**Article 10.10.** – Forfeited Prize Money – Would FIAS be in line with WADA Code if the forfeited prize money goes "to FIAS developments funds" instead to the athlete who would have been entitled the forfeited prize money? – according to proposed new version of the article

Any ADRV caused during the competition affect the results, nevertheless, the ranking of the athlete is not changed due to the single-elimination tournament system in SAMBO

### **Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

Amendment proposal:

**10.10 Forfeited Prize Money**

Any organization who has recovered a prize money required to be forfeited as a result of an anti-doping rule violation shall make a reasonable effort to be allocated and distributed this prize money to the Athletes who would have been entitled to the prize money it had the forfeiting Athlete not competed. An International Federation, may provide in its rules whether or not the redistributed prize money shall be considered for purposes of its ranking of Athletes.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 10.10 Forfeited Prize Money**

According to this Article "All prize money required to be forfeited as a result of an anti-doping rule violation shall be (..)", however it is not clear on what basis these prize moneys are required to be forfeited.

**Canadian Olympic Committee**

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

We agree with this principle, which should be a positive obligation on the part of the impacted organization. As such, the wording could be modified as follows: "All prize money required to be forfeited, or insurance proceeds pertaining thereto, received by the organizer as a result of an ADRV shall be reallocated and distributed ..."

**United States Olympic Committee**

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

The USOC is supportive of the change providing that prize money required to be forfeited as a result of an anti-doping rule violation shall be distributed to those athletes who would have been entitled to the prize money had the forfeiting athlete not competed.

**China Anti-Doping Agency**

SUBMITTED

Zhaoqian LUAN, . (China)  
Sport - Other

**Article 10.10** states that all prize money required to be forfeited as a result of an ADRV shall be collected by the anti-doping organization. We don't think this Article is proper. This practice will not only increase the burden on the anti-doping organization, but also make it difficult to operate. Anti-doping organizations have strict legal and policy restrictions on the use and management of funds, and should not be turned into a prize money collection agency. As a fair, impartial and independent agency, the anti-doping organization should focus on education, testing, investigation, results management, administrative operation, legal affairs, which are the core of doping control. The allocation and distribution of prize money should be undertaken by the competition departments or to be specified in the anti-doping rules of each signatory.

**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

**Gouvernement du Canada**

Francois Allaire, Agent Principal de Programme (Canada)  
Public Authorities - Government

SUBMITTED

The Government of Canada fully supports the new provision under the draft 2021 Code under **Article 10.10 - Forfeited Prize Money** regarding the requirement for athletes to forfeit their prize money as a result of an anti-doping rule, and that the amount be distributed amongst the athletes who would have been entitled to the prize money had the sanctioned athlete not competed.

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 10.10**

It is necessary to maintain the extremely important role of CAS in anti-doping activities. Currently, this rule works effectively and does not require revision. In the proposed wording, the provision creates too wide a possibility of discretion, including who will subsequently receive the seized money. This can significantly violate the rights of athletes and undermine equal conditions.

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 10.10.** The summary document states that if prize money is collected by the ADO from the Athlete found to have committed a violation, it must be redistributed. However, the Article does not provide for this and simply says that all prize money required to be forfeited shall be redistributed. It should be explicit that prize money is only required to be redistributed where it has been recouped from the Athlete.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

**WE CONSIDER THAT THIS DISTRIBUTION MAY NOT BE POSSIBLE BECAUSE IS NOT FEASIBLE THAT THE NADOS ESTABLISH AND DEMAND LEGAL OBLIGATIONS TO PRIVATE ORGANIZATIONS THAT ARE NOT LINKED WITH THE NADO'S. IF THIS DISTRIBUTION WERE NOT POSSIBLE, WE PROPOSE THAT THIS ARTICLE SHOULD BE DELETED.**

So the new wording should be: 10.10: All prize money required to be forfeited as a result of an anti-doping rule violation shall be, as a first priority, allocated and distributed to the *Athletes* who would have been entitled to the prize money had the forfeiting *Athlete* not competed. Would this distribution not be possible, a second priority, the prize money shall be allocated to educational and/or preventive activities against doping, focused in young athletes.

**Article 10.12.2.1 (8)****International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC support the clarification regarding sanctions for violating a provisional suspension. One such clarification could be whether or not an athlete can train.

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

The scope of this provision should be clarified. Does it only (as with the amended art 10.13) apply to mandatory provisional suspensions, or also to voluntary provisional suspensions? The UCI believes it should be clarified if an athlete should receive credit for the time he served under a voluntary provisional suspension in case the athlete decided to lift his voluntary provisional suspension before the final adjudication of his case to compete again, taking two examples: (i) good faith – where the athlete requests to lift the provisional suspension because the case is taking too long, or s/he has made progress in preparing her/his defence which renders the provisional suspension nonsensical (e.g. identified the source in circumstances which would likely result in a reduced sanction); (ii) bad faith – where the athlete accepts a voluntary provisional suspension for the off-season or during a part of the season which is not important for her/him and then retracts this in order to compete once the (important part of the) season begins again).

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Art. 10.12.**

It is suggested that the requirements for "delays", which are not caused by the athlete, are defined more precisely and as concrete and concluding as possible.

This rule needs to be applied with caution. It may perhaps be appropriate to stipulate that tribunals need to be satisfied on the balance of probability that delays were not caused by the athlete before it is applied, and should record their reasoning on this point.

No further comments, unless they are listed and specified in the "General Comments" section to this article.

**NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

**Art. 10.12.1.****We propose the following Draft Text**

“...other than education or rehabilitation programs or another defined activity that is agreed by the ADO, the sports federation or equivalent organisation and the athlete.’

***[Comment to Article 10.12.1: Athletes and/or Athlete Support Personnel returning to sport after a period of ineligibility should be made aware of current anti-doping information, such as the Prohibited List and Code changes to prevent the recurrence of an ADRV. This should be the responsibility of the prosecuting organisation unless delegated upon agreement to another ADO.]***

**NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

We propose the following Draft Text:

“...other than education or rehabilitation programs or another defined activity that is agreed by the ADO, the sports federation or equivalent organization and the athlete.”

[Comment to Article 10.12.1: Athletes and/or Athlete Support Personnel returning to sport after a period of ineligibility should be made aware of current anti-doping information, such as the Prohibited List and Code changes to prevent the recurrence of an ADRV. This should be the responsibility of the prosecuting organization unless delegated upon agreement to another ADO.]

### **AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

**WE THINK IT IS NECESSARY TO EXPLAIN THE CONSEQUENCES FOR THE NON SUSPENDED ATHLETES MEMBERS OF THE TEAM IN 10.12.2.4**

**WOULD THEY BE ALLOWED TO PLAY IN A NEW TEAM?**

**WHAT WOULD HAPPEN IN THE CASE OF A NON-ANALITICAL RULE VIOLATION AFFECTING THE TEAM, I.E. POSSESION OF DOPING SUBSTANCES BY THE TEAM? WHAT WOULD HAPPEN IF THE RULE VIOLATION AFFECTS ONLY SOME ATHLETES OF THE TEAM?**

**WHAT WOULD HAPPEN IN THE CASE OF OTHER RELATED ISSUES LIKE RULE VIOLATION AFFECTING CLUBS OR REGIONAL OR NATIONAL ASSOCIATIONS OR FEDERATIONS THAT INCLUDE MANY TEAMS.**

**WHAT WOULD HAPPEN WITH CASES OF DOPING RULE VIOLATIONS IN A SUBSTANTIVE NUMBER OF TEAMS ON THE SAME CLUB, ASSOCIATION OR FEDERATION?**

**SEE ALSO QUESTIONS IN ARTICLE 11.**

**SO NEED TO DEVELOP THESE CONDITIONS**

**10.12. We need to develop a standard that makes clear what happens with the clubs that includes several teams.**

### **Anti Doping Denmark**

SUBMITTED

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

Prohibition against Participation during Ineligibility

COMMENT: “...other than authorized anti-doping education or rehabilitation programs”. There is no definition of the term ‘authorized’ and who determines such authorization?

We suggest changed to:

“...other than education or rehabilitation programs or another defined activity that is agreed by the ADO, the sports federation or equivalent organization and the athlete.”

### **GM Arthur Sports Representation**

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

The removal of the 'timely admission' provision does not appear to be warranted.

Whilst the wording of Article 10.11.2 has been cumbersome for some time, the thrust of the provision, that early admission of a violation can be advantageous to an Athlete, is sound.

A suggested wording would be –

A hearing panel (or the ADO with results management, if there is no hearing), may set the commencement date of a period of Ineligibility at an earlier date if the Athlete or other Person has admitted (which in the case of an Article 2.1 violation, encompasses the waiving of any B Sample analysis) and accepted liability in respect of the relevant violation.

## Article 10.13.1 (11)

### World Rugby

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby agree with the clarifications relating to sanctions for violation of a provisional suspension

### Union Cycliste Internationale

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

It is not clear to the UCI why only mandatory provisional suspensions are referred to in this article – the UCI would assume that this status applies also for athletes under voluntary provisional suspension.

The UCI considers it is essential to clarify the following terms in a comment or in the definitions to give athletes a better understanding of what they are not allowed to do during a period of ineligibility or mandatory provisional suspension:

- “activity”
- “other member organization of a Signatory’s member organization”
- “international or- national-level event organization”.

This is particularly important considering the addition of “not respecting a provisional suspension” to the concept of aggravating circumstances – even more so as the “knowingly” exception does not seem to encompass “unknowingly” breaching a provisional suspension, as it only refers to the ADRV.

### Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

Please confer Other suggestions.

### United States Olympic Committee

SUBMITTED

Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

The Code should clearly articulate the consequences of a Provisional Suspension and what activities Athletes and other Persons who are serving a Provisional Suspension are permitted to take part in during



that time period. Also, the reference to “Mandatory Provisional Suspension” in Article 10.13 gives the impression that mandatory Provisional Suspensions are regarded differently than voluntary Provisional Suspensions. However, no such distinction is made in the Code Definitions. If they are to be treated differently, what is the rationale for doing so?

### **Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### **10.13 Status during Ineligibility or Mandatory Provisional Suspension**

*Currently there is no reference to education during a period of ineligibility which should be addressed.*

#### **10.13.1 Prohibition against Participation during ineligibility**

*Proposed changes:*

“...(other than education or rehabilitation programs or another defined activity that is agreed by the ADO, the sports federation or equivalent organisation and the athlete)....

*[Comment to Article 10.13.1: Athletes and/or Athlete Support Personnel returning to sport after a period of ineligibility should be made aware of current anti-doping information, such as the Prohibited List and Code changes to prevent the recurrence of an ADRV. This should be the responsibility of the prosecuting organisation unless delegated upon agreement to another ADO.]”*

#### **Article 10.13.2**

All international Level Athletes will argue that they cannot exercise effectively on their own. It is not clear if the exemption relates to every individual athlete as long as they are part of a team. If this is not so, then it should be clearly expressed.

#### **Article 10.14**

The automatic publication of sanctions as a separate binding provision is not in line with the GDPR (DSGVO)

It is suggested that this provision should be deleted or reformulated more non-binding.

### **UK Anti-Doping**

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

**10.13.1** - It is not clear if the definition of a Provisional Suspension contained within the definition of Consequences is supposed to relate to a mandatory or non-mandatory Provisional Suspension. If it is the former, it appears to be inconsistent with the Article 10.13.1 definition. Does there need to be more detail on the terms of a non-mandatory Provisional Suspension?

At 10.13.1, it would also assist to stipulate that ineligible Athletes are required to provide whereabouts information, as they remain subject to testing.

### **AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

**THE GOVERNMENTS ARE NO SIGNATORIES OF THE CODE.**

**THE CONSEQUENCES OF NON COMPLIANCE ARE ONLY FOR SIGNATORIES.**

**WE DO NOT HAVE A CLEAR IDEA ABOUT HOW WADA WILL REINFORCE THE CODE COMPLIANCE AGAINST GOVERNMENTS. 10.13.1 AND 10.13.4)**

**IS WADA THINKING TO SUSPEND AGAIN NADOs BECAUSE OF NON COMPLIANCE OF GOVERNMENTS OR GOVERNMENTAL AGENCIES?**

In relation with the article 10.13.1 Prohibition against Participation during *Ineligibility* or Mandatory *Provisional Suspension*, we propose to remove the wording ‘funded by a governmental agency’ and ‘or other *Person*’, so the new wording should be: No *Athlete* or other *Person* who has been declared ineligible or is subject to a mandatory *Provisional Suspension* may, during the a period of *Ineligibility* or mandatory *Provisional Suspension*, participate in any capacity in a *Competition* or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any *Signatory*, *Signatory’s* member organization, or a club or other member organization of a *Signatory’s* member organization, or in *Competitions* authorized or organized by any professional league or any international- or national-level *Event organization* or any elite or national-level sporting activity.

An *Athlete* subject to a period of *Ineligibility* longer than four years may, after completing four years of the period of *Ineligibility*, participate as an *Athlete* in local sport events not sanctioned or otherwise under the jurisdiction of a *Code Signatory* or member of a *Code Signatory*, but only so long as the local sport event is not at a level that could otherwise qualify such *Athlete* or other *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event*, and does not involve the *Athlete* or other *Person* working in any capacity with *Minors*.

An *Athlete* subject to a period of *Ineligibility* shall remain subject to *Testing*.

**WE DO NOT SEE THE OBJECT TO SUBJECTING TO ANTIDOPING TESTS TO “OTHER PERSON” (NON-ATHLETE). A NON-ATHLETE IS NOT OBLIGED TOWARDS THE LIST OF METHODS AND SUBSTANCES**

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

In Article 10.13.1, add a reference to voluntary Provisional Suspension. As drafted, it is excluded by omission.

**NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

By bringing the mandatory provisional suspension under the same regime as the prohibition against participation, it means that a member of a team can no longer train with the team. NADOF believes this this could be seen as disproportionate to the rationale of the provisional suspension, which is meant to preserve the rights of other athletes and is put into place in order to maintain a fair competition. Under a provisional suspension, the guilt has not yet been established. The prohibition against participation during a mandatory provisional suspension should be more specific, but should also find a better balance, based on the rationale of the provisional suspension. If the athlete is later acquitted, he will have to reintegrate in training before he can return to competition. This could in some cases be considered disproportionate.

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 10.13.1 and Provisional Suspension.** As alluded to in the paragraph below in relation to mandatory Provisional Suspension, is it intended that those under an optional Provisional Suspension, would be allowed

to train and use the facilities of teams / clubs etc.? If that is the intention, presumably the definition of Provisional Suspension (under Consequences) should also be changed.

The amendments to Article 10.13.1 appear to mean there is now a difference between what an Athlete can do while under a mandatory Provisional Suspension and what they can do under an optional Provisional Suspension (and presumably a voluntary Provisional Suspension under Article 10.12). The summary document deals with Provisional Suspension but does not explain why this change was made and it is not obvious to Sport Ireland why the change has been proposed.

Sport Ireland is of the view that there should be no delineation between mandatory Provisional Suspension and optional Provisional Suspension.

### **Institute of National Anti-Doping Organisations**

SUBMITTED

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

This article remains insufficiently clear as to the scope of its effect. That is the meaning of "... participate in any capacity in a Competition or activity ..." is far from clear. The CAS decision of December 2017 re Murray sets out how this should be interpreted and it is much broader than has been argued by some. It is crucial that the Code makes it explicit that a person who is prohibited may not "coach" or otherwise assist in a sporting sense a person bound by the Code AT ANY TIME. This includes not just coaching but e.g, acting as a doctor or physio. 2.10 states that - "Association by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Athlete Support Person" is prohibited. The terms of prohibition should mirror this i.e. the person may not participate "in a professional or sport related capacity". It is illogical that the terms of the two provisions do not refer to exactly the same terms. At the moment the terminology is quite different, therefore confusing and it is 10.13.1 which is to blame.

## **Article 12.2 (7)**

### **World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support the proposal to give Signatories authority to exclude Athletes and other Persons from its Events as a sanction against a Member Federation

### **Canadian Olympic Committee**

SUBMITTED

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

We agree with the suggested changes and suggest expanding also to "by the IOC against an International Federation".

### **Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

## **Article 12.2 Proceedings Against Other Sporting Body**

We recommend the following rewording of the last paragraph of this Article:

"These rules may include the exclusion of all, or some group of, persons affiliated with or representing a sporting body from specified *Events* or competitions or all *Events* or competitions conducted within a specified period of time."

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)

Sport - Other

SUBMITTED

**Article 12** is a provision of excluding all athletes and other persons from its event as a sanction against a member federation. When serious organized ADRVs occur, excluding all the participants in a sport from a country will no doubt have a great deterrent and restraining effect, but it may also harm the clean athletes. Athletes' sporting life is very short, and the participation in the international competitions such as the Olympic Games is particularly rare. In order to protect clean athletes, this Article should have more flexibility. It is recommended to improve the system of "neutral athletes", increasing the exceptional provision that allows truly clean athletes to participate in the name of individuals and the detailed rules for implementation should be formulated.

**Ministry of Culture**

Nevena Toft, Special Advisor (Denmark)

Public Authorities - Government

SUBMITTED

SUBMITTED BY WADA

**Comment to WADC article. 12:**

The possible sanctions for non-compliance to the Code should be regulated directly in the Code instead of in the International Standard for Code Compliance by Signatories – it could be done by listing the possible consequences for non-compliance, and keep the detailed information in the Standard.

In addition, and as also proposed in our initial submission in the 1st phase of the WADC review process, we propose a regulatory sanctioning framework within the WADC for cases concerning *Other Sporting Bodies*, e.g. national governing bodies and local sports clubs under the authority of the WADC *Signatories*. Hereby, alignment across jurisdictions in cases concerning such other sporting bodies will be achieved.

By example, by implementing a regulatory framework within the WADC for other sporting bodies, a case concerning a football association in Country A that accepts, or perhaps even promotes, a doping culture within its clubs and athletes, will be adjudicated under the same legal framework as a basketball association in Country B having engaged in a similar, unacceptable doping culture.

In terms of relevant sanctions and procedures, the regulatory framework within the WADC for other sporting bodies can take its outset in the new compliance framework applicable to Signatories, although mirrored at the national level and conducted within the realms of the judicial system in place in each Country (NADO, Anti-Doping Tribunal etc.).

**Council of Europe**

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 12**

WADA proposal:

«These rules may include the exclusion of all, or some group of, members of that sporting body from specified future Events or all Events conducted within a specified period of time».

Signing parties or governments, when using their own rules in relation to other organizations under its jurisdiction, should be independent in the choice of these measures and methods.

This item is proposed to be deleted.

**NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

NADA Austria agrees that there must be the possibility of the exclusion of all or some group of members of a sporting body. However, the current anti-doping framework needs further enhancement so see this provision in action.

**Article 13.2.3 (3)****Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

It should be clarified which NADO has a right of appeal, if not both, in a scenario where the athlete lives in a foreign country (see art. 13.2.3 d): the NADO of the Person's country of residence or countries where the Person is a national or license holder).

Also, here are minor comments on the structure/terminology of the footnote:

- It is not clear why the footnote comes directly after the addition re. informing WADA of the appeal – including it here suggests that WADA's knowledge of the appeal and time limit to appeal are interrelated.
- The UCI would suggest simply referring to a “party's deadline to appeal” rather than “allotted time to appeal”?
- The UCI would recommend that the concept of “receipt of a decision” is addressed if this comment is to be included.

**Sport New Zealand**

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)  
Public Authorities - Government

**Article 13**

1.

We agree that the wording of Article 13.1.2 needs to be amended. Currently, this article is unclear about whether CAS may defer to the findings being appealed. In other words, it is not clear whether all CAS appeals *must* be heard de novo. It would be unusual for a court to be forced to rehear all evidence and submissions, even those aspects that are accepted by both parties. Article 13.1.2 should be amended to make it clear that CAS *may* defer to the findings being appealed. This would provide CAS with the discretion to hold de novo hearings where necessary.

2.

A rule that prevented CAS from ever deferring to the discretion exercised by the body whose decision is being appealed would be both inefficient and inconsistent with general legal principle. We consider a discretion to defer to the findings being appealed is appropriate and would also be consistent with the approach currently set out in Rule 57 of the *CAS Code of Sports-related Arbitration*.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Article 13**

Add the wording to the section:

«Decision of the anti-doping organization on reviewing of the case due to newly discovered/new circumstances can be appealed in accordance with the rules provided for in Article 13.2 of the Code».

**Article 14.3 (19)****International Cricket Council**

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The proposed change to Code Article 14.3.6 in support of minors is supported by the ICC.

**International SAMBO Federation**

SUBMITTED

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized Sport Accord

**Article 14.3.1.** – Is there any legal source/applicable law in case that after the hearing the panel decided it is not ADRV? Particularly than to avoid the case when the athlete would accuse us for lost profit?

**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support the proposed changes to Public Disclosure

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

Article 14.3.1: The UCI believes that this article should specify that the nature of the ADRV or the substance involved can be disclosed (cf 14.3.2).

The UCI would also replace "who is asserted by an *Anti-Doping Organization* to have committed an anti-doping rule violation" by "who is notified of a potential ADRV"

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 14.3 Public disclosure****Article 14.3.3**

Please confer Article 8 and the “Requirements of the hearing bodies.”

### Article 14.3.6

“Recreational athlete” must be added to the last sentence.

### EU and its Member States

SUBMITTED

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

The EU and its Member States recall that WP29 considered that processing of personal data for anti-doping activities could not be based on consent and that other legal bases had to be explored. WP29 also questioned the compliance with principles relating to the processing of personal data, in particular in view of retention periods for storing different data on athletes and the publication of the names of athletes who have violated anti-doping rules (Article 14.3 of the Code).

[1] Second opinion 4/2009 on the World Anti-Doping Agency (WADA) International Standard for the Protection of Privacy and Personal Information, on related provisions of the WADA Code and on other privacy issues in the context of the fight against doping in sport by WADA and (national) anti-doping organizations, adopted on 6 April 2009:

[http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2009/wp162\\_en.pdf](http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2009/wp162_en.pdf)

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Article 14

the Code will be subservient to national law responsibilities, especially the GDPR

### Art. 14.3.1

It is also pointed out that Art. 14.3.1 is according to the interpretation and application of many national data protection authorities in Europe not in accordance with the provisions of the GDPR (DSGVO).

### Organizacion Nacional Antidopaje de Uruguay

SUBMITTED

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

In accordance with 14.3.5 how is this Do not change

### Anti-Doping Norway

SUBMITTED

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

Art. 14.3.6 Anti-Doping Norway support the change regarding Recreational Athletes.

### NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)

## NADO - NADO

Article 14.3.1 will be subject to national data protection regulations regarding the processing of personal data.

As with other data specific references in the Code, national laws will shape how these articles are put into practice.

Depending on the nature of the Anti-Doping Organisation, the GDPR will require the disclosure of the person's identity to be proportionate and compatible with one of the lawful grounds for processing.

Publication of sanction decisions (in conjunction with Art. 10.13 WADC) must be in accordance with **European Data Protection Law**.

Comment: Adaptation and amendment of the rules on the publication of sanction decisions in accordance with the (European) data protection and personal rights of the athletes.

**Anti Doping Denmark**

SUBMITTED

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

## 14.3.2 - Mandatory Public Report

The obligation of ADOs to publicly report all decisions in detail may be in conflict with the GDPR according to the interpretation and application of the GDPR by many national data protection authorities in Europe. Particularly if the case concerns a lower-level athlete.

It must be remembered that ADOs can only carry out their responsibilities under the Code in a way that is compatible with their national law responsibilities. For a large number of European countries, that means the GDPR.

Accordingly, we propose that the relevant articles are re-drafted so that the mandatory element is taken out and replaced with an optional solution.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)  
NADO - NADO

**14.3 Public Disclosure**

In this context those articles are as follows: 14.3.1 After notice has been provided to the *Athlete* or other *Person* in accordance with Article 7.3, 7.4, 7.5, 7.6 or 7.7, and to the applicable *Anti-Doping Organizations* in accordance with Article 14.1.2, the identity of any *Athlete* or other *Person* who is asserted by an *Anti-Doping Organization* to have committed an anti-doping rule violation and whether the *Athlete* or other *Person* is subject to a *Provisional Suspension* may be *Publicly Disclosed* by the *Anti-Doping Organization* with results management responsibility. In case of any anti-doping rule violation by a Minor, the identity of this Minor must never be published

14.3.2 No later than twenty days after it has been determined in a final appellate decision under Article 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in accordance with Article 8 has been waived, or the assertion of an anti-doping rule violation has not otherwise been timely challenged, the *Anti-Doping Organization* responsible for results management must *Publicly Report* the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the *Athlete* or other *Person* committing the violation, the *Prohibited Substance* or *Prohibited Method* involved and the *Consequences* imposed. The same *Anti-Doping Organization* must also *Publicly Report* within twenty days the results of final appeal decisions concerning anti-doping rule violations, including the information described above. In case of any anti-doping rule violation by a Minor, no information about rule violation, name of the Minor, Prohibited Substance or Method or Consequences imposed must never be published, in any case.



14.3.3 In any case where it is determined, after a hearing or appeal, that the *Athlete* or other *Person* did not commit an anti-doping rule violation, the decision may be *Publicly Disclosed* only with the consent of the *Athlete* or other *Person* who is the subject of the decision. The *Anti-Doping Organization* with results management responsibility shall use reasonable efforts to obtain such consent, and if consent is obtained, shall *Publicly Disclose* the decision in its entirety or in such redacted form as the *Athlete* or other *Person* may approve. If any *Minor* did not commit any anti-doping rule violation, The *Anti-Doping Organization* with results management responsibility never can use any effort to obtain such consent.

14.3.6 The mandatory *Public Reporting* required in 14.3.2 shall not be required where the *Athlete* or other *Person* who has been found to have committed an anti-doping rule violation is a *Recreational Athlete*.

#### **INTRODUCE A NEW POINT 14.3.7 ABOUT MINORS.**

#### **ONLY IN CASE WADA WOULD NOT ACCEPT OUR PROPOSAL OF A NEW ARTICLE 11.**

14.3.7 The mandatory *Public Reporting* required in 14.3.2 shall not be required where the *Athlete* or other *Person* who has been found to have committed an anti-doping rule violation is a *Minor*. *No Public Reporting will be issued in this case*

#### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

The implementation of article 14 subsidiary to the implementation of the European GDPR and can only be done if compatible with GDPR and national law. This should be dealt with in a more general manner. This comment is also a general comment to article 14.

#### **Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Clarifications to Sanctions for Violation of a Provisional Suspension (Article 14.3.1)

· These changes are supported, except for the last line (“Article 14.3.1 (Public Disclosure) has been modified to make clear that prior to the final decision in the case, an anti-doping organization may publicly disclose the identity of the individual who has been charged and whether a provisional suspension has been imposed”). In many instances this can be disproportionate and such public disclosure should be done in a very careful way.

#### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

EADA supports the wording proposed in the Second Code Draft 14.3.6. (when the athlete is a *Minor* or *Recreational Athlete*, the public reporting should be based on the proportionality). However, it is not clear, why the second sentence of the article does not apply for the recreational athletes.

#### **Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

In Article 14.3.6 add “or *Recreational Athlete*” in the final sentence: “Any optional *Public Reporting* in a case involving a *Minor* or *Recreational Athlete* shall be proportionate to the facts and circumstances of the case”

**GM Arthur Sports Representation**

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

In any nation that has implemented the General Data Protection Regulation, this requirement is subject to an overriding standard that the publication is necessary and proportionate, and has a legal justification other than consent. The same point applies to 'mandatory publication' of sanctions. These obligations override the Code provisions (as acknowledged in the ISPPPI).

**UK Anti-Doping**

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)  
Other - Other (ex. Media, University, etc.)

**14.3.6 -**

Whilst there is sanctioning flexibility for minors and recreational athletes, there is no reference to or provision for athletes with intellectual impairments who are potentially vulnerable to an inadvertent ADRV. Consideration should be given to making similar specific provisions for such athletes.

**International Paralympic Committee**

SUBMITTED

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

The publication of CAS and other tribunal decisions need to be dealt with in a more consistent manner.

**Article 14.5 (6)****ISU**

SUBMITTED

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

**CODE 14.5 Doping Control Information Clearinghouse and Monitoring of Compliance**

Ad new 14.5 para 1: *“WADA has developed a database management tool, ADAMS, that reflects data privacy principles. In particular, WADA has developed ADAMS to be consistent with data privacy statutes and norms applicable to WADA and other organizations using ADAMS. Private information regarding an Athlete, Athlete Support Personnel, or others involved in anti-doping activities shall be maintained by WADA, **which is supervised by Canadian privacy authorities**, in strict confidence and in accordance with the International Standard for the Protection of Privacy and Personal Information.”*

**ISU Comment:**

Why supervision by Canada and not by Switzerland? WADA's legal seat is Switzerland. Besides, WADA cannot escape the application of any national data protection law depending on the given circumstances.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 14.5 Doping Control Information Clearinghouse and Monitoring of Compliance****Article 14.5.3**

In our last submission, we recommended WADA to consider establishing a database containing all decisions rendered according to the WADC. We commend WADA for putting in place a system for notification of all decisions. However, to enforce automatic implementation of ADOs decisions by other signatories worldwide, cf. the new Article 15.1, this database must be accessible to all signatories and not only serve to facilitate WADA's oversight and appeal rights for result management. Hence, we propose the following:

"To facilitate WADA's oversight and appeal rights for results management and the automatic implementation of *Anti-Doping Organisations* decision by other *Signatories*, *Anti-Doping Organizations* shall report the following information into ADAMS or another system approved by WADA in accordance with the requirements and timelines outlined in the *International Standard* for Results Management and Hearings: (a) notifications of antidoping rule violations and related decisions for *Adverse Analytical Findings*; (b) notifications and related decisions for other anti-doping rule violations that are not *Adverse Analytical Findings*; and (c) whereabouts failures."

**NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

NADA Austria agrees to the amendment which reflects the current procedure in a better way.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing to eliminate the concepts of In-Competition and Out-of Competition.

The wording should be as follows: 14.5.1 To facilitate coordinated test distribution planning, avoid unnecessary duplication in *Testing* by various *Anti-Doping Organizations*, and to ensure that *Athlete Biological Passport* profiles are updated, each *Anti-Doping Organization* shall report all test to the WADA clearinghouse, by entering the *Doping Control* forms into ADAMS or another system approved by WADA, within the timelines contained in the *International Standard* for *Testing* and Investigations

**Irish Sports Council**

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

Sport Ireland would like to re-iterate that ADAMS in practice is only practical if the data transfer issues are resolved. WADA must deliver on its commitment from previous years to provide an API, without this the commitment to ADAMS is premature.

**International Testing Agency**

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Insofar as WADA defines (through the Code which is then reflected in the ADOs' ADR) the purposes and (mandatory) means (ADAMS) of the processing of personal data in the anti-doping framework, WADA might be considered as a Controller or Co-Controller of such personal data processing under the GDPR - regardless of any different contractual stipulations or statutory provision. This comes with a set of consequences and implications (primarily for WADA) which would deserve further consideration.

**Article 14.6 (2)****Antidoping Switzerland**

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Data Privacy must be compliant with legislation but must (within that) be as practical and simple to implement as possible. In addition, it should be noted that country legislation comes before the WADAP. Situations, where the WADAP requires certain action from an ADO and at the same time the national legislation does not allow the ADO to do so, are difficult to resolve and must be avoided.

**SA Institute for Drug-Free Sport**

khalid galant, CEO (South Africa)  
NADO - NADO

SUBMITTED

14.3.6 This clause should not apply to recreational athletes. Public disclosure is the only major deterrent for recreational athletes not to cheat. In many sports, recreational athletes compete in age-group categories which are just as prestigious as elite categories although there is no financial rewards for victory.

**Article 15 (12)****International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED

SUBMITTED BY WADA

The ICC supports clarity on the automatic recognition and implementation of a signatory's final decision by other signatories and mandatory provisional suspensions. The ICC is also in support of the discretion allowed to other signatories on the implementation of optional provision suspensions.

**International SAMBO Federation**

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized SportAccord

SUBMITTED

**Article 15.1.** – We would add a note related to mandatory reporting to respective ADOs. For example, in case of International Athletes the IF has to be inform from results management authority about the decision in order to be able to implement it.

**World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby agree with the proposed changes to Article 15 Implementation of Decisions

**Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

The UCI understands that the implementation of such decision internationally (i.e. extending its effect) constitutes a new decision but that such decision would not be subject to appeal. The UCI believes it should be clarified that the ADOs implementing the decision should not be held liable for any damages caused by such implementation.

Certain ADOs expressly state in their decision that the period of ineligibility is only applicable to the territory or sports over which they have jurisdiction. In these situations where the decision mentions that the period of ineligibility is only applicable to a certain territory or certain events, we cannot expect athletes to know that

the decision will also be implemented internationally by all signatories (and when it will be) without further clarifications. If the current disposition is adopted, it should therefore be mandatory for all ADOs to include in the decision that the effects of their period of ineligibility will be automatically implemented internationally by all signatories, and the date on which it will be.

The UCI would appreciate clarifications regarding the reason why the implementation is delayed until such time when WADA has received notice of the decision. The UCI believes that the automatic implementation should be as soon as the decision is notified to the athlete so as to leave no holes during which the athlete could compete elsewhere and also because the current proposal (date on which WADA is notified of the decision) is unknown to the athlete therefore he cannot be expected to know when he is not allowed to compete elsewhere anymore.

Given that there may be (albeit shouldn't be) situations in which WADA is informed of a decision and the relevant International Federation/NADO/etc is not, WADA should be required, upon receipt of a decision that should be implemented outside a signatories' authority, to inform all relevant ADOs of the decision so that mistakes are not made.

### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

This explanation requires further explanation as somehow confusing as presented. At the end (third paragraph); Mandatory is compared versus Optional. Optional is not underlined which caused the confusion. This is a good change to ensure mandatory recognition of provisional suspensions considering abuse has occurred in the past.

### Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

Australia agrees with the proposed amendments to Article 15 to clarify the operation of the mutual recognition provisions.

### Ministry of Culture

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED  
SUBMITTED BY WADA

### Comment to WADC article 15.2:

The added value of the proposed article 15.2 is not clear to us. The article creates an uncertainty for other ADOs since, in practice, they will have to assume the legal responsibility for implementing a decision imposed by another body. In other words, insofar the proposed new regime in articles 15.1 and 15.2 stands – i.e. that the WADC distinguishes between different types of decisions in terms of automated mutual recognition of decisions – the implementation of *Other Decisions* will reflect a separate and somewhat “voluntary” decision to do so by the ADO implementing another ADO’s decision. Consequently, the ADO implementing such *Other Decision* takes on an unreasonable legal risk which might, in turn, serve as a deterrent in ADO’s willingness to uphold a strong and common practice of mutual recognition of decisions in anti-doping cases.

Against this background, we believe that full responsibility should lie with the ADO that imposes the provisional suspension, whether this is required by the WADC or not, and all sanctions – including provisional suspensions – should automatically be mutually recognized across jurisdictions. This would also be in line with the general change in article 15 that any final decision by a Signatory is automatically implemented by other signatories.

Furthermore, the situation where a provisional suspension is only partially recognized and implemented creates an uncertainty. E.g. should the final sanction only be credited for the provisional suspensions under those signatories who have implemented the provisional suspensions? And will an athlete then have 2 different sanctions (one starting from the beginning of the provisional suspension, and one starting from the actual sanction), depending on the different jurisdictions in which the athlete wants to continue his/her sporting activities?

We therefore suggest that the proposed article 15.2 is deleted.

### **Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### **Article 15 - Mutual Recognition**

Regarding mutual recognition, the proposed draft does not seem to solve the difficulties identified by ADOs (and even WADA itself). In particular, the new proposed Article 15 does not seem to clarify which decisions shall be recognized and implemented, and how ADOs should be notified of the decisions that must be implemented (should we recognize decisions taken by an ADO towards a national? towards all athletes? And what if the ADO that rendered the decision does not inform the relevant ADOs? What should the process be to recognize a decision (in particular, what should be communicated to the athlete?).

As a general idea, we welcome the introduction of a mechanism of recognition of provisional suspensions, but the processes should be made clearer.

It is required to preserve the existing mechanism by analogy with the recognition and execution of judicial decisions. Otherwise, the control over the national anti-doping system will be lost and any decisions of the relevant foreign organizations should be automatically executed, even if they contradict national interests and public order and legislation.

### **Organizacion Nacional Antidopaje de Uruguay**

SUBMITTED

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

YES. Adressed.

### **NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

Art. 15

Regarding mutual recognition, the proposed draft does not seem to solve the difficulties identified by ADOs (and even WADA itself). In particular, the new proposed Article 15 does not seem to clarify which decisions shall be recognized and implemented, and how ADOs should be notified of the decisions that must be implemented (should we recognize decisions taken by an ADO towards a national? towards all athletes? And what if the ADO that rendered the decision does not inform the relevant ADOs? What should the process be to recognize a decision (in particular, what should be communicated to the athlete?).

### **Anti Doping Denmark**

SUBMITTED

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

15.1 - Automatic Implementation:

The new Article 15.1 on "Automatic Implementation of Anti-Doping Organization Decisions by Other Signatories" is in many ways a step forward when it comes to avoiding misunderstandings of the effect of sanctions and provisional suspensions.

However, we do not agree with WADA's argument that "since the Signatory imposing an optional Provisional Suspension had the discretion to impose a Provisional Suspension in the first place, other Signatories should also have discretion in whether they choose to implement it", as we fear that it will lead to confusion and inconsistency.

On the contrary, just as an ADO will have to accept that the final decision issued by another ADO is Code compliant and therefore should be implemented, it should be mandatory for other ADOs to which the Athlete is affiliated to accept that the ADO responsible for results management issues an optional provisional suspension for good reasons and in accordance with the code.

In conclusion, all decisions made in the results management process by the responsible ADO should be accepted and implemented by other ADOs and the draft Article 15.1 should be amended accordingly.

A situation where an Athlete or other person is provisionally suspended in one ADO's jurisdiction but not in others' is only bound to create confusion for everyone involved.

### Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 15.1.** The first sentence should refer to not just decisions of Signatory ADOs but also decisions of 'hearing panels under Signatory anti-doping rules'.

The Article refers to "*a mandatory Provisional Suspension (after a Provisional hearing or acceptance of the mandatory Provisional Suspension by the Athlete or other Person)*". Article 7.9 allows the imposition of a mandatory Provisional Suspension after a Provisional Hearing or if the Athlete is given the option of an expedited hearing of the full matter on a timely basis. The proposed amendments to Article 15 therefore appear inconsistent with Article 7.9.

It is also unclear to Sport Ireland why this Article refers to a decision which purports to "*impose Consequences beyond the direct authority of the Anti-Doping Organization*".

While the intention of giving other Signatories discretion regarding the recognition of optional Provisional Suspensions is perhaps understandable, this would appear to create logistical and operational issues. Signatories may not be aware of optional Provisional Suspensions imposed by other Signatories. There is also the issue of consistency and an Athlete not being entitled to compete in one sport but being entitled to compete in another. Further, because an Athlete may be Provisionally Suspended by one Signatory and not by others, does this mean that depending on the Signatory involved his period of Ineligibility will expire at different times (i.e. presumably he / she cannot receive credit for a Provisional Suspension he did not serve)? Sport Ireland does not believe this proposed amendment is feasible.

## Article 18 (14)

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

## The Council of Europe proposes this new draft of the Article

### 18.1 Principle and Primary Goal

The main principle for Education Programs is to actively contribute to the anti-doping system as one of the four prevention strategies intended to preserve the spirit of sport and to help foster a clean sport environment as described in the Introduction to the *Code*.

The primary goal of Education is to raise awareness, inform, to instil values, develop life skills and decision-making capability to prevent intentional and unintentional anti-doping rule violation as well as reform and rehabilitate in cases of transgressions.

All Signatories, shall within their scope of responsibility (as defined in *Article 18* and *Article 20* and *Article 21*) and in cooperation with each other, plan, implement, monitor and evaluate Education Programs in line with the principles set out in the International Standard for Education (ISE) to protect clean sport.

The Education Program should encompass a range of interventions as outlined in *Article 18.3.1*.

## **18.2 Target Groups and Education Pool**

### **18.2.1 Athletes**

Athletes as defined by each Anti-Doping Organization that are subject to the anti-doping rules shall be considered as part of the education plan in line with the requirements of the International Standard for Education.

Competitive athletes below national-level, in sports clubs or schools, should be targeted where resources are available, specifically in high risk sports.

*[Comment to Article 18.2.1: Where a NADO decides to use its discretion to broaden its anti-doping activities to recreational-level athletes and those participating in fitness type activities, information should be established for these groups of athletes prior to any testing activities being implemented. Athletes at this level must be made aware of the rules they are subject to, their rights and responsibilities and key information to mitigate the risks of inadvertent doping relevant to them.]*

### **18.2.2 Athlete Support Personnel**

Athlete Support Personnel (ASP) may influence athletes and their behaviour. ASP have a responsibility to inform and counsel Athletes regarding ethical sporting practice, and anti-doping rules and procedures pursuant to the *Code*. ASP who are bound by the *Code* and anti-doping rules and must be made aware of such, including the consequences of doping.

Therefore, ASP shall be considered as part of the Education Program, where coaches and medical personnel, shall be the primary focus. For younger athletes, parents should be included.

*[Comment to Article 18.2.2: ADO's should identify and where resources permit implement interventions for wider ASP such as; nutritional personnel, sport science personnel, team managers, sports officials, teachers, athlete agents and the media. For international competitions, ASP such as Chef de Missions for National Teams, or Heads of Delegation, may benefit from inclusion in the Education Program.]*

### **18.2.3 Education Pool**

Signatories/ADO's shall identify their target groups and form an Education Pool in line with the minimum requirements outlined in the ISE.

*[Comment to Article 18.2.3: The Education Pool should not be limited to National- or International-Level Athletes and should include all Persons, including youth, who participate in sport under the authority of any Signatory, government or other sports organization accepting the Code. (See definition of Athlete.) These programs must also include Athlete Support Personnel and consider wider, Persons, as defined in the Council of Europe Anti-Doping Convention and UNESCO Anti-Doping Convention. These principles are consistent with the UNESCO Convention with respect to education and training.]*

## **18.3 Education Program and Plan**

### **18.3.1 Education Program**



The programs and associated interventions shall promote the spirit of sport and focus on developing a clean sport environment to have a positive and long-term influence on the choices made by Athletes, Athlete Support Personnel and other Persons.

The Education Program shall include the following components; Awareness, Information, Communication, Values-Based Education, and Anti-Doping Education and cover as a minimum the following topics, as they are relevant for specific target groups:

- Principles and values associated with clean sport
- Athletes rights and responsibilities
- Consequences of doping including health, social, psychological effects and the case management process
- Anti-doping rule violations
- The prohibited list, including in- and out-of-competition periods
- Risks with medications and supplements, including health consequences
- TUEs
- Testing procedures, including urine, blood and the biological passports
- Requirements of a registered testing pool, including Whereabouts and use of ADAMS
- International competition (for those attending a major games or international sporting event)
- Speaking up to share concerns about doping
- Importance of anti-doping and its governance, including jurisdiction

Athletes who become part of a registered testing pool should be educated in understanding and fulfilling their Whereabouts requirements. For younger athletes, programs should be values-based, with a focus on instilling the spirit of sport, ideally through the school programmes.

### **18.3.2 Education Plan**

Signatories responsible for education must develop an Education Plan that demonstrates the Education Program interventions and who these are targeting. This plan should be long-term and include how the Education Program will be monitored and evaluated.

Signatories shall undertake a current situation assessment to establish risk areas, target groups and the resources required to deliver the plan.

Any prioritization of target groups or interventions should be justified based on a clear rationale as part of the Education Plan.

*[Comment to 18.3.2 – WADA Guidelines document the TDSSA already provides sport specific knowledge relating to the risk of doping with a sport. Such information can be used to inform the risk assessment process to identify priority target groups for education programs. WADA also provides information and education resources for ADO's to use to support their program delivery.]*

### **18.4 Education Program Implementation**

Athletes and ASP must not be put at risk of inadvertent doping due to misinformation being presented, or disengaged from the anti-doping system through the provision of poor education.

Any education intervention of ADO shall be delivered by a trained and authorized person according to the responsibilities in the International Standard for Education.

ADOs should ensure that education delivery is appropriately quality assured, and data, as specified in the ISE, should be collected on an annual basis and reported to WADA.

*[Comment 18.4 - The purpose of this provision is to introduce the concept of an Educator. Education should only be delivered by a trained and competent person, similar to testing whereby only trained and appointed DCO's can conduct tests. In both cases, the requirement for trained personnel is to safeguard the athlete and maintain consistent standards of delivery. Further details of the requirements can be found in the ISE, and WADA Model Guidelines for Education, including best practice examples of interventions that can be implemented]*

### **18.5 Coordination and Cooperation**

The Education Program shall be coordinated by the NADO at national level, working in collaboration with their respective national sports federations, NOC, NPC, Governments and wider educational institutions. This coordination should maximise the reach of education programmes across sports, athletes and ASP and minimise duplication of effort.

International-level athletes should be the priority for International Federations, where event-based education should become a mandatory element of any anti-doping programme associated with an International Event.

NADO and government should cooperate to embed values-based education into the school programmes.

All Signatories shall proactively support participation by Athletes and Athlete Support Personnel in education programs.

WADA will work with international partners to support the implementation of ISE and act as a central repository for information and education resources and/or programs developed by WADA or ADO's. Signatories shall cooperate with each other and Governments to coordinate their efforts

*[Comment to 18.2.1 – Further guidance for signatories with responsibility for education can be found in Article 20.]*

### **Current 18.3 Professional Codes of Conduct**

*We propose that this article is repositioned and further clarified as it. Our view is that 18.3 is trying to reflect the following two points:*

- That Codes of Conduct should be in place, working in collaboration with relevant professional associations.*
- That sports organisations should ensure that they have relevant disciplinary procedure in place should, as an example, an anti-doping organisation have insufficient evidence to prosecute an anti-doping rule violation, but there is sufficient evidence to bring a disciplinary procedure. Equally, sports organisations must ensure they have sufficient polices in place to remove and sanction those from their sport when required.*

*In light of the above, we propose that Article 18.3 in its current form is clarified and moved to Part 3 of the Code's, Roles and Responsibilities section:*

### **20 Additional Roles and Responsibilities of Signatories**

"All Signatories shall cooperate with each other and governments to encourage relevant sports organisations, educational institutions, and professional associations to develop and implement appropriate Codes of Conduct that reflect good practice and ethics related to sport practice regarding anti-doping, as well as sanctions, which are consistent with the Code.

*[Comment: Such Codes should make provision for appropriate disciplinary action to be taken by sports bodies to either support the implementation of any doping sanctions, or for an organisation to take its own disciplinary action should insufficient evidence prevent an anti-doping rule violation being brought.]"*

#### **Organizacion Nacional Antidopaje de Uruguay**

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

SUBMITTED

A NEW STANDAR. OK. Agree

SUBMITTED

**Anti-Doping Norway**

Anne Cappelen, Director Systems and Results Management (Norway)

NADO - NADO

Anti-Doping Norway support the increased focus on education and suggest that the principles of developing and implementing, an effective, intelligent and proportional Education Plan should be based on a risk assessment described and referenced similar as the principle of a testing plan.

There should also be a stronger requirement in the Code of reporting education activities, equal to testing statistics.

**Article 18.2 Programs and Activities**

Anti-Doping Norway suggest that "Principles and values for a Clean Sport" is added to the bullet points in 18.2 and addressed in the Education Plan.

WADA has published an ADO reference guide to the 2015 WADC (July 2015). Section 2 in this excellent document is providing valuable understandings of definitions and what to include in an Education Plan and program. Anti-Doping Norway suggest that these principles and approaches are defined in the article 18 and the ISE as appropriate.

**NADA**

Regine Reiser, Result Management (Deutschland)

NADO - NADO

SUBMITTED

**Art. 18.1**

The main principle for Education Programs is to actively contribute to the anti-doping system as one of the four prevention strategies (ISE Article 3.2.1) intended to preserve the spirit of sport and to help foster a clean sport environment as described in the Introduction to the *Code*.

The primary goal of Education is to raise awareness, inform, communicate, to instil values, develop life skills and decision-making capability to prevent intentional and unintentional doping.

All Signatories, shall within their scope of responsibility (as defined in *Article 18* and *Article 20* and *Article 21*) and in cooperation with each other, plan, implement, monitor and evaluate Education Programs in line with the principles set out in the International Standard for Education (ISE) to protect clean sport.

The Education Program should encompass a range of interventions as outlined in *in the ISE*.

**18.2.1 Education Program**

The programs and associated interventions shall promote the spirit of sport and focus on developing a clean sport environment to have a positive and long-term influence on the choices made by Athletes, Athlete Support Personnel and other Persons.

The Education Program **shall include** the following components; Awareness, Information, Communication, Values-Based Education, and Anti-Doping Education. The education program should cover as a minimum the following topics;

- Principles and values associated with clean sport
- Athletes rights and responsibilities
- Consequences of doping including health and social consequences as well as sanctions
- Anti-doping rule violations

- The prohibited list
- Risks with medications and supplements, including health consequences
- TUEs
- Doping control procedures
- Requirements of a registered testing pool, including Whereabouts and use of ADAMS

Athletes who become part of a registered testing pool should be educated in understanding and fulfilling their Whereabouts requirements. For younger athletes, programs should be values-based, with a focus on instilling the spirit of sport ideally through the school curricula.

### 18.2.2 Education Plan

Signatories responsible for education must develop an Education Plan that demonstrates the Education Program interventions and who these are targeting. This plan should be long-term and include how the Education Program will be monitored and evaluated.

Signatories shall undertake a current situation assessment to establish risk areas, target groups and the resources required to deliver the plan.

Any prioritization of target groups or interventions should be justified based on a clear rationale as part of the Education Plan.

*[Comment to 18.3.2 – WADA Guidelines document the TDSSA already provides sport specific knowledge relating to the risk of doping with a sport. Such information can be used to inform the risk assessment process to identify priority target groups for education programs. WADA also provides information and education resources for ADO's to use to support their program delivery.]*

### 18.5 Coordination and Cooperation

The Education Program shall be coordinated by the NADO at national level, working in collaboration with their respective national sports federations, NOC, NPC, Governments and wider educational institutions as described in the ISE, Article 5.3.

All Signatories shall proactively support participation by Athletes and Athlete Support Personnel in education programs.

WADA will work with international partners to support the implementation of ISE and act as a central repository for information and education resources and/or programs developed by WADA or ADO's. Signatories shall cooperate with each other and Governments to coordinate their efforts

*[Comment to 18.2.1 – Further guidance for signatories with responsibility for education can be found in Article 20.]*

#### **AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we strongly disagree with the concept of "spirit of sport".

We think that the basic principle of education programs should be the purpose as established in the PURPOSE, SCOPE AND ORGANIZATION OF THE WORLD ANTIDOPING PROGRAM AND THE CODE.

The Ministry of Education in many countries may find that doping is not so important for the education of children and youngsters in general, and that it is only an issue for athletes, which could be a problem we may

find. The implementation in school curricula should not be mandatory.

In the other hand, in many countries the Signatories (the sole entities obliged by the code) have no competence on school curricula and it could be very difficult or even be impossible to fulfil this task, although, if it is not possible, there may be many other ways to reach children and young people outside the school curricula.

The following articles should be as follows:

#### 18.1 Basic Principle and Primary Goal

The basic principle for information and education programs for doping-free and clean sport is to achieve the purpose of the World antidoping program and the Code: To protect the *Athletes'* fundamental right to participate in doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide. The primary goal of such programs is prevention. The objective shall be to prevent the intentional or unintentional *Use by Athletes of Prohibited Substances and Prohibited Methods*.

Information programs should focus on providing basic information to *Athletes* as described in Article 18.2.

Education programs should focus on prevention. Prevention programs should be based and directed mainly towards *Athletes* and *Athlete Support Personnel* with a particular focus on young people.

Those programs should be, whenever possible, properly implemented in school curricula, and developed together with a Quality Physical Education Policy as promoted by UNESCO mainly focused in the development of the physical and psychological well-being, social and emotional skills, adequate learning approaches, and an appropriate cognition in order to induce and encourage life and sport values seeking to achieve a doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide. If it is not possible to implement the programs in the school curricula they should be developed by other ways to reach children and young people.

All *Signatories* shall within their means and scope of responsibility and in cooperation with each other, plan, implement, evaluate and monitor information, education, and prevention programs for doping-free and clean sport.

#### 18.2 Programs and Activities.

These programs shall provide *Athletes* and other *Persons* with updated and accurate information on at least the following issues:

- Substances and methods on the *Prohibited List*
- Anti-doping rule violations
- *Consequences* of doping, including sanctions, health and social consequences
- *Doping Control* procedures
- *Athletes' and Athlete Support Personnel's* rights and responsibilities

- 
- TUEs

- 
- Managing the risks of nutritional supplements

- 
- Harm of doping to the spirit of sport

- 
- Applicable whereabouts requirements

The programs shall promote the right to participate in doping-free and clean sport and thus promote health, fairness and equality for *Athletes* worldwide, in order to establish an environment that is strongly conducive to doping-free sport, development of values and will have a positive and long-term influence on the choices made by *Athletes* and other *Persons*.

To promote this policy, the education programs should be consistent with the UNESCO Convention with respect to education and training, and the development of values through the UNESCO four pillars of learning: learning to know, learning to do, learning to be, learning to live together.\*

(\*The four UNESCO pillars of learning are fundamental principles for education:

**Learning to know:** to provide the cognitive tools required to better comprehend the world and its complexities, and to provide an appropriate and adequate foundation for future learning.

**Learning to do:** to provide the skills that would enable individuals to effectively participate in the global economy and society.

**Learning to be:** to provide self analytical and social skills to enable individuals to develop to their fullest potential psycho-socially, affectively as well as physically, for an all-round 'complete person.

**Learning to live together:** to expose individuals to the values implicit within human rights, democratic principles, intercultural understanding and respect and peace at all levels of society and human relationships to enable individuals and societies to live in peace and harmony.)

Prevention programs shall be primarily directed at young people, appropriate to their stage of development, in school and sports clubs, parents, adult *Athletes*, sport officials, coaches, medical personnel and the media.

*Athlete Support Personnel* shall educate and counsel *Athletes* regarding anti-doping policies and rules adopted pursuant to the *Code*.

All *Signatories* shall promote and support active participation by *Athletes* and *Athlete Support Personnel* in education programs for doping-free sport.

18.3 18.3 Professional *Codes* of Conduct

**Why WADA use “consequences” on non-compliant Signatories, but asks to these Signatories to enforce “sanctions” on the entities under their umbrella?**

**We consider that WADA should call “sanctions” as SANCTIONS.**

**NADA Austria**

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

We propose the following Draft Text:

**"18.1. Principle and Primary Goal**

The main principle for Education Programs is to actively contribute to the Anti-Doping System as one of the four prevention strategies intended to preserve the spirit of sport and to help foster a clean sport environment as described in the Introduction to the Code.

The primary goal of Education is to raise awareness, inform, to instil values, develop life skills and decision-making capability to promote clean sport and to prevent intentional and unintentional Anti-Doping Rule Violations.

All Signatories, shall within their scope of responsibility (as defined in Article 18 and Article 20 and Article 21) and in cooperation with each other, plan, implement, monitor and evaluate Education Programs in line with the principles set out in the International Standard for Education (ISE) to protect clean sport.

**18.2. Education Plan**

Each Signatory shall develop and implement an effective, intelligent and proportionate Education Plan that prioritizes appropriately between sports, disciplines and categories of target groups and starting with a risk assessment, setting of clear objectives, documenting an action plan for implementation and monitoring and evaluation procedures all in compliance with the requirements of the International Standard for Education. Each Signatory shall provide WADA upon request with a copy of its current Education Plan.

**18.3. Program and Activities**

Any Education intervention as part of Information and Education Programs of a Signatory shall be delivered by a trained and authorized person according to the responsibilities in the International Standard for Education.

Signatories shall, at least annually, publish publicly a general statistical report of their Information and Education Programs, with a copy provided to WADA. WADA shall, at least annually, publish statistical reports summarizing the information that it receives from Signatories.

**18.3.1 Information Programs**

Information programs shall, at a minimum, provide Athletes and Athlete Support Personnel identified as highest priority according to the Education Plan with updated and accurate information on at least the following issues as defined in the International Standard for Education:

- Principles and values associated with clean sport
- Athletes rights (in general as they relate to the Charter of Athletes Rights)
- Consequences of doping including health, social, psychological effects and the case management process
-

## Anti-doping Rule Violations

- 
- The Prohibited List, including in- and out-of-competition periods
- 
- Athletes and Athlete Support Personnel rights and responsibilities (as they relate to specific Anti-Doping Activities)
- 
- Risks with medications and supplements, including health consequences
- 
- TUEs
- 
- Testing procedures, including urine, blood and the biological passports
- 
- Requirements of a registered testing pool, including Whereabouts and use of ADAMS
- 
- Speaking up to share concerns about doping
- 
- Importance of the anti-doping System

### 18.3.2 Education programs

Education programs shall be delivered according to the Education Plan and be directed especially at young Athletes and different other target groups as defined in the ISE. These programs shall promote the spirit of sport in order to establish an environment that is strongly conducive to clean sport and will have a positive and long-term influence on the choices made by Athletes and Athlete Support Personnel.

Education programs should follow educational principles and focus on the levels of learning that each target group will need to achieve in order to be fully competent in each topic. They should

- 
- be tailored to the target population, ensuring content and delivery are appropriate
- 
- include interactive activities, allowing the learner to engage with the concept of with what is being taught, including case studies, scenarios,
-



aim at developing core Life-Skills

- 

run over a period of time where key messages are repeated and reinforced,

include multi-modal communication, with consistent and simultaneous messages coming from different sources, such as home, school, club or community.

#### 18.4. Coordination and Cooperation

Information and Education Programms shall be coordinated by the NADO at national level or if applicable the RADO, working in collaboration with their respective national sports federations, NOC, NPC, Governments and wider educational institutions. This coordination should maximize the reach of education programs across sports, Athletes and Athlete Support Personnel and minimize duplication of effort.”

Current Article 18.3. Professional Codes of Conduct:

We propose that this article is repositioned and further clarified.

Our view is that 18.3 is trying to reflect the following two points:

- 

That Codes of Conduct should be in place, working in collaboration with relevant professional associations.

- 

That sports organizations should ensure that they have relevant disciplinary procedure in place should, as an example, an anti-doping organization have insufficient evidence to prosecute an anti-doping rule violation, but there is sufficient evidence to bring a disciplinary procedure. Equally, sports organizations much ensure they have sufficient polices in place to remove and sanction those from their sport when required.

In light of the above, we propose that Article 18.3 in its current form is clarified and point 1 is moved to Part 3 of the Code, and point 2 is moved to the Roles and Responsibilities section, since Codes of Conduct are not necessarily an Education specific topic.

#### Japan Anti-Doping Agency

Akira Kataoka, Senior Manager, Results Management & Intelligence (Japan)  
NADO - NADO

SUBMITTED

1.

- 18.1 Basic Principle and Primary Goal

"....The primary goal of such programs is prevention. The objective shall be to prevent the intentional or unintentional Use by Athletes of Prohibited Substances and Prohibited Methods" - these sentence should be more widely described; these should be related to the preservation and development of values in sport and through sport. Also, "Prevention" provides a misunderstanding particularly for Non-English countries/people and narrow focus, only focusing on "drug-free sport". This is not the ultimate. The goal or outcome should be

mentioned in relation to the "development of real champion or role model" in sport and in society through AD Program.

- 18.1 2nd Paragraph - Rules-based information programme (knowledge-based) and Values-based Education wording should be kept as current, which should be reflected in ISE for the conceptual separation and for better understanding of "Education" - what the ADOs mean on "education".

- 18.2 3rd Paragraph - "Prevention programs shall be primarily directed at..." -- this sentence describes too wide. It would be better to mention on "Values-based Education" should be targeted to young people (\*need to define), what the "stage of development" means, whose responsibilities this is.

- Government's roles and responsibilities for promoting and ensuring the rules-based information and education can be stressed herein (though already mentioned in relation to complying with the UNESCO Convention in Article 22).

- "Education for Media" - from investigations point of view, "investigative media" is playing such an important role. It is true that considering their significance, Media is one of the target groups for Education, which is already mentioned in the 2015Code, it would be ideal to mention the important roles of Media in anti-doping programme and "how to educate" media (possibly in the Guideline?).

- Evaluation, outputs, outcome - it would be preferable to mention the minimum standard and on evaluation.

2.

Regarding the specified wording used in ISE on "Clean Sport Environment/Program", it would be recommendable to use / define in the Code as well. What is "Clean Sport Environment" means and is seeking to achieve? This is because "Principle" and "Fundamental rationale" are closely related to the objectives of what the Code is universally seeking for.

3.

The significance on (developed) NADO x (developing) N/RADO and NADO x IF assistance or cooperation in Education Program can be mentioned.

4.

- Athletes Support Personnel - given the significance of ASP with their influences on Athletes, those ASP/ Entourage indirectly influence or engaged in Athletes development or management could also be mentioned.

- Those definitions left open to NADOs/IFs give some unclarities, different or mis-understanding, such as National/International-Level Athletes, Event.

### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

Regarding the Articles 18, 19 and 20, EADA supports the proposals submitted by the Advisory Group on Education of the Monitoring Group of the Council of Europe.

### **UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

1. Article 18 should be rewritten to reflect the new International Standard for Education and should be structured as follows;

18.1 Principle and Primary goal

18.2 Target Groups and Education Pool

18.3 Education Programme and Plan

18.4 Programme Implementation

18.5 Coordination and Cooperation.

2. A revised and more comprehensive list of topics that shall be covered in an education programme (as relevant to the target group), we propose;

- Principles and values associated with clean sport
- Athletes rights - as they relate to the Charter of Athletes Rights
- Consequences of doping including health, social, psychological effects and the case management process
- Anti-doping rule violations
- The prohibited list, including in- and out-of-competition periods
- Risks with medications and supplements, including health consequences
- TUEs
- Testing procedures, including urine, blood and the biological passports
- Requirements of a registered testing pool, including Whereabouts and use of ADAMS
- International competition (for those attending a major games or international sporting event)
- Speaking up to share concerns about doping
- Importance of anti-doping and its governance, including jurisdiction
- Athletes rights and responsibilities (as they relate to specific anti-doping functions such as testing or case management)

3. The term 'Testing Pool' as used in the International Standard for Education should be renamed an 'Education Pool' to better reflect the athletes and Athlete Support Personnel (who are not tested) who should be included in such a pool for the purposes of education. Athlete support personnel must be included, and referred to, as a key target audience to be educated, with the priority in the first instance being coaches and medical personnel working in sport.

4. Reference should be made to 'trained and authorised/accredited personnel as defined by the ADO' who are able to deliver education, namely an Education Officer.

#### **AFLD (Agence française de lutte contre le dopage)**

Catherine Coley, Director, Communications and prevention (France)

NADO - NADO

SUBMITTED

Regarding the proposed change by the Advisory Group on Education (T-DO Ed) of the Council of Europe: art. 18.5 Coordination and Cooperation:

France's political structure with regard to prevention and education on anti-doping involves many stakeholders who contribute to anti-doping awareness, information and education, coordinated by the Ministry of Sport under a "National Prevention Plan" that covers wide audiences.

Moreover, the Ministry of Sport, as a State Party signatory to the UNESCO Convention, has responsibilities according to article 19 (General Education and training principles) and article 23 (Cooperation in Education and training).

It should be noted that the legal provisions proposed in the World Anti-Doping Code (Code) and the International Standard for Education (ISE) do not prevent the Ministry of Sport from coordinating anti-doping initiatives in the country, and its National Prevention Plan must allow the National Anti-Doping Organization, as a Code signatory, to fulfill its responsibilities relating to anti-doping education as stated in the Code and the ISE.

### **Turkish Anti Doping Commission**

SUBMITTED

Mehmet YOGURTCUOGLU, Deputy General Coordinator / Legal Advisor (Turkey)  
NADO - NADO

Article 18.1: The objective should be amended in a way to cover not only the prevention of the intentional or unintentional use of substances and methods but also all other anti-doping rule violations.

TADC is also of the view that the specific roles and responsibilities of organizations should be added to Article 20 as well as the mandatory compliance with the International Standards for Education. On the other hand, not all organizations have the same level of resources for the implementation of the education programs and therefore ISE and the Code shouldn't set the bar too high and instead focus on identifying the essential requirements.

### **Kamber-Consulting**

SUBMITTED

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

Article 18 and a yet to be drawn "Guideline for Education" is enough, it is no need for an IS Education.

### **International Paralympic Committee**

SUBMITTED

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

All Education materials must be made accessible for relevant athletes with visual impairments.

### **Institute of National Anti-Doping Organisations**

SUBMITTED

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

18.1 para 1 last sentence. Should read "The objective shall be to prevent the intentional or unintentional commission of an anti-doping rule violation by athletes or any other person. While it is understandable that "use" might be seen as a priority the wider objective (including e.g. whereabouts failures, possession) must explicitly be covered.

18.1 para 2 line 1 should read "...basic AND NECESSARY ..."

18.1 para 3 (and elsewhere) "...within their means and scope of responsibility ..." takes on additional significance now a mandatory Standard is involved. Clarity needs to be provided as to what practical significance this has. What relief is available and to whom?

## **Article 19 (8)**

### **Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

The Council of Europe proposes a new subarticle to the Article 19:

### **19.2 Social Science Research**

“Social science research should focus on sport educational practices, athlete education techniques and motives (psychosocial) reasons for doping behaviour.

Research studies to evaluate the reach and impact of education programmes and interventions should also be prioritised, including development of programs for less resourced ADOs to help them meet the requirements of the ISE.

WADA shall support the coordination of social science research, encouraging the research community to submit proposals in collaboration with ADO's. WADA will commit to sharing such research with the anti-doping community.”

#### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### **19.3 Social Science Research**

Social science research should focus on sport educational practices, athlete education techniques and motives (psychosocial) reasons for doping behaviour.

Research studies to evaluate the reach and impact of education programmes and interventions should also be prioritised, including development of programs for less resourced ADOs to help them meet the requirements of the ISE.

WADA shall support the coordination of social science research, encouraging the research community to submit proposals in collaboration with ADO's. WADA will commit to sharing such research with the anti-doping community.

#### **Japan Anti-Doping Agency**

Akira Kataoka, Senior Manager, Results Management & Intelligence (Japan)  
NADO - NADO

SUBMITTED

- The 'evidence-based program' and 'evaluation/monitoring' have been highlighted over the years particularly after the 2015Code is adopted. It would be better to mention here what does 'evidence-based program' mean and its significance.

- The system for public sharing of the research findings should be made for practical use (currently clearinghouse or coordination of research through WADA is not necessarily been achieved). Hence, more clarified phrases like "WADA shall lead to publicize widely the collected anti-doping research as easiest and accessible way as possible."

#### **AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

**Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we are proposing that WADA should continue being a Code Signatory and an Anti-Doping Organization.**

**The wording should be as follows:** All *Signatories including WADA* shall, in cooperation with each other and governments, encourage and promote such research and take all reasonable measures to ensure that the results of such research are used for the promotion of the goals that are consistent with the principles of the *Code*

**UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

A new article 19.2 should be included that makes reference to social science research.

**Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

Regarding the Articles 18, 19 and 20, EADA supports the proposals submitted by the Advisory Group on Education of the Monitoring Group of the Council of Europe.

**Anti Doping Denmark**

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

**19.2 Social Science Research**

Proposed text:

Social science research should focus on sport educational practices, athlete education techniques and motives (psychosocial) reasons for doping behaviour.

Research studies to evaluate the reach and impact of education programmes and interventions should also be prioritised, including development of programs for less resourced ADOs to help them meet the requirements of the ISE.

WADA shall support the coordination of social science research, encouraging the research community to submit proposals in collaboration with ADO's. WADA will commit to sharing such research with the anti-doping community.

**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

19.1 second sentence suggest:"All signatories shall, in cooperation with each other, Governments, and other relevant bodies ..."This would incorporate e.g. Universities.

**Article 20 (24)****International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

The ICC supports the clarification of stakeholder's responsibilities for the purposes of Code compliance.

**Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby note the delegation of any aspects of doping control does not absolve any responsibility in terms of compliance of the delegating ADO. Independent Service Providers are not Signatories to the Code and therefore are not bound by any Compliance requirements, but we believe some aspects of their operations should be addressed in the ISTI (if not the Code) for example around mandatory accreditation and training of sample collection staff.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Preamble**

WADA has proposed the following amendment to the preamble of Article 20:

*“Each Anti-Doping Organization may delegate aspects of Doping Control for which it is responsible but remains fully responsible for ensuring that any delegated aspect is performed in compliance with the Code. To the extent such delegation is made to a service provider that is not a Signatory, the agreement with the service provider should require its compliance with applicable Code provisions and Technical Documents.”*

Considering the recently adopted “International Standard for Code Compliance by Signatories”, NIF welcomes a clarification of roles and responsibilities for the delegating organ and the subsidiary organ. However, more guidance would be appreciated as delegation differs, as some or all aspects of the Doping Control may be delegated. For example, some delegate the responsibility for developing test planning requirements and conducting the testing in accordance with these requirements, with the overall responsibility for the anti-doping program remaining with the ADO, while some delegate more, as is the situation in Norway where NIF has delegated the conducting of testing and the management of test results prior to the hearing, to the foundation Anti-Doping Norway. Such guidance should be accompanied with model agreements that regulates the roles and responsibilities between the two parties and clarifies the mandate of the subsidiary organ, thus reducing the risk of non-compliance for the delegating organ.

**Article 20.5 Roles and Responsibilities of National Anti-Doping Organizations**

Please confer the definition of “National Anti-Doping Organization”. For the sake of good order, it is repeated below:

***“National Anti-Doping Organisations (“NADO”)***

*We concur with stakeholders that have asked for a clarification of the requirement of independence found in Article 20.5. In addition to this clarification, we propose a rewording of the definition of a NADO. NADOs are set up and funded quite differently. Some are public some are private. Some base their authority on national legislation, some on sports rules. Some have been designated the authority by their NOC, some by public authorities.*

*Furthermore, result management is more than management of test results.*

*Considering the tasks of a NADO and the legal nature of a NOC, if the NOC or one of its designee is not the NADO in a specific country, the only alternative, as we see it, is that the NADO is established in accordance with national legislation. To our knowledge the latter is by far most common, and this should be reflected in the definition.*

*Hence, we propose the following new wording of the definition:*

*“National Anti-Doping Organization: The entity established in accordance with national legislation as possessing the primary authority and responsibility to adopt and implement the Code and the International*

*Standards, and for the Doping Control in a specific country, or the country's National Olympic Committee or its designee."*

## Article 20.7 Roles and Responsibilities of WADA

### WADA's structure

Stakeholders have suggested changes affecting the organizational structure of WADA. Acknowledging the importance of good governance, we ask WADA to provide stakeholders with the opportunity to submit proposals in a separate open WADA Statutes review process.

### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**Article 20.7.6:** Among the Roles and Responsibilities of WADA, Article 20.7.6 discusses WADA's connection with the International Standard for Education. It should be clarified 1) whether WADA is responsible for anti-doping research and the formulation of relevant educational programs and the anti-doping organizations are responsible for specific anti-doping education and training for athletes or 2) whether WADA also has the obligation to organize specific anti-doping education activities. It is recommended to include the entry of "anti-doping education" in the Definition in Appendix I. In addition, WADA's responsibilities and obligations can be increased moderately since it has less responsibilities and obligations compared with those of other signatories, athletes, and athlete support personnel.

### EU and its Member States

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

SUBMITTED

### Good governance

Acknowledging that discussions on the reform of the governance of WADA are ongoing, the EU and its Member States would like to recall that good governance is a necessary process and fundamental component to ensure public confidence in the contribution of the anti-doping system to the integrity of sport.

All actors in the anti-doping system, including WADA itself, should implement the basic principles of good governance, such as accountability, transparency, democracy and participation (Article 20 of the Code). In order to fully protect the rights of clean athletes, WADA's and Signatories' and governments' governance structures must be free from any conflicts of interests.

Recalling that WADA should be the sole regulator of the anti-doping system, the EU and its Member States invite WADA to consider how its compliance with the Code, as well as compliance by the IOC, could be evaluated and monitored, by an independent monitoring body.

### Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

Australia suggests the proposed amendments that subject employees to the Code are better dealt with through employment law rather than the Code.

In light of the International Standard for Education, Australia suggests that Article 20.5 be amended to reflect that NADOs don't just promote education, but also deliver it.



**Ministry of Culture**

Nevena Toft, Special Advisor (Denmark)  
Public Authorities - Government

SUBMITTED  
SUBMITTED BY WADA

**Comment to WADC article 20.3.2, 20.3.7, 20.4.2 and 20.4.4:**

We suggest including a reference to the membership of the international and the national federations in article 20.3.2, 20.3.7, 20.4.2 and 20.4.4, and thereby require the members of the national federations to ensure compliance of their anti-doping policies and rules with the WADC, and to report any information concerning ADRV to the appropriate organisations.

20.3.2. To require as a condition of membership that National Federations and their membership's policies, rules and programs are in compliance with the applicable provisions of the Code, and to take appropriate action to enforce that condition.

20.3.7. To require National Federations and their membership to report any information suggesting or relating to an anti-doping rule violation to their National Anti-Doping Organization and International Federation and to cooperate with investigations conducted by any Anti-Doping Organization with authority to conduct the investigation.

20.4.2. To require as a condition of membership or recognition that National Federations and their membership's anti-doping policies and rules are in compliance with the applicable provisions of the Code, and to take appropriate action to enforce that condition.

20.4.4. To require National Federations and their membership to report any information suggesting or relating to an anti-doping rule violation to their National Anti-Doping Organization and International Federation and to cooperate with investigations conducted by any Anti-Doping Organization with authority to conduct the investigation.

**Comment to WADC article 20.1.6, 20.3.3 and 20.4.7**

Following the comments in our submission in the 1st phase of the WADC review process regarding an increased focus on intermediaries in sport, we find it sensible to include "*agents and other intermediaries*" in the listing of the clientele that sports organizations must ensure is governed by the applicable rules due to this clientele's participation or involvement in the sports competitions of the sport organization in question.

By doing so, for instance, a sports governing body conducting a mega event must ensure – and thus, as a positive consequence, have a direct legal basis for requiring – that agents representing and negotiating on behalf of certain athletes, e.g. long-distance runners entering major road races, have accepted to be bound by the anti-doping rules.

Including "*agents and other intermediaries*" in articles 20.1.6, 20.3.3 and 20.4.7 will provide sports organizations a needed tool for requiring intermediaries, in whatever capacity and legal structure, to accept being governed by WADC compliant anti-doping rules as a prerequisite for e.g. being recognized as a formal representative of an athlete or a club in connection to the sport competitions.

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 20**

It should be clearly regulated in the Code that all Anti-Doping Organisations responsible for intelligence, investigation, testing and prosecution must be independent from the sport organisations and other stakeholders, ensuring that the ADO cannot be instructed in their operational decisions and activities.

To ensure the adequate independence with no conflict of interest, it should thus be clearly expressed that a National Olympic Committee cannot be a National Anti-Doping Organization and vice versa.

All ADOs Board Members and Staff should adhere to a strict conflict of interest policy ensuring no involvement in the management of MEOs, IFs, National federations, NOCs or clubs competing at top level.

## Article 20 - New Signatories

WADA needs to clarify that it has been inaccurate to list WADA as a signatory in Art 23.1.1 WADC. This is now clarified by the deletion.

Furthermore, WADA must emphasize which administrative obligations and compliance requirements WADA defines for itself and its bodies. What are the consequences of a non-compliance by WADA?

It is proposed to use DIN EN 9001 or comparable standard standards as a basis and to bind WADA to this.

The standards must then apply to both the WADA Management and supervisory and executive boards (Executive Board and Foundation Board).

Likewise, the WADC must apply to WADA to the same extent as to the signatories. The ISCCS is not sufficient. The WADC needs to regulate which restrictions and auditing rules apply to WADA (such as error management, data protection, etc.).

No further comments, unless they are listed and specified in the "General Comments" section to this article.

## 20 Independent Anti-Doping Service Providers

The status of anti-doping service providers must be clarified in the WADC. There is the definition of "Anti-Doping Organization" and the term "Service Provider". Both are provided with a corresponding definition.

WADA must define whether the ITA is considered as an anti-doping organization or a service provider (such as PWC, IDTM, GQS, etc.). This classification is relevant to the legal relationships of NADOs and IFs / NFs with the ITA. A reference to the fundamental responsibility of the ADOs / IFs, even if they "outsource" parts of the doping control process, is not enough. It is about a general and landmark decision of WADA.

We note that the Introduction to the redline version of the Code emphasizes that ADOs remain responsible for all aspects of Doping Control, and therefore for the conduct of sample collection authorities.

We would prefer sample collection authorities to be directly subject to the Code. We propose that the Code should require sample collection authorities at major events to be bound by the Code. At present, the Independent Testing Authority and the commercial sample collection agencies are neither Code signatories nor are they bound by the Code, so there is no mechanism to ensure that their processes comply with the Code and the Standards, whereas ADOs are required to comply with both. This means that their processes can be sub-standard and non-compliant but WADA would not be able to issue a sanction of any kind or declare them non-compliant. It also means that athletes will have less confidence in their processes. To make this change it would be necessary to define "major events" but we envisage that this would include all large-scale international events where an ADO would not automatically have jurisdiction over the participating athletes.

### 20.1 Roles and Responsibilities of the International Olympic Committee

*Proposed revision of current 20.1.10 and adding 2 new subarticles:*

"20.1.10 To require participating countries/NOC to conduct anti-doping education programs in collaboration with the NADO, prior to the Olympic Games, which must as a minimum inform athletes of the anti-doping rules and changes in jurisdiction for the Games at which they intend to participate.

20.1.10' To actively encourage NOCs to ensure that Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Olympic Games they aim to attend.

20.1.10" To require NOC to have an anti-doping point of contact to support effective collaboration between NADO, National Federations and Governments.

*[Comment to Article 20.1 – The IOC should ensure that NADOs of participating countries where the NADO is not part of the NOC, receive the anti-doping rules for the Olympic Games in a timely manner.]”*

#### **Art.20.1.13**

This paragraph should be deleted, in accordance with the rationale for paragraph 2.11.1.

### **20.2 Roles and Responsibilities of the International Paralympic Committee**

*Proposed revision of current 20.1.9 and adding 2 new subarticles:*

“20.2.9 To require participating countries/NPC to conduct anti-doping education programs in collaboration with the NADO, prior to the Paralympic Games, which must as a minimum inform athletes of the anti-doping rules and changes in jurisdiction for the Games at which they intend to participate.

20.2.9’ To actively encourage NPCs to ensure that Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Paralympic Games they aim to attend.

20.2.9” To require NPC to have an anti-doping point of contact to support effective collaboration between NADO, National Federations and Governments.

*[Comment – The IPC should ensure that NADOs of participating countries where the NADO is not part of the NPC, receive the anti-doping rules for the Paralympic Games in a timely manner.]”*

#### **Art. 20.3.11**

We believe it expedient to return to the previous formulation of this Article in the Code:

To do everything possible to award World Championships only to countries where the government has ratified, accepted, approved or acceded to the UNESCO Convention and the National Olympic Committee, National Paralympic Committee and National Anti-Doping Organization are in compliance with the Code.

### **20.3 Roles and Responsibilities of the International Federations**

*Proposed revision of current 20.3.13 and adding 3 new subarticles:*

20.3.13 To ensure that any anti-doping programs associated with international events they sanction consist of both education and testing. International federations should focus on event-based education, particularly at junior international competitions and consider working in partnership with the host countries NADO or RADO to implement.

20.3.13’ To ensure an appropriate information and education program is in place for any athlete joining an international-registered testing pool.

20.3.13” To require National Federations to conduct education programs for athletes and ASP (in priority order as outlined in the ISE) in collaboration with the applicable NADO/RADO, and to ensure they provide access to athletes for the purposes of education as well as testing.

20.3.13”” To require National Federations to have an anti-doping point of contact to support effective collaboration between NADO/RADO, National Federations and Governments.

### **20.4 Roles and Responsibilities of National Olympic Committees and National Paralympic Committees**

*Proposed revision of current 20.4.12 and adding a new subarticle:*

“20.4.12 To actively support education.

20.4.12 To require National Federations to conduct education programs for athletes and ASP (in priority order as outlined in the ISE) in collaboration with the applicable NADO/RADO, and to ensure they provide access to athletes for the purposes of education as well as testing.”

## 20.5 Roles and Responsibilities of National Anti-Doping Organizations

It is proposed, in case of justified grounds, to provide NADOs with the right to investigate third-party involvement in anti-doping rule violation at its own discretion and with consent from WADA and the International Sports Organizations, solely within the authority with which it is endowed.

### Art. 20.5.7 (in French)

Dans le but de préserver l'indépendance et l'équité des audiences et, plus largement, le principe de la séparation des pouvoirs, il est proposé d'insérer, à la fin de l'article 20.5.7 du Code (relatif aux responsabilités des ONADs), les mots " mettre tout en œuvre pour veiller à " entre les mots "dans chaque cas de dopage et " et les mots " s'assurer de l'application correcte des conséquences.

Cette proposition a pour but d'éviter qu'une ONAD - dont une des missions principales est d'effectuer des contrôles - ne puisse être tenue responsable d'une éventuelle décision disciplinaire non conforme au Code qui aurait été rendue, en degré d'appel, par une instance d'audition tout à fait autonome et indépendante de cette ONAD. Surtout, que l'ONAD ne puisse pas être tenue responsable dès lors qu'elle a interjeté appel d'une première décision, rendue en première instance, que l'ONAD estimait non conforme au Code et ce, précisément dans le but de tendre à l'application la plus correcte possible des conséquences.

Il s'agit donc de préciser que la dernière responsabilité de l'ONAD, visée à l'article 20.5.7 du Code, consiste bien en une obligation de moyens et non de résultat, contrairement à ce que semble suggérer actuellement cet article.

L'article 20.5.7 du Code serait alors rédigé comme suit :

20.5.7 Poursuivre vigoureusement toutes les violations potentielles des règles antidopage relevant de leur compétence, y compris enquêter sur l'implication potentielle du personnel d'encadrement du sportif ou d'autres personnes dans chaque cas de dopage et mettre tout en œuvre pour veiller à s'assurer de l'application correcte des conséquences."

*Proposed revision of current 20.5.9 and adding a new subarticle:*

20.5.9 To coordinate the education plan for their country, working in collaboration with National Federations, NOC, NPC, Governments and wider professional associations and to cooperate with International Federations, IOC/IPC and MEOs in the implementation of education programmes for International-level athletes during international sport events.

20.5.9' To ensure an appropriate information and education program is in place for any athlete joining a national-registered testing pool.

## 20.6 Roles and Responsibilities of Major Event Organizations

It should be compulsory for Major Event Organisers to put an education programme in place for all events. The requirement at Article 20.6.8 is just "To promote anti-doping education."

WADA should consider adding in Management of their International Co-Operation programme as one of their responsibilities.

The International Anti-Doping Arrangement (IADA) developed a Policy in 2016. The Policy focus on securing the principles of separation of powers in anti-doping and the establishment of the entire anti-doping structure, including responsibilities relating to development of rules, the establishment of one independent national anti-doping organisation in each country and the establishment of independent hearing and appeal panels. The principles in the IADA Policy – in general – should be reflected in the Code.

The Code identify that all ADOs maintain and promote the principle of good governance respecting accountability, the human rights and transparency, and vigorously pursue that their organisational structure is free from corruption.

*Proposed revision of current 20.6.8:*

20.6.8 To ensure that any anti-doping programs associated with international events they authorize consists of both education and testing. Major Event Organisations should focus on event-based education consider working in partnership with the host countries NADO or RADO to implement.

## 20.7 Roles and Responsibilities of WADA

*Proposed revision of current 20.7.6:*

20.7.6 To promote, commission, fund and coordinate anti-doping research and to activate education through the development and promotion of anti-doping tools, resources and programs, for ADOs, especially NADOs as national coordinators of the anti-doping education plan

## 21 Additional Roles and Responsibilities of Athletes and Other Persons

### 21.3 Roles and Responsibilities of Regional Anti-Doping Organizations

*Proposed revision of current 21.3.6 and adding a new subarticle:*

21.3.6 To coordinate the education plan for their country or for RADO's their Region, working in collaboration with National Federations, NOC, NPC, Governments and wider professional associations.

21.3.6' To ensure an appropriate information and education program is in place for any athlete joining a national-registered testing pool.

### Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 20.** The first sentence is poorly phrased and should be reworded.

The Article says that the service provider should be required to comply with the applicable Code Provisions and Technical Documents. This should presumably also refer to International Standards.

Article 20 sets out the roles and responsibilities of the IOC, IPC, IFs, NOCs and NPCs, NADOs and Major Event Organisations, including:

"To require all its directors, officers and employees who are involved in any aspect of Doping Control, to agree to and be bound by anti-doping rules in conformity with the Code as a condition of such position or involvement."

Clearly, there is no reason why this should also not apply to WADA.

### Organizacion Nacional Antidopaje de Uruguay

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

SUBMITTED

In agreement with the hole responsibility of the Officials

### NADA

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

Art. 20 Responsibilities of Officials

Revision of the original addressed audience/target group of the WADC

Comment: Besides the "individual athlete", the athlete support personnel and any "conspirative, systematic interaction" should be more highlighted and ranked on the same level of regulation. At present, only few articles

show elements of a violation relating to athlete support personnel (Art. 2.8-2.10). Currently, various problems occur

Clear definition and bounding of athletes support personnel to the WADC (NADC)

Example: An athlete receives doping substances from the parents (or family doctor). The athlete can proof in the

proceedings that he bears no fault or negligence in the violation. His sanction is (significantly) reduced. The parents

(or the family doctor without a specific reference to competitive sports) are currently not subject to sports law in

Germany.

Comment: The definition of athlete support personnel could be graded. "Level 1" = coaches and persons with a

close (sports related) relationship to athlete; "Level 2" = doctors, physiotherapists, etc.; "Level 3" = officials; "Level

4" = parents, siblings, etc. For the individual levels different, maybe staggered demands on the elements of the

violation and the sanctions framework could be attached.

Extending the strict liability principle to include possible doping violations by athlete support personnel and systemic doping by ADOs, NOCs or other stakeholders.

## EDUCATION

**20.1.10 To actively encourage NOCs to ensure that Athlete's and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Olympic Games they aim to attend.**

*[Comment to Article 20.1 – The IOC should ensure that NADOs of participating countries where the NADO is not part of the NOC, receive the anti-doping rules for the Olympic Games in a timely manner.]*

**20.2.9 To actively encourage NPCs to ensure that Athlete's and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Paralympic Games they aim to attend.**

*[Comment – The IPC should ensure that NADOs of participating countries where the NADO is not part of the NPC, receive the anti-doping rules for the Paralympic Games in a timely manner.]*

20.3.13 To require National Federations to conduct education programs for athletes and ASP in collaboration with the applicable NADO/RADO and to ensure that any anti-doping programs associated with international events they sanction consist of both education and testing. International federations should focus on event-based education.

20.4.12 To actively support education and to require National Federations to conduct education programs for athletes and ASP in collaboration with the applicable NADO/RADO.

20.5.9 To ensure an appropriate information and education program as described in the ISE is in place for any athlete joining a national-registered testing pool.

20.6.7 To ensure that any anti-doping programs associated with international events they sanction consist of both education and testing. Major Event Organisations should focus on event-based education consider working in partnership with the host countries NADO or RADO to implement.

20.7.6 To promote, conduct, commission, fund and coordinate anti-doping research and to activate education through the development and promotion of anti-doping tools, resources and programs.

21.3.6 To develop and coordinate an information and education program for their regions, working in collaboration with National Federations, NOC, NPC, Governments and wider professional associations.

### **Anti Doping Denmark**

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

Articles 20, 23.1 - Independent Service Providers:

We appreciate that in the draft, WADA is addressing the role of the independent anti-doping service providers. However, ADD does not find that WADA's proposal is enough to solve the challenges.

The independent anti-doping service providers such as ITA, PWC, and IDTM play an important role in anti-doping and they are here to stay.

It may be that WADA can not differ from the fundamental principle that "the delegating Anti-Doping Organization shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the Code", as stated in the introduction to Part One and in article 20.

However, more should be done by WADA to ensure that these companies are bound by and are acting in accordance with the Code, if the ADO that hires such service providers is to be held solely responsible for the actions of the service providers in terms of Code compliance, following WADA International Standards, etc.

When entering into an agreement with an accredited service provider an ADO should expect the same high level of Code compliance as with a WADA-accredited laboratory.

We therefore repeat our proposal of a system of accreditation by WADA for such service providers along the same lines as WADA's accreditation of laboratories.

As for the question of education, we refer to the comments about article 20 and 21 made in the commentary to the International Standard for Education.

### **Anti-Doping Norway**

SUBMITTED

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

#### ***Independence and no conflict of interest***

Anti-Doping Norway believe it should be clearly regulated in the Code that all Anti-Doping Organisations responsible for intelligence, investigation, testing and prosecution must be independent from the sport organisations and other stakeholders, ensuring that the ADO cannot be instructed in their operational decisions and activities.

To ensure the adequate independence with no conflict of interest, it should thus be clearly expressed that a National Olympic Committee cannot be a National Anti-Doping Organization and vice versa.

All ADOs Board Members and Staff should adhere to a strict conflict of interest policy ensuring no involvement in the management of MEOs, IFs, National federations, NOCs or clubs competing at top level.

#### ***Good governance***

The International Anti-Doping Arrangement (IADA) developed a Policy in 2016, attached in the previous hearing. The Policy focus on securing the principles of separation of powers in anti-doping and the establishment of the entire anti-doping structure, including responsibilities relating to development of rules, the establishment of one independent national anti-doping organisation in each country and the establishment of independent hearing and appeal panels. Anti-Doping Norway recommend that the principles in the IADA Policy be reflected in the Code.

Anti-Doping Norway also recommend that the Code identify that all ADOs maintain and promote the principle of good governance respecting accountability, the human rights and transparency, and vigorously pursue that their organisational structure is free from corruption.

#### ***Education***

Anti-Doping Norway encourage WADA to strengthen the responsibilities and requirements relating to Education and Information. The Anti-Doping organisations should thus be responsible for not just to "promote" education but to ensure that all athletes within their jurisdiction is offered education containing the requirements as identified in the ISE.

### **NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

NADA Austria does not agree with the new proposal that ADOs may delegate aspects of doping control since we are of the opinion that conducting doping controls is a very important task which should be carried out with utmost care and professionalism. In recent years we had a number of complaints of from Austrian athletes on doping controls conducted by service providers. Conducting doping controls should not be a field of business.

In addition, NADA Austria is of the opinion that doping controls shall only be conducted by independent ADOs. To avoid a potential conflict of interests, National and International Federations, Olympic and Paralympic Committees, Sport Organisations and MEO shall not be responsible for any part of doping control, results management and anti-doping proceedings.

However, if WADA decides to keep this provision, it is not comprehensible why this should only apply to doping control and not also for education?



From an Education point of view, it is not enough to “promote” education, it has to be “delivered”. There need to be clear responsibilities who is responsible for what (NADOs, RADOs, IFs, MEO, governments). Right now everyone (=nobody) is responsible.

#### Article 20.1 Roles and Responsibilities of the International Olympic Committee

We propose the following Draft text:

"20.1.9 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18.

20.1.10 To actively encourage NOCs to ensure that Athletes and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Olympic Games they aim to attend."

#### Article 20.2 Roles and Responsibilities of the International Paralympic Committee

We propose the following Draft text:

"20.2.9 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18.

20.2.10 To actively encourage NPCs to ensure that Athletes and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Olympic Games they aim to attend."

#### Article 20.3 Roles and Responsibilities of International Federations

We propose the following Draft text:

"20.3.12 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18.

20.3.13 To require National Federations to develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18."

#### Article 20.4 Roles and Responsibilities of National Olympic Committees and National Paralympic Committees

We propose the following Draft text:

"20.4.11 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18.

20.4.12 To require National Federations to develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18."

#### Article 20.5 Roles and Responsibilities of National Anti-Doping Organizations

We propose the following Draft text:

"20.5.8 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18."

#### Article 20.6 Roles and Responsibilities of Major Event Organizations

We propose the following Draft text:

"20.6.7 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18."

#### Article 20.7 Roles and Responsibilities of WADA

We propose the following Draft text:

"20.7.6 To promote, conduct, commission, fund and coordinate anti-doping research and to support education through the development and promotion of anti-doping tools, resources and programs."

1.

#### Article 21.1 Roles and Responsibilities of Athletes

We propose the following Draft text:

"20.1.2 to actively participate and engage in Information and Education Programs of a Signatory"

2.

#### Article 21.2 Roles and Responsibilities of Athlete Support Personnel Athletes

We propose the following Draft text:

"20.2.2 to actively participate and engage in Information and Education Programs of a Signatory"

3.

#### Article 21.3 Roles and Responsibilities of Regional Anti-Doping Organizations

We propose the following Draft text:

"20.3.6 To develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18.

20.3.7 To require member countries to develop and implement an effective, intelligent and proportionate Education Plan in accordance with Article 18."

### UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**Introduction and Article 20** - Directors, officers and employees of Signatories (and International Federations and member organizations etc) being subject anti-doping rules. UKAD sees some value in ADO staff being subject to suspensions from involvement in sport where they have committed an ADRV, and to that extent it supports this proposal. However, we do seek clarity about how it is envisaged this will work – in particular, confirmation that the relevant people are only directly covered by Articles 2.5, 2.7, 2.8 and 2.11, and that the primary purpose of this provision is to make them subject to 2.9 (complicity).

If this provision is adopted, we suggest that it be widened to ensure that it covers people performing tasks for ADOs on a less formal basis than directors, officers and employees, for example contractors.

**20.6** - It should be compulsory for Major Event Organisers to put an education programme in place for all events. The current requirement at Article 20.6.8 is just "To promote anti-doping education."

**20.7** - We propose that WADA should add in management of their International Co-Operation programme as one of their responsibilities.

**20 & 21** - Roles and responsibilities of signatories as they relate to education need to be realigned to reduce duplication of effort and maximise the reach of the education programme. At the international level, event-based education should be a mandatory component of any major event where testing is implemented, and this should be the primary focus for international organisations. At national level country specific education programmes should be coordinated by the NADO/ADO for that country working in collaboration with national sports federations.

### Anti-Doping Authority Netherlands

SUBMITTED

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Delegation of Doping Control Functions (Introduction to Part 1 & Article 20)

· We have noted the clarification that anti-doping organizations remain fully responsible for ensuring that any delegated aspects of doping control are performed in compliance with the Code. However, the Code makes WADA responsible for monitoring and enforcing compliance by Signatories with the Code and the International Standards. WADA's Compliance Monitoring Program, with the new International Standard for Code Compliance by Signatories, is considered crucial to ensure that strong Code-compliant, anti-doping rules and programs are applied and enforced consistently and effectively across all sports and all countries. Notably, one of the strengths of WADA's Compliance Monitoring Program is the audits of Signatories that WADA can conduct. It is not clear how Code compliance of such delegated aspects can be monitored and enforced by WADA at the same level as for Code Signatories. In our view, it is not sufficient to leave this duty of compliance monitoring solely to the ADOs. This should be clarified in the text.

### AEPSAD

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)  
NADO - NADO

**Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we are proposing that WADA should continue being a Code Signatory and an Anti-Doping Organization.**

**So the proposed text is as follows: ARTICLE 20 ADDITIONAL ROLES AND RESPONSIBILITIES OF SIGNATORIES**

**AEPSAD agrees with the content of this Point 20.7**

**In this point it is very clear that WADA is an Anti-Doping Organization and it must be a Code Signatory.**

**But as we think it is very important to have a new ARTICLE 23 THE WORLD ANTI-DOPING AGENCY, we think the contents of 20.7 must go to 23.3 Roles and Responsibilities' of WADA.**

**We consider that the following comment: 89 [Drafting Note to Article 20.7: A number of stakeholders offered comments on whether or how WADA's fulfillment of its Code responsibilities should be monitored and whether the Code should specify good governance principles applicable to WADA. These comments have been forwarded to the Working Group on WADA Governance. These issues will be addressed, if at all, following receipt of feedback from that group.], should be removed:**

**WE CONSIDER THAT WADA AS CODE COMPLIANT IS A DIFFERENT THING THAN WADA WITH A GOOD GOVERNANCE MONITORING.**

**AEPSAD CONSIDERS THIS IS A VERY IMPORTANT ISSUE, AS WADA COMPLIANCE AND GOVERNANCE IS NOT GOING TO BE LET TO A WORKING GROUP AND NEEDS TO BE ADDRESSED BY ALL THE ANTIDOPING COMMUNITY IN A VERY CLEAR AND TRANSPARENT WAY. THESE**

**POINTS WILL BE DIFFICULT TO ADDRESS BY STAKEHOLDERS IF IN THIS MOMENT WE DO NOT HAVE ANY DRAFT REGARDING THIS ISSUE.**

**WE PROPOSE THIS NEW ARTICLE 23 THE WORLD ANTI-DOPING AGENCY WITH POINTS:**

**23.4 Governance of the World Anti-Doping Agency**

**23.5 Compliance of the World Anti-Doping Agency with the Code.**

**CITA**

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

SUBMITTED

Delegation of Doping Control Functions by Anti-Doping Organizations

CITA also considers anti-doping organizations are responsible for all aspects of doping control, even if they may delegate any of those aspects, but they remain fully responsible for the performance of those aspects in compliance with the Code. This is also confirmed by many of the CAS rulings in that respect where a strict responsibility of the anti-doping organizations to uphold the binding procedures set forth in the international standard for testing and investigation which strikes an appropriate balance between the strict obligations of the athletes and their rights to have their samples collected and tested in accordance with mandatory testing standards. CITA agrees that anti-doping organizations responsibility which may not be avoided by delegating any of those aspects on third parties.

**Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

Regarding the Articles 18, 19 and 20, EADA supports the proposals submitted by the Advisory Group on Education of the Monitoring Group of the Council of Europe.

**Turkish Anti Doping Commission**

Mehmet YOGURTCUOGLU, Deputy General Coordinator / Legal Advisor (Turkey)  
NADO - NADO

SUBMITTED

ADOs buying services from independent service providers such as ITA, IDTM, PwC and such shouldn't be held responsible for their mistakes or non-compliance with the rules. Some sort of monitoring mechanism is highly needed in this area whether with accreditation or by giving them a Signatory status like other ADOs.

**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

En concertation avec nos autres collègues belges responsables en matière d'antidopage, nous proposons de modifier l'article 20.5.7 du Code, qui porte sur les rôles et responsabilités des ONADs (et qui est aussi en lien avec la question de l'indépendance des instances d'audition).

Dans le but de préserver l'indépendance et l'équité des instances d'audition et, plus largement, le principe de la séparation des pouvoirs, il est proposé d'insérer, à la fin de l'article 20.5.7 du Code (relatif aux responsabilités des ONADs), les mots " mettre tout en œuvre pour veiller à " entre les mots "dans chaque cas de dopage et " et les mots " s'assurer de l'application correcte des conséquences."

Cette proposition a pour but d'éviter qu'une ONAD - dont une des missions principales est d'effectuer des contrôles - ne puisse être tenue responsable d'une éventuelle décision disciplinaire non conforme au Code qui aurait été rendue, en degré d'appel, par une instance d'audition tout à fait autonome et indépendante de cette ONAD. Surtout, que l'ONAD ne puisse pas être tenue responsable dès lors qu'elle a interjeté appel d'une première décision, rendue en première instance, que l'ONAD estimait non conforme au Code et ce, précisément dans le but de tendre à l'application la plus correcte possible des conséquences.

Il s'agit donc de préciser que la dernière responsabilité de l'ONAD, visée à l'article 20.5.7 du Code, consiste bien en une obligation de moyens et non de résultat, contrairement à ce que semble suggérer actuellement cet article.

L'article 20.5.7 du Code serait alors rédigé comme suit :

"20.5.7

Poursuivre vigoureusement toutes les violations potentielles des règles antidopage relevant de leur compétence, y compris enquêter sur l'implication potentielle du personnel d'encadrement du sportif ou d'autres personnes dans chaque cas de dopage et mettre tout en œuvre pour veiller à s'assurer de l'application correcte des conséquences."

### International Testing Agency

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Consider the following alternative option below as opposed to proposed Art. 20 (new additions in bold):

23.2 Implementation of the Code

(...)

**23.2.2. Any aspect of Doping Control may be delegated to a third party. However, the delegating Anti-Doping Organization shall remain fully responsible for ensuring that any delegated aspect is performed in compliance with the Code. To the extent such delegation is made to a third party that is not a Signatory, the agreement with such third party should require its compliance with applicable provisions of the Code (including applicable International Standards and Technical Documents).**

23.5 Monitoring and Enforcing Compliance with the Code

(...)

23.5.4 In cases of non-conformity (whether with reporting obligations or otherwise), WADA shall follow the corrective procedures set out in the International Standard for Code Compliance by Signatories. If the Signatory, **or the delegated third party acting on behalf of a Signatory**, fails to correct the non-conformity within the specified timeframe, then (following approval of such course by WADA's Executive Committee) WADA shall send a formal notice to the Signatory, asserting that the Signatory is non-compliant, specifying the consequences that WADA proposes should apply for such non-compliance, and specifying the conditions that WADA proposes the Signatory should have to satisfy in order to be reinstated to the list of Code-compliant Signatories. That notice will be publicly reported in accordance with the International Standard for Code Compliance by Signatories.

### International Paralympic Committee

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

The issue of compliance jurisdiction needs to be made more clear. WADA should be monitoring compliance of NPCs, as they are a signatories. IPC cannot manage the compliance of hundreds of NPCs and NFs (IPC is also an IF for multiple sports as well).

**Article 22 (10)****World DanceSport Federation**

Ineke Crijns, Chair anti-doping commission (Nederland)  
Sport - IF – Other

SUBMITTED

I am very please with the amendment of art 22.2, because we had difficulties of getting samples out of China.  
In case not all governments agree to the code, is it possible to have list of countries available which are on some sort of black list?

**World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby support this addition with respect to Signatories' expectation of Governments

**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

There should be a formal obligation on the part of all ADOs to report such circumstances to WADA (with failure to do so amounting to an ADRV) and for the WADA Compliance Review Committee to be able to decide whether or not an ADRV has occurred in the circumstances. The present state of affairs is unsatisfactory and encourages scofflaws.

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

**1. To strengthen governments' support for investigation**

The importance of investigation in anti-doping work is increasing, but for many anti-doping organizations, investigation still lacks legal basis and effective means. Therefore, it is proposed that in the Code Article 22 (Involvement of Governments) it should be clearly stated that governments provide legal and policy support and substantial assistance to anti-doping organizations in the process of investigation, especially for such serious violations as illegal manufacturing and trafficking doping, organizing, coercing, deceiving and abetting athletes to use doping, provide intelligence information and judicial assistance, cooperate with anti-doping organizations to carry out follow-up investigation, investigate criminal liability according to applicable laws when necessary and increase deterrence and sanctions on serious violations.

**2. Article 6.7** states that "WADA may, in its sole discretion at any time, with or without prior notice, take physical possession of any Sample stored by a Laboratory or Anti-Doping Organization" and **Article 22.2** provides that each government should not restrict transport of urine and blood Samples. However, it should be noted that athletes' samples including blood, urine and other genetic contents concerns about major national interests such as national genetic safety and biosafety. Therefore, many countries have strict restrictions or prohibitions on the entry and exit of blood samples. This Article may conflict with the laws of many countries and may involve disputes with the customs and law enforcement agencies of those countries during implementation. Therefore, it is recommended to delete it.

**Norwegian Ministry of Culture**

Eva Cathinka Bruusgaard, Senior adviser (Norway)  
Public Authorities - Government

SUBMITTED

**Art. 22 INVOLVEMENT OF GOVERNMENTS**

The Norwegian Ministry of Culture question the new article 22.3;

" Each government will require that all government officials or employees directly involved in the governance or operations of a sport subject to the Code agree to be bound by the Code as a condition of such involvement."

If article 22.3 is meant to be understood as to cover government officials or employees with responsibility for the governments overall sports policy in general, but without direct authority of each specific national sports federation, we cannot find that this is a requirement that is legitimate to codify.

### Secretaria de Estado da Juventude e Desporto

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

Transport and analysis of samples (blood and urine), depending on the cost of the services might be subject the specific European Union Regulations that the country cannot circumvent. Maybe a better formulation identifying what are the concrete obstacles that Governments need to remove would improve the scope of the article.

### Council of Europe

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

## Article 22

### *WADA proposal:*

*Article 22.2: «Each government will put in place legislation, regulation, policies or administrative practices for cooperation and sharing of information with Anti-Doping Organizations and, sharing of data among Anti-Doping Organizations as provided in the Code, unrestricted transport of urine and blood Samples, unrestricted entry and exit of Doping Control officials and unrestricted access for Doping Control officials to all areas where International-Level Athletes or National-Level Athletes live or train».*

It is necessary to provide a definition of the concept of "Doping Control officials" in the relevant section of the Code – "Definitions".

We propose to consider an alternative formulation:

22.2. Each government should adopt and develop legislation, regulations, policies or administrative practices for cooperation and information exchange with Anti-Doping Organizations, exchange of data between Anti-Doping Organizations as provided for in the Code, take **reasonable** measures to ensure transportation of urine and blood samples, admission of Doping control inspectors in all zones where athletes of international and national levels live and train, to carry out the test if there are appropriate documents confirming the need for sampling.

### **Art. 22.3**

It is from an administrative point of view very unrealistic to oblige all persons involved in sport, may it be either in the government or any anti-doping ministry or public body. More clarity on the intended effect of this provisions is needed.

In addition, relevant labor law provisions of individual countries are likely to prevent this regulation from being applied.

WADA needs to establish clearer criteria and requirements as well as legally binding clauses for the application of such regulations.

Articles 20.1.7, 20.2.7, 20.3.4, 20.4.8, 20.6.5: Requirements that all officials who are somehow related to doping control must comply with anti-doping rules that comply with the WADA Code. We consider it expedient to exclude.

### Article 22.3

*WADA proposal:*

*Article 22.3: «Each government will require that all government officials or employees directly involved in the governance or operations of a sport subject to the Code agree to be bound by the Code as a condition of such involvement».*

This provision should either be deleted or further worded.

### Article 22.8

A government should meet the expectations of Article 22.2 20.2....

**20.2** - Invalid reference to the Article.

### UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**22.3** – please could WADA clarify the intention of this provision? Is it intended to apply only to all government officials and employees directly involved in the governance or operations of a specific sport, or is it also intended to apply to government officials and employees who are involved in sports operations or governance generally?**22.8** - Drafting point. Reference to Article 20.2 should be left so as to be to 22.2, as it currently is.

### AEPSAD

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

MOST GOVERNMENTS CANNOT BE PARTIES TO, OR BE BOUND BY, PRIVATE NON-GOVERNMENTAL INSTRUMENTS SUCH AS THE CODE. GOVERNMENTS ARE OBLIGED BY THE *UNESCO CONVENTION*. IN THIS MOMENT THERE IS A WORKING GROUP ADDRESSING THE ISSUE OS MONITORING THE COMPLIANCE OF GOVERNMENTS WITH THE *UNESCO CONVENTION (GUIDELINES AND CONSEQUENCES FOR NON COMPLIANCE)*.

AEPSAD THINKS THAT WADA AND WORLD ANTI-DOPING CODE CANNOT INTERFERE WITH THE UNESCO CONVENTION MECHANISMS, SPECIALLY RELATING POINT 22.9.

GOVERNMENTS ARE NOT SIGNATORIES AND CANNOT BE OBLIGED BY THIS ARTICLE IN ANY MANNER, SO WE THINK ALL THIS ARTICLE 22 INVOLVEMENT OF GOVERNMENTS, MUST BE DELETED FROM THE CODE.

In relation with the article 22.8 AEPSAD DOES NOT UNDERSTAND THIS POINT 22.8 TAKING INTO ACCOUNT THIS POINT 20.2 IS

### **20.2 Roles and Responsibilities of the International Paralympic Committee.**

**What have to do governments with IPC?**

**What are the reasons of this extension of time to achieve compliance?**



**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

It is unrealistic to expect Governments to grant 'unrestricted access' in the manner envisaged by this Article. Access will, as it is for all persons, subject to national security, admission and immigration protocols.

**Article 23.2: Suggestion to issue a Guideline for considering which sport organizations shall be invited or permitted to become Signatories (5)****International Triathlon Union**

Leslie Buchanan, Anti-doping Director (Canada)  
Sport - IF – Summer Olympic

SUBMITTED

My Secretary General will make comments here.

**Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

Agreed. More support and accountability are good so long as there is no added confusion with the implementation of programs with respect to authority.

As an aside, but related, is the NCAA. There are many athletes from many countries competing in the US College system in Olympic (and non-Olympic Sports). Code buy-in and compliance by the NCAA would be very significant and helpful with our global anti-doping efforts.

**Secretaria de Estado da Juventude e Desporto**

Paulo Fontes, Advisor (Portugal)  
Public Authorities - Government

SUBMITTED

This procedure could be the cause of disruption related to what national legislation consider registered or federated athletes to be, originating that certain practitioners of organisations meanwhile recognized by wada would not be seen has registered athletes in Portugal, thus our recommendation is that a consensus is reached with the sports international entities.

**Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

**Article 23.1.1**

WADA, as a body coordinating the elimination of doping in sport, must remain a signatory.

**Article 23.5**

It is proposed to add the following provision:

«In case the signatory of World Anti-Doping Code is declared non-complying with it, the criteria for its restoration, sanctions and restrictions should be linked only with those roles and responsibility, which are introduced in the Code, and related to the operational activity of the organization.

If the state party is declared non-complying with the UNESCO Convention the conditions for its restoration, sanctions and restrictions should be linked only with the obligations of the state, introduced in the Convention.

It is necessary to adhere to the principle of a "unified approach" and non-discrimination».

### **AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

Following the arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we propose a new ARTICLE 23:

### **NEW ARTICLE 23 THE WORLD ANTI-DOPING AGENCY**

To develop.

23.1 Definition of the World Anti-Doping Agency

23.2 Objective

23.3 Scope of the World Anti-Doping Agency

As was said before, AEPSAD thinks the contents of 20.7 must go to 23.3 **Roles and Responsibilities of WADA.**

### **Definition of Aggravating Circumstances (6)**

#### **World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support the definition of Aggravating Circumstances

#### **Norwegian Olympic and Paralympic Committee and Confederation of Sports**

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

Confer Article 10.7.

#### **NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

Art. 2.5; 10.3.1.1 and 10.7 NEW

It seems to be legally problematic to create an "additional sanction" for misconduct during the Result Management.

This point should be better taken into account in measuring the degree of fault in the case-by-case szenario.

### **AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

AEPSAD AGREES WITH THE DEFINITION AND WITH THE EXPLANATION. BUT WE THINK THAT ALSO A CLEAR AND DETAILED CATALOGUE OF AGGRAVATING CIRCUMSTANCES (AND ATTENUATING) CIRCUMSTANCES MUST BE DEVELOPED ON 10.6 AND 10.7 ARTICLES

WE THINK THAT IF AGGRAVATING CIRCUMSTANCES COME TO THESE DEFINITIONS, ALSO THE ATTENUATING CIRCUMSTANCES MUST COME TO THE DEFINITIONS

### Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Definition of Aggravating Circumstances.** While the definition provides a non-exhaustive list of things which may be considered to constitute an Aggravating Circumstance, Sport Ireland does wish to raise issues regarding some of things specifically mentioned in the definition:

i. *the Athlete Used or Possessed multiple Prohibited Substances or Used or Possessed a Prohibited Substance on multiple occasions* - This should also refer to testing positive for two substances or on more than one occasion;

ii. *a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility* – This could be feasible if substances were categorised this way in the Prohibited List, failing which Sport Ireland has concerns regarding the practicality of this and is of the view it may be susceptible to legal challenge. There would be wide scale inconsistency unless WADA published guidance on what these substances might be. There is also the question of what if the Athlete is not a 'normal individual' and could establish that he / she would not benefit beyond the otherwise applicable period of Ineligibility. Sport Ireland is of the view that this element of the definition should be removed.

### Institute of National Anti-Doping Organisations

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

This proposal is agreed but also needs to be applicable to situations where persons attempt to undermine a charge of breaching a period of ineligibility by using the same methods referred to. This needs to be explicit and not just implied.

## Definition of Minor (18)

### World Rugby

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby agree with the proposed added flexibility to sanctioning Minors which seems reasonable and are content with the revised definition.

### Union Cycliste Internationale

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

The UCI believes it is not ideal to establish a definition for minors binding all International Federations given that the definition of International Events varies considerably depending on the sport. The UCI would recommend letting each International Federation establish its own definition of minors taking into

consideration the particularities of its sport, with minimum requirements to make sure IFs don't unfairly discriminate against or in favour of their athletes. In any event, we would suggest clarifying what the "open category" is in the definition of Minor.

**ISU**

SUBMITTED

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

## Definition of Minor (new)

*Minor*: A natural *Person* who has not reached the age of (~~eighteen years~~) sixteen years; or a natural *Person* who has not reached the age of eighteen years and, at the time of the anti-doping rule violation, is not included in any *Registered Testing Pool* and had never competed in any International Event in the open category.

**ISU Proposal**: Category „minor“ shall be determined as per Swiss law which sets the age of eighteen years. Definition of Minor should not stay as it is in the CODE 2015: **A natural *Person* who has not reached the age of eighteen years.**

**World Curling Federation**

SUBMITTED

Susan Keith, Anti-Doping Administrator (Great Britain)  
Sport - IF – Winter Olympic

## Added flexibility for Sanctioning Minors:

We feel there should be a consistent definition of a minor and how will this work with varying definitions?

**International Ice Hockey Federation**

SUBMITTED

Adriaan Wijckmans, Junior Legal Counsel (Switzerland)  
Sport - IF – Winter Olympic

In the latest version of the 2021 WADC, the definition of a Minor has been modified. 16 and 17-year-old athletes who are in a registered testing pool, or who have competed in an international event in the open category are now no longer considered Minor athletes.

The IIHF would like to express its disagreement with this modification of the definition in the WADC as IIHF is of the opinion that, regardless of the level on which the athlete is active, any athlete that has not reached the age of 18 should be considered a Minor. The fact that a Minor athlete performs on the highest level does not take away the fact that this athlete, in contrast to an adult athlete, is still underaged and thus very young and inexperienced. It is this inexperience that often plays a crucial role when a Minor commits anti-doping rule violation.

The IIHF on the other hand agrees with the fact that Minor athletes performing on the highest level have some advantages compared to lower-level Minors. Namely, in most cases, these Minor athletes have had more doping education and these athletes are usually assisted and supported by a professional staff.

Taking the foregoing into account, the IIHF is of the opinion that Minor athletes should be in any event considered Minors. Therefore, all Minors, even the ones already performing on the highest level, should be able to benefit from the lighter sanctioning regime under the WADC.

With respect to the above-mentioned advantages for Minors related to playing on the highest level, the IIHF is of the opinion that these should be taken into account by the deciding body when they assess the degree of fault of the Minor athlete when making the decision on the reduction of the sanction on case of no

Significant Fault or Negligence. These benefits should however under no circumstance result in a situation in which a 16 or 17-year old athlete is not longer considered a Minor Athlete by the WADC.

Lastly, the IIFH would like to address the fact it organizes an IIFH u18 World Championship for all of its divisions. Thus, even very low-level Minor athletes compete in a World Championship. This would mean that, under the new Code, these athletes would be excluded from the Minor athlete category and thus be treated as adult athletes.

Therefore, the IIFH requests WADA to reinstate the original definition of a Minor, namely that under the WADC a Minor is a natural Person who has not reached the age of eighteen years.

### **IFIA**

Viktor Dok, CEO (UK)  
Sport - Other

SUBMITTED

1) in the Appendix 1 of the WADA Code «Definitions» add the following definition:

Para athlete - an athlete with impairments, who participated in the Paralympic movement.

Para athlete with special disability (Option 2: Para athlete with special behavior) - Para athlete, or with extremely hard physical disabilities, or with extremely intellectual disabilities or a totally blind athlete whose legal capacity is limited by the severity of their impairments

### **China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

The definition of minors is newly added, but it is in conflict with national laws on the age of minors and may cause unnecessary trouble for doping control. For example, for a 17-year-old natural person, the testing agency only knows his/her age, but may not know whether he/she meets the definition of a minor, and whether the testing should be carried out in accordance with the standards for minors? It is recommended to be revised as: a natural person who has not reached the age of sixteen years; a natural person who has not reached the age of eighteen years at the time of the ADRV and is not included in any Registered Testing Pool and had never competed in any international Event in the open category, shall be subject to the anti-doping rule violation proceeding by applying the same standard as that for minors.

### **Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

Whilst having increased flexibility when dealing with a minor may assist anti-doping organisations, it could also lead to situations where athletes competing at the same open international event are subject to differing anti-doping arrangements. In the interest of fairness, all athletes should be subject to the same anti-doping arrangements when competing in the pinnacle events of their sport.

### **Council of Europe**

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

SUBMITTED

### **Minors**

The CoE acknowledges WADA's desire to implement flexible sanctions for underage athletes.

However, it is pointed out that reducing the age limit for minors to be treated as minors under WADC violates the current UN Convention on the Rights of the Child.

Although the proposal to reduce the age limit is based on an explicit proposal of the athletes, the legality of such a proposal is limited by applicable, supranational law.

An implementation into national law is internationally extremely difficult or merely impossible to standardize.

Lowering the theoretical sanction for minors to a 2-year-ban may not be in line with the principles/spirit of the Code. Is it really acceptable to impose a 2-year-ban to a 17 year-old with a sample positive to multiple steroids where the ADO is not able to gather enough evidence to prove the intent and give a 4-year-ban?

We would welcome, for this category, more flexibility in the range of applicable sanctions and reductions, but the quantum of sanctions shall remain identical for all athletes.

In any case, it is unclear why the 2-year-ban for minors is only applicable in case of presence, use or possession of a prohibited substance. If such a modification of the length of the ban is adopted, it should be applicable to all ADRVs (included non-analytical ones, and in particular those related to evasion, refusal or failure to submit to sample collection. Indeed, a minor who is submitted to a first doping control might, in good faith, feel uncomfortable and refuse to be supervised during the collection of the sample.)

### **Article 10.5.1.3: Additional flexibility for sanctioning Minors/Recreational Athletes**

How can an athlete who is a Minor/Recreational Athlete who:

- a) tests positive for non-specified substance; and
- b) bears No Significant Fault (as opposed to No Fault at all),

receive only a reprimand and return immediately to competition without this posing a serious threat to protecting a level playing field?

If the Adverse Analytical Finding concerns a steroid, such a Minor/Recreational Athlete could still be benefiting from the performance enhancing substance in his system. Allowing such an athlete (who acted with a certain degree of fault) an immediate return to competition would be detrimental to creating a level playing field and be manifestly unfair to his clean competitors. This cannot be the objective of the very Code which is designed to protect clean athletes.

Under the current (2015) Code an athlete cannot go below a 1-year period of ineligibility for a non-specified substance unless (i) the contaminated product rule applies, or (ii) the athlete bears No Fault. That is fair and protects clean athletes from competing against athletes who may have performance enhancing substances in their system.

#### **NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

The definition of minors in the WADCdraft is not in line with national and international law

Reducing the age limit for minors to be treated as minors under the WADC also violates the current UN Convention on the Rights of the Child.

Although the proposal to reduce the age limit is based on an explicit proposal of the athletes, the legality of such a proposal is limited by applicable, supranational law.

An implementation into national law is internationally impossible to standardize.

#### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

WADA's desire to reduce the age limit for minors to be treated as minors under WADC violates the current UN Convention on the Right of the Child. Although the proposal is limited by applicable, supranational law. An implementation into national law is internationally extremely difficult or merely impossible to standardize.

### NADO Flanders

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

NADOF Flanders would request that the definition of a minor should not be amended and be kept aligned with the UNCRC definition (a person below the age of 18). Any special provision for minors in which they are brought under the same regime as adults, should be specified in the articles which apply to minors and need a different approach for certain minors, with inclusion of clear criteria to determine which minors should be treated differently from minors in general.

### AEPSAD

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

WE STRONGLY DISAGREE WITH THIS DEFINITION. In the big majority of western countries the age for majority of age is 18 years (in some of them 21 years). In no case 16 years will be acceptable in these countries. And a Minor will be a Minor and must be treated as a Minor out of his/her sport level. We propose the following definition: *Minor*: A natural *Person* who has not reached the age of eighteen years at the time of the anti-doping rule violation.

For AEPSAD, as was clearly specified in our comments to the Code first document, it is essential to have in the Code a specific and separate treatment for anti-doping when it comes to minors. Minors, in any legislation of the world, are by definition irresponsible because the legal system considers that they do not yet have the capacity to act freely and voluntarily. It does not therefore seem very consistent with the Declarations of Human Rights or with the Declaration of the Rights of the Child, sponsored by the UN, that the Code only foresees the younger age of a minor as a mitigating circumstance.

We think that any regulation must take into account a dignified and humane treatment of minors, with an attention to the special circumstances that occur in them, when in the vast majority of cases the intake of substances or the use of doping methods are decided and administered by people who are criminally responsible. In addition, we are also obliged to prevent minors from being seen in the practice of sports for the rest of their lives as social stigma. This differential treatment for minors should avoid as much as possible any sanction involving the removal of minors from sports, and should arbitrate corrective or educational measures in order to try to recover these children for a clean and healthy sport that allows them to have a full life.

**A group of experts should to analyse the problem and to work on standards, to develop a new ARTICLE 11 MINORS in which the following subjects on minors will be addressed AS: Minors and different doping types, Minors and Control Planning (when, where, how), Management of results and Minors (sanctions, environment), doping in Minors and Ordinary Justice, sanctions of doping in the interests of the Minor.**

### ONAD Communauté française

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

Il est proposé, pour la définition, de s'en tenir à celle de la Convention internationale relative aux droits de l'enfant, qui définit le mineur comme une personne n'ayant pas atteint l'âge de 18 ans. Ensuite, dans les

dispositions du Code, l'on pourrait appliquer différentes mesures aux mineurs, comme un régime plus souple en ce qui concerne la charge de la preuve et les sanctions par exemple.

### Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

CCES prefers using one age (age 18) for all purposes.

### Freelance journalist

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

Allowing under-18 athletes concessions which often lead to suspensions of one year or less for a steroid violation could be avoided if the age-limit is reduced to say under-16 or under-14. The concession is an invitation to not only dope but to fudge age certificates.

### GM Arthur Sports Representation

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

A Minor is a person of under eighteen years of age. This was addressed in the last Code Review.

In a number of nations, the Code provisions are reflected in national laws. National laws will not include a definition of Minor that is incompatible with the generally applied and used definition of a Minor as being a person of under eighteen years old.

### UK Anti-Doping

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

1. The definition of 'minors' has been modified to exclude 16 and 17-year-olds who are in a registered testing pool or compete at an international event as a senior elite athlete. There is no guidance around whether athletes under 16 years-old, who may compete at the Paralympic Games, will be treated as minors, and so granted flexibility in sanctioning, or whether they will be treated as senior athletes. Given the British team at the Paralympic Games has previously consisted of athletes under 16 years-old, clarification is required.

## Definition of Recreational Athlete (24)

### World Bridge Federation

Anna Gudge, Secretary to WBF Medical Commission (Switzerland)  
Sport - IF – IOC-Recognized

SUBMITTED

***In addition to the category of Recreational Athletes, the World Bridge Federation, supported by the International Mind Sports Association, would like to propose a further category, that of Mind Sport Athletes.***

***For this category we propose that Out of Competition Testing is specifically not required. Our risk assessments demonstrate clearly that there are no prohibited substances that can be taken Out of Competition in order to enhance the cognitive powers of athletes engaging in Mind Sports and that any such substances have to be ingested during competition time.***

***This does not in any way contravene Article 1, where the emphasis is still on Health as a Rationale for the Code, and without question all the generally prohibited medication will be part of any In Competition Tests undertaken during Mind Sport events.***



**World Rugby**

SUBMITTED

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

World Rugby support the introduction of "Recreational Athletes", however we ask that WADA please clarify the draft definition of "recreational athlete" which implies a 5 year "limit" (which we assume to be correct), whereas the explanation in the "Summary or Major Changes" implies no limit eg "*never been in a registered testing pool or other whereabouts pool...*"

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

While the UCI finds that this "Recreational Athlete" status is worth exploring, it considers that the definition must be carefully considered to ensure that certain athletes are not punished solely by virtue of the IF's number of international events or the size of its RTP. The UCI suggests exploring the possibility to have a specific definition of recreational athlete for each sport with minimum requirements to make sure IFs don't unfairly discriminate against or in favour of their athletes

**World Curling Federation**

SUBMITTED

Susan Keith, Anti-Doping Administrator (Great Britain)  
Sport - IF – Winter Olympic

New Category of Athletes—"Recreational Athletes" Permitted More Flexibility in the Imposition of Consequences:

Flexibility in dealing with recreational athletes is important. The challenge is differentiating intentional with unintentional doping. Consideration to mandatory education as part of an initial sanction.

**International Ice Hockey Federation**

SUBMITTED

Adriaan Wijckmans, Junior Legal Counsel (Switzerland)  
Sport - IF – Winter Olympic

The new WADC creates a new category of athletes, the "Recreational Athlete", which would benefit from a more flexible sanctioning regime in case of an anti-doping rule violation. The implementation of this new category provides leniency to athletes who are not and have not for the prior 5 years been an international-level or national-level athlete; have never represented a country in an international event; have never been in a registered testing pool or other whereabouts pool of an international federation or national anti-doping organization; or at the time of the anti-doping rule violation were not nationally ranked in the top 50.

In this context, the IIHF would like to refer to the uniqueness of the IIHF Championship structure. Namely, all IIHF member countries are divided into six divisions and the IIHF organizes a World Championship for each of these divisions. This means that, due to the IIHF structure, many low-level athletes are competing in a World Championship as they are playing for a country in one of the lower IIHF divisions.

It is however undisputed that these low-level athletes are amateurs playing ice hockey as a leisure activity. They just happen to play for the national team of their country because ice hockey is not that popular or well organised in that country. Therefore, even though these athletes compete in a World Championship, the IIHF would consider these players Recreational Athletes.

Nonetheless, it is unclear whether the definition of a Recreational Athlete would allow these low-level athletes to benefit from the more flexible regime that is applicable to Recreational Athletes as they are in fact representing their countries at an international event, albeit it on a very low level.

Therefore, the IIHF requests WADA to clarify the definition of a Recreational Athlete, taking into account the specificity of the various sports categories and especially, the uniqueness of the IIHF Championship structure.

## Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

### Regarding the definition of "Athlete"

According to this definition, the Code applies only to international level athletes and national level athletes. ADOs have full discretion to apply the Code to lower level athletes, however, by doing so and these athletes take part in competitions, there is no discretion in terms of the application of consequences, cf. *"However, if an Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any Athlete over whom an Anti-Doping Organization has authority who competes below the international or national level, then the Consequences set forth in the Code (except Article 14.3.2) must be applied."*

The definition of an athlete is a key point in the Code. We find the definition of "athlete" problematic, complicated and the proposed amendment in version 1.0 does not resolve these issues.

In Norway, NIF, has chosen to apply anti-doping rules to athletes on all levels under our authority. In our last submission, we called on WADA to amend the definition thus recognizing that anti-doping work is organized differently in each country and provide the necessary flexibility to ADOs that want to apply the Code on lower level athletes that compete under its authority. For this group of athletes, the current use of non-flexible regulations could easily lead to i.a. unproportionate sanctions. Several other stakeholders have submitted similar opinions.

ADOs have full discretion to leave the lower level athletes outside the scope of the Code. Any logical consequence would be that ADOs deciding to apply anti-doping rules on this group of athletes, would have full discretion to establish their own anti-doping rules without being forced to apply the consequences set forth in the Code.

We commend WADA for addressing the issue of lower level athletes in version 1.0, cf. Article 10.5.1.3, however we do not find the amendment sufficient to solve the problem of non-flexible regulations. The flexibility should apply not only to reduction of sanctions for specified substances/contaminated products for violations of Article 2.1, 2.2 or 2.6. but should be reflected in other part of the Code as well, i.a. violations of other Articles, and appeals to CAS. Instead of assessing, and considering amending, each and one of the Articles in the Code, simply amending the definition of "athlete" will, in our opinion, provide the flexibility asked for by the stakeholders.

In addition, we find that a lot of the text in the definition does not serve the purpose of defining "athlete", and should be deleted.

Finally, athletes do not represent a country when participating in an international event, but a NOC/NPC, national sports federation etc.

In line with the above, we propose the following definition:

*"Athlete: Any Person who*

- *competes in sport at the international level as defined by each International Federation (International Level athlete) or the national level as defined by each National Anti-Doping Organization (National Level Athlete),*

- *for the prior five years has competed in sport as an International Level Athlete or a National Level Athlete,*

- *for the prior five years has participated in an International Event either as an individual or team member,*
- *at the time of the anti-doping rule violation*
- *was ranked in the top fifty (50) in the national rankings as an individual or team member in any Competition category, or*
- *was included in any Registered Testing Pool or other whereabouts information pool maintained by an International Federation or National Anti-Doping Organization.”*

### **International Mind Sports Association**

Thomas Hsiang, Secretary General (USA)  
Sport - Other

SUBMITTED

The International Mind Sports Association (IMSA) strongly supports the proposal by the World Bridge Federation to add the category of Mind Sport Athletes in addition to the category of Recreational Athletes. In particular, for the Mind Sport Athletes, the Out of Competition Testing be exempted.

IMSA has carried out testing of our athletes since the first multi-Mind-Sport international event in 2008 and now has experience over 10 years and many events. We are appreciative of the benefit of such programs to the health and well-being of our athletes. At the same time, risk assessments by our member federations clearly indicate that any prohibited substances taken to enhance cognition, memory, or responsive speed are only effective if taken during the actual competition of Mind Sports. A thorough In Competition Testing program is then both effective and comprehensive, with no additional benefits added by Out of Competition Testing.  
-- Thomas Hsiang, IMSA Secretary General

### **China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

#### **1. Testing and monitoring of recreational athletes**

The Code addresses the issue of recreational athletes, who are the high risk group of doping use. Therefore, it is necessary to conduct appropriate testing to them on the basis of education and guidance. We recommend only S1 and S2 are tested for some students participating in school track and field races while S1 and S5 will be enough for some bodybuilders and fitness enthusiasts to achieve the purpose of deterrence and monitoring. It is uneconomical to develop the testing distribution planning and types of testing on these groups in compliance with the existing TDSSA, which would greatly increase the costs of anti-doping organizations. The process of reducing the types of testing under a scale specified by TDSSA would be very complex even if WADA approval has been sought in accordance with Article 6.4.2. These requirements will inhibit the enthusiasm and commitment of anti-doping organizations to conducting testing of recreational athletes. Therefore, it is recommended to simplify the corresponding procedures and give more flexibility in reducing the types of testing for recreational athletes so as to adapt to the actual testing and analytical capabilities.

**Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

The concept of including a definition for Recreational Athlete is supported. However, the proposed definition is unduly complex and confusing. The drafting committee may wish to consider the following revised definition:

*Recreational Athlete:* A natural Person who is not or has not been an International-Level or National-Level Athlete for the five previous years (either as an individual or team member)

This simplifies the definition of recreational athlete and puts the onus on the ADO to determine which athletes are national level athletes and which are not. The excluded athletes become your recreational level athletes..

**Sport New Zealand**

Sam Anderson, Senior Advisor (Legal) (New Zealand)  
Public Authorities - Government

SUBMITTED

**Recreational Athletes**

1.

We support the proposed new category of "Recreational Athletes" as it provides flexibility in relation to the sanctioning of low-level athletes. This reform is particular important given the increased likelihood that low-level athletes, who traditionally have not been tested, may become subject to ADRVs through ADO's increased focus on intelligence and investigations. In such cases, the sanctioning regime needs to recognise that lower level athletes are less likely to have received anti-doping education and may be unaware the rules apply to them.

2.

We are concerned that the current definition of "Recreational Athletes" does not appear to take into account the situation that exists in countries with smaller populations, such as New Zealand, where some sports may have very small athlete pools. For example, a relatively low-level athlete may nonetheless be ranked within the top 50 for that sport in New Zealand (depending on the sport). It may be difficult to establish a definition that is workable across countries of different sizes. Therefore, it may be desirable for the definition to provide that:

1.

An athlete who has previously represented his/her country is subject to the full range of sanctions

2.

The sanction for any other athlete is at the discretion of the hearing body (noting WADA will retain its right of appeal). This would allow the hearing body to take into account the range of circumstances applicable to the athlete and the particular ADRV.

**Ministry of Culture**

Nevena Toft, Special Advisor (Denmark)

SUBMITTED

SUBMITTED BY WADA

## Public Authorities - Government

**Comment to WADC definition of recreational athlete:**

The proposed definition of "Recreational Athlete" is unclear in the current version.

In our understanding of the term, a "recreational athlete" can both be a person who participates in sport purposes, e.g. improved physical fitness, fun, and social involvement as well as a person who participate in sport for competitive reasons. Hence, the term "Recreational Athlete" may, unintentionally, signal that everyone participating in sport, including those who never compete, are covered by the Code. Consequently, the Code will, in principle, apply to national anti-doping frameworks set up to specifically target purely recreational, non-competitive sports in which considerations for the specificities of such sports justify e.g. sanctioning regimes that differ from the one's set out in the WADC.

Against this background, we suggest the introduction of the term "Lower-Level Athlete", instead of "Recreational Athlete", and propose that the former term is defined in the WADC as follows:

*Lower Level Athlete: Natural Persons* who compete in sport but who are not (and have not been for the prior five years) *International-Level Athletes* or *National-Level Athletes* and who (etc...)

NB the definition is changed to plural in order to streamline with the definition of *International-Level Athlete* and *National-Level Athlete*.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Recreational Athletes**

It is welcome to create a different regime for recreational athletes. This seems coherent with the existing differentiated regime, for these athletes, regarding the grant of a TUE. However, we would like to emphasize that:

- the definition of recreational athletes should be carefully drafted, so that ADOs do not face difficulties trying to transpose/use it.

- the maximum applicable sanction in case of absence of significant fault or negligence should be 2 years. For this category, more flexibility in the range of applicable sanctions and reductions is suggested, but the quantum of sanctions shall stay identical for all athletes.

- as for minors, we do not see why the more lenient regime should apply only for analytical ADRVs, and possession, and not for the other ADRVs, in particular evading, refusing or failing to submit to sample collection.

Some delegations expressed the following general opinion on the recreational athletes, which WADA is encouraged to take into consideration:

"We can support a further examination of the role of recreational drugs in the Code, but we cannot support the suggestion of a uniform one-year or eighteen-month suspension, if the use was out of competition and not connected to sport. The sanction should still be stipulated according to the individual circumstances of the case. Neither can we support the suggestion that "Sports could also be given the power to stipulate that an athlete must also undergo therapy or rehabilitation before they return to sport". We could foresee many practical obstacles, and furthermore, athletes should be able to count on sanctions issued according to the Code is the full sanction, without any additional sanctions given by sports organisations.

**NADA**

SUBMITTED

Regine Reiser, Result Management (Deutschland)

## NADO - NADO

NADA Germany express reservations regarding the new definition of "recreational athletes". The implementation of this new category of Athletes might be a big challenge for current Doping Control Systems, testing strategies, responsibilities for testing, rights of athletes. Finally, the definition of recreational Athletes must be checked in regard of any relevant sport- and athletes categories and their framework (competitions, appointment calendar eg)

**NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

**Recreational Athletes**

In the view of NADA Austria the definition of "Recreational athlete" should be specified. In accordance with the current status it is not clear if the NADO or the IF is responsible for which kind of athlete. Especially in team sports the determination "Ranked in the Top 50" is not enforceable. The same problem arises for the definition "has not represented any country in an International Event". NADA Austria strongly recommend to clarify these definitions and create practical guidelines.

**Anti Doping Denmark**

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

ADD appreciates that WADA has reacted to stakeholder comments that testing of recreational athletes is conducted for the sake of public health (typically by Government order or legislation) and NOT for the usual sporting reasons of protecting clean athletes, level playing field, etc. and has introduced a new Code definition of "Recreational Athletes".

However, this proposed definition does not cover the needs of NADOs such as ADD who test fitness athletes who are not affiliated to a certain International Federation.

These athletes can not and should not be categorized as representatives of a certain sport, because they are not "weightlifters", "power lifters" or "gymnasts", they simply do fitness in a fitness center or run or cycle as part of an exercise diet.

It would be highly unfair to national and international federations if doping cases of such athletes were to be included in the statistics of, say, the IWF, particularly when you consider the consequences a high number of doping cases can have for international participation, etc.

There is a need for a category of "other athletes" in ADAMS and WADA, i.e. athletes not affiliated to a signatory to the Code other than the NADO, if the needs of NADOs testing fitness athletes are to be fulfilled.

Furthermore, it has to be stressed once again that a limited sanctions regime is necessary for these athletes. We appreciate that in the first draft of the definition of "Recreational Athletes", these athletes benefit from the same flexibility in sanctioning as minors as provided in Article 14.3.6 (public disclosure not mandatory) and Article 10.5.1.3 (minimum sanction is a reprimand when no significant fault is established). This is just not enough. WADA has to accept the fact that the standard 4 year sanction for "cheating" in sport does not make sense when it comes to fitness athletes. There is no cheating going on. The fitness athlete on steroids is polluting his fitness training environment and damaging his health and a sanction of 2 years' suspension is considered proportionate, but 4 years is simply out of proportion.

ADD therefore repeats our proposal to the definition to read: "In relation to Athletes who are neither International-Level nor National-Level Athletes, an Anti-Doping Organization may elect to: conduct limited Testing or no Testing at all; analyze Samples for less than the full menu of Prohibited Substances; require limited or no whereabouts information; not require TUEs but accept a prescription by an authorized MD/GP; or introduce a limited sanctions regime."

**Japan Anti-Doping Agency**

SUBMITTED

Akira Kataoka, Senior Manager, Results Management & Intelligence (Japan)  
NADO - NADO

The Code Draft newly defines the *Recreational Athlete* in the Appendix 1:

Definitions relevant to reduction of period of *Ineligibility* based on article 10.5.1.3. The Code Draft excludes a natural person who, at the time of the anti-doping rule violation, was ranked in the top fifty (50) in the national rankings as an individual or team member in any Competition category from the *Recreational Athlete*.

However, “athletes who was ranked in top fifty (50) in the national rankings in **ANY COMPETITION CATEGORY**” can be interpreted to include not only national-level athletes but also athletes who were ranked in fifty (50) in small competitions but their performance was evaluated as recreational. If the 2021 Code accepted the current definition of the *Recreational Athlete*, article 10.5.1.3 would hardly be applied.

Therefore, the scope of the athletes who are excluded from the *Recreational Athlete* should be narrowed to expand the coverage of the *Recreational Athlete*.

(Appendix 1 Definitions)

Recreational Athlete: A natural Person who is not (and has not been for the prior five years) an International-Level or National-Level Athlete and who for the five previous years (either as an individual or team member) has not represented any country in an International Event and at the time of the anti-doping rule violation was not ranked in the top fifty (50) in the national rankings as an individual or team member in any Competition category and was not included in any Registered Testing Pool or other whereabouts information pool maintained by an International Federation or National Anti-Doping Organization.

**Anti-Doping Authority Netherlands**

SUBMITTED

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):  
We do support this new definition and the concomitant flexible sanctioning regime. It is, however a tricky issue. If lower level athletes did not receive adequate education on doping-related issues, it is in our view not right to perform doping controls in this group, with the concomitant sanctions. If education has been received, there is no sense in issuing lower sanctions. It all comes down to the degree of fault, which indeed may be lower in many cases involving ‘recreational athletes’, but the general principles of the Code should still apply. This dilemma could be explained in a comment.

**NADO Flanders**

SUBMITTED

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

Although NADOF strongly supports the idea of a more flexible sanctioning system for recreational level athletes, the proposed definition is very difficult to apply and does not allow to achieve the envisaged flexibility. Stating in order to be considered a recreational athlete, the athlete cannot be ranked in the top 50 nationally, this is contradictory to the definition of a national level athlete which allows NADOs to define what is to be considered a national level athlete. For popular and widely practiced sports or sporting disciplines within a country, an athlete ranked outside the top 50 can still be considered an athlete of national level. Vice versa, sports that are only practised by a small number of people within the jurisdiction of the NADO, can be considered recreational athletes even if they are ranked in the national top 50. Furthermore, not all sporting disciplines have a clear ranking system which allows to apply the definition.

**UK Anti-Doping**

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)

## NADO - NADO

"Recreational Athlete". We are in favour of this concept. However as currently drafted the definition does not work for UKAD due to the way we define National-Level Athlete. It will of course be difficult to arrive at a universally accepted definition. We have two suggestions – firstly, this definition could be tied to that of National-Level Athlete, so that Recreational Athletes are all those who are not National-Level or International-Level Athletes; or, secondly, as with the definition of National-Level Athlete, NADOs could be left to determine this for themselves.

**Irish Sports Council**

SUBMITTED

Siobhan Leonard, Anti-Doping Manager (Ireland)

NADO - NADO

**Definition of Recreational Athlete.** In principle Sport Ireland does not have an objection to there being increased flexibility in sanctions for truly recreational athletes. However, the definition as currently drafted would cause significant issues in small countries like Ireland and may have a number of unintended consequences.

It is not clear what is meant by Athletes "*not ranked in the top 50....as a team member.*"

Sport Ireland appreciates that there are 4 cumulative requirements in order for an Athlete to be a Recreational Athlete, but it should be highlighted that the requirement of being outside the top 50 nationally would not make sense in many sports in many countries like Ireland with small playing pools.

Sport Ireland defines National Level Athletes as those in its Registered Testing Pool. As matters stand, Athletes in team sports in Ireland like rugby and GAA (football and hurling) are not National Level Athletes and some would therefore appear to be Recreational Athletes. This would make no sense as these players are not Recreational Athletes in any sense.

In addition, the Technical Document for Sports Specific Analysis (TDSSA) requires a minimum level of analysis in relation to National Level Athletes, depending on the sport / discipline. Many NADOs, like Sport Ireland, define National Level Athletes as Athletes in their Registered Testing Pool. The definition of Recreational Athletes may require many NADOs to amend their definition of National Level Athlete, thereby expanding the pool of Athletes required to be subject to minimum level testing and thereby substantially increasing testing costs.

Similarly, any expansion to the pool of National Level Athletes could mean a significant increase in the number of TUE applications and the number of positive tests for which an Athlete would currently be entitled to a retroactive TUE.

To take another example, the highest level of club soccer in Ireland is largely semi-professional. Whereabouts is provided through their Team Activity Schedule. If Sport Ireland had to include these Athletes in its Registered Testing Pool or otherwise require them to provide whereabouts, just so as to ensure they were not deemed Recreational Athletes, this would have massive cost implications for Sport Ireland. Not only would there be the costs of administering the whereabouts information, there would be increase in the cost of testing in accordance with the minimum level of analysis required by the TDSSA and an increased cost in administering TUEs (they would no longer be entitled to retroactive TUEs).

This issue is key for Sport Ireland and must be addressed. Sport Ireland can understand why there might be an argument in favour of harmonisation, one solution from Sport Ireland's perspective would be to allow NADOs to define Recreational Athletes for their particular country. Another option might be to amend the last criterion of the definition as :

*"and was not included in any Registered Testing Pool or other ~~whereabouts information~~ pool of Athletes designated ~~maintained~~ by an International Federation or National Anti-Doping Organization."*

In conjunction this amendment is also to remove the reference to the Top 50 ranking.



**ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

D'accord sur le principe qu'un régime plus souple et proportionné (notamment pour les questions de charge de la preuve et de la sanction) puisse s'appliquer à des sportifs qui ne sont pas élites.

Par contre, il est proposé, dans un souci de simplification et de sécurité juridique, de s'en tenir, finalement, à deux grandes catégories de sportifs :

-les élites (soit de niveau national ou international), qui sont soumis à des obligations de localisation;

- les sportifs amateurs (ou récréatifs, cela dépend du terme utilisé), entendus par opposition aux sportifs d'élite ou, par exemple, comme couvrant tous ceux qui n'ont jamais été repris dans un groupe cible. Pour cette seconde catégorie de sportifs, il se peut que ceux-ci fassent du sport en dehors de toute compétition (ex dans une salle de sport ou de fitness)

Cette logique plus simple et binaire serait probablement plus lisible et compréhensible, tant pour les sportifs, que vis-à-vis de l'extérieur.

Plus on prévoit de sous-catégorie (ou d'éléments dans les définitions), plus le régime devient flou tant juridiquement que dans sa compréhension générale. Or la bonne compréhension du système est nécessaire pour restaurer la confiance des sportifs et du public en général.

Pour illustrer ce propos, nous pensons qu'il est vraiment préférable d'éviter de se retrouver avec 3 catégories de sportifs:

- les élites (nationales ou internationales);

- les sportifs récréatifs (avec la définition actuellement proposée qui est complexe et contestable dans plusieurs de ces éléments (notamment le top 50) )

- et ceux qui ne sont ni élites, ni récréatifs (et qui ne sont finalement définis nulle part, avec l'incertitude juridique que cela amènera...)

En conclusion, nous proposons donc de s'en tenir, dans les définitions, à deux grandes catégories de sportifs : les élites et ceux qui ne le sont pas (ou ceux qui ne l'ont jamais été): les amateurs ou les récréatifs.

Ensuite et par contre, dans le cadre de l'application de l'article 10.5.1.3 en projet, l'instance disciplinaire pourrait, à propos des sportifs récréatifs (entendus comme les non élites) faire une pondération, basée sur le niveau de compétition du sportif récréatif (fait-il de la compétition et si oui à quel niveau ?), pour pouvoir apprécier le degré de faute de ce sportif et, dès lors, lui appliquer une sanction juste et proportionnée (plus en lien avec son niveau sportif et son degré de connaissance supposé de l'antidopage). Un commentaire en ce sens pourrait être fait à l'article 10.5.1.3 en projet.

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

CCES prefers a three (3) year waiting period and a top 20 ranking.

The definition of a "Recreational Athlete" is not clear enough. "Ranked in the top 50" is not precise enough for many sports. Smaller sports in smaller countries may have less than 50 top level athletes. Further, the definition is aimed at Olympic sports but does not provide a workable definition for many team based sports where there are well in excess of 50 National level athletes.

Uncertainty is also created in relation to athletes that "have not represented any country in an International Event". Guidelines for every sport may assist.

### **Kamber-Consulting**

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

### **Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

In some countries, the "top 50" if stipulated might effectively include every athlete in the discipline including very young ones. For clarity, it should probably refer to "elite level national rankings" top 50 so it cannot be interpreted to refer to e.g. Masters events. "...the anti-doping rule violation" should probably read "...ANY anti-doping ..." This provision is an important and a welcome/essential addition but the definition needs more consultation and perhaps a mini consultation group to ensure it is relevant and realistically applicable to the full range of circumstances.

## **Definition of Tampering (4)**

### **Union Cycliste Internationale**

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping  
Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

The UCI would suggest replacing the word "Bribe" by something more general such as incentive or undue advantage

### **World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby are content with the revised definition of Tampering

### **NADA Austria**

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

There should be a clarification that this offense could be committed intentionally or negligently.

### **Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

Tampering

[On behalf of Anti-Doping Authority the Netherlands]

It is not uncommon for Athletes who have been notified of an Adverse Analytical Finding to spike a supplement of other product they have used, with the detected prohibited substance in order to meet to burden of establishing how the prohibited substance entered his/her body. It is important to bring this kind of conduct (more clearly) within the scope of Tampering. In addition it would be helpful to clarify in Article

10.5.1.2 that when an Athlete has engaged (or is likely to have engaged) in such conduct the Contaminated Product rule in the Code cannot be applied.

## **Suggestion to raise reporting thresholds for substances which are known contaminants, or obviously used Out-of-Competition and could not possibly have an In-Competition effect (18)**

### **International Cricket Council**

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED  
SUBMITTED BY WADA

Once again, the ICC strongly supports the proposal to set thresholds for certain substances which are only prohibited in-competition but which, after an out-of-competition ingestion, may appear in trace amounts in in-competition tests e.g. a cocaine AAF based on the biologically inactive metabolite.

### **World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

World Rugby agree with the rationale and await the proposal from the WADA List Committee

### **Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We reserve judgment until we see the suggested levels and the scientific justifications to ensure higher thresholds do not have any performance enhancing effects.

### **Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

### **Regarding Article 4.3 Criteria for including substances and methods on the Prohibited List**

Please confer our comments to “GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY”. For the sake of good order, it is repeated below:

*“We also question why WADA/the team have chosen not to respond and address the number of stakeholders - ranging from athletes and sports organisations to NADOs and governments - explicitly expressing the need for amending the criteria for placing a substance/method on the prohibited list. Instead of addressing the issue as such, WADA/the team is referring to a decision from the European Court of Human Rights and suggestions made by “a number of stakeholders”, and opt for moving “health” to the top of the list of the rationales for the Code.*

*Firstly, we were not aware of any order of importance of this bullet point list. Secondly, in our readthrough of all the comments from the stakeholders, we found only one stakeholder referring to the decision from the European Court of Human Rights and only three asking to move health on top of the list. Furthermore, when moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such amendments have been made. Instead, the decision to move health to the top of the list has made the lack of logic between the Code, the list and the consequences more accentuated. Also, we question the reference to the decision from the European Court*

*of Human Rights as the sole legal basis and only reason for moving health to the top of the list. The Court found the French Government's Order as being in line with the European Convention on Human Rights (ECHR) Article 8, hence there should be no need for amending the bullet point list. Furthermore, any radical change in the rationale behind the Code requires a thorough analysis and reasoning. Simply referring to one single decision dealing with whereabouts requirements within a system that has other aims to protect (ECHR) than the Code, is in our view not sufficient nor satisfactory."*

We support the need for an amendment, and this is in line with our concerns outlined in our last submission to WADA, an extract of which will be presented in the following.

Obviously, any sanctioning rule must have legitimacy both in its essence and in its effect, and doping is, amongst most people, unquestionably perceived as an athlete's use of prohibited substances/methods to improve sport performance damaging the overarching standard of fair play. The definition of doping in the WADC is wider, and performance enhancing potential is not a requirement when considering placing a substance/method on the prohibited list. It is sufficient that the substance/method has a potential health risk and contravenes the spirit of sport. We, representing the sport movement, are concerned about this divergence, and the risk that it may create confusion among the public and eventually could influence on the legitimacy of the anti-doping rules and be detrimental to the important fight against doping in sport. We are also concerned that the wide definition of doping, where all athletes are being perceived as "cheaters", does not sufficiently differ between athletes that use prohibited performance enhancing substances/methods, and athletes that use unhealthy and non-performance enhancing substances/methods. Furthermore, there is a lack of logic between the three criteria for including a substance/method on the prohibited list, and the prohibited list itself, e.g. the distinction between in- and out-of-competition testing; If a substance/method is performance enhancing and damaging to health it should be prohibited both in- and out-of-competition. The same should apply to substances/methods that are not performance enhancing but pose a danger to health and is deemed to violate the spirit of sport.

Considering the above, a substance/method should only be included on the prohibited list if it meets the criteria of performance enhancement and in addition at least one of the other two current criteria; potential health risk and violation of the spirit of sport.

As a logical consequence, the two lists will merge into one single list for both in- competition-testing and out-of-competition-testing, so that all substances/methods on the list are prohibited at all time. This will also solve the problem of small traces of prohibited substances found in samples taken in-competition but results from use out-of-competition.

In line with this, Article 4.3.1 could read:

*"4.3.1 A substance or method shall be considered for inclusion on the Prohibited List if WADA, in its sole discretion, determines that the substance or method meets the following criteria:*

*4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance, and*

*4.3.1.1.1 Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete; or*

*4.3.1.1.2 WADA's determination that the Use of the substance or method violates the spirit of sport described in the Introduction to the Code."*

We also request WADA for transparency regarding how substances and methods are added to the prohibited list, and to release the criteria met for each of the substances/methods listed on the current prohibited list.

**United States Olympic Committee**  
Onye Ikwuakor, Associate General Counsel (USA)  
Sport - National Olympic Committee

SUBMITTED

The USOC is aware of the difficulty dealing with (i) prohibited substances that have known contaminants and (ii) with substances that are not prohibited out-of-competition, but even though taken out of competition may test positive during an in-competition test. This is especially the case where such substances could not possibly have had an in-competition effect. The USOC is supportive of changes to the Code and/or of raising the reporting limits in such a way that would address these situations. The USOC looks forward to providing comments when a decision is made on the proper way to proceed.

## China Anti-Doping Agency

Zhaoqian LUAN, . (China)

Sport - Other

SUBMITTED

### 1. Reporting limits for contaminated products

As mentioned in the Comment to Article 10.5, "Many stakeholders have expressed the view that the current No Significant Fault or Negligence requirement that the Athlete must establish how the Prohibited Substance entered his or her system is unfair in a number of cases... Rather than modify the definition of No Significant Fault or Negligence which requires that, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his or her system as a necessary element, WADA will issue a Technical Document increasing the reporting limit for certain substances that are particularly susceptible to contamination".

We don't believe that it is enough to merely increase the reporting limit of certain substances that are particularly susceptible to contamination. Some non-specified substances, for example, clenbuterol, are found in contaminated meat products. With the increased analytical sensitivity, the number of adverse analytical findings for clenbuterol keeps increasing. As a result, the laboratory has to waste a lot of resources for confirmation, the anti-doping organization wastes resources for results management and hearing and the athlete tries to prove that the adverse analytical finding was caused by meat contamination. Even if these cases are dealt with as atypical findings, the same kind of confirmation will consume a large number of resources in the investigation. Therefore, it is necessary to increase the reporting limit for those individual non-specified substances, such as clenbuterol or to set a reasonable reporting threshold of AAF.

In terms of the reporting limits for specified substances, please be sure to note higenamine. A large number of research findings carried out by CHINADA show that higenamine is widely found in food, medicine, nutrients and even cosmetics containing natural plant ingredients. It is also likely to be found in athletes' normal diet, medicines and cosmetics, causing the concentration of higenamine higher than 10ng/mL in athletes' urine samples, posing an unexpected risk to the athletes. Therefore, we believe that the current reporting limit of 10 ng/mL is not sufficient. It is recommended that the WADA List Committee continue to study the problem and appropriately increase the reporting limit for higenamine.

Furthermore, we note that the Comment to Article 10.5.1.2 mentions the problems resulting from environmental contamination of a "non-product". Where an Adverse Analytical Finding results from environmental contamination of a "non-product" such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Article 10.4. Obviously, this comment categorizes the athlete's inevitable environmental contamination risk into No Fault or Negligence, but it is impossible for the comment to effectively solve the problems of environmental contamination that are difficult to prevent. The proposal raised by other anti-doping organizations that a new article entitled Environmental Risk or Environmental Contamination be added and improved in its content is worth considering seriously.

The definition for Environmental Contamination should take into account the potential and inevitability of the process in which environmental contamination plays a role, as well as the relevance to certain regions and countries. An open and independent Environmental Risk List (ER List) should be created and maintained, with continuous inclusions of the contaminants or substances that potentially pose environmental risks to athletes in reality. Meanwhile, a rational reporting threshold should be determined to correspond to different prohibited substances. In doing so, considerations should be given to the distinctions in the analytical capabilities of WADA-accredited laboratories. Where the "floor"("X") is set too low according to some laboratories with extremely low detection limits, the athletes who are adversely affected by serious environmental contamination will bear too much burden of proof. However, the "ceiling" ("Y") cannot be

selected too high, otherwise it will be taken advantage of by the athletes who dope intentionally. If the concentration of the prohibited substance detected is lower than “X”, the adverse analytical finding will be closed while if the concentration is over “Y”, the adverse analytical finding will not be considered for a reduction based on an environmental risk. With regard to the burden of proof of “environmental pollution”, considering the nature of being uncontrollable and region-specific of such risks, WADA may set special requirements for proof, such as travelling to a country or region, consuming the food or water containing the prohibited substance so that the athlete is allowed to prove the unpredictability of the risk. The anti-doping organization shall bear the burden of proof if it believes that the athlete had the intentional use of doping. If the athlete is unable to prove or the anti-doping organization can prove the intentional use, then the otherwise applicable articles shall apply.

**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia agrees with this approach and await to provide feedback on the proposed threshold limits determined by the WADA List Committee.

**Council of Europe**

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

**Article 9**

Add the wording to the section:

The anti-doping organization has a right, in exceptional cases, not to cancel the athlete's results achieved in the competition where he/she was tested positive. An anti-doping organization should be given such a right in case the athlete can prove there is No Fault or Negligence, as well as provide evidence that the use of specific prohibited substance could not enhance sports performance in this specific case.

The need to introduce such amendment is related to the fact that, in some cases, the prohibited substance comes from Contaminated Products or because of sabotage by third parties, and the concentration of the prohibited substance is so small that excludes the possibility to enhance athlete's performance. In such cases, the anti-doping organization should have a right to keep in force the results of the athlete, considering exceptional circumstances.

**NADA Austria**

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

NADA Austria agrees to a certain extent, but points out the problems that arise from these approach. As seen in the Froome case, each threshold is arbitrarily to a certain extent. It could give real cheaters a chance to argue that small amounts found in their body due to metabolization are justified as “could not possibly have an In-Competition effect”. Clenbuterol is a known contaminant. How to draw the line between “could not possible have an In-Competition effect” and intentional doping. How to handle Substances which are prohibited in- and out-of-competition.

**AEPSAD**

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing to eliminate the concepts of In Competition and Out-of Competition.

For us it makes no sense to distinguish between prohibited substances In-competition and out-of-competition if we follow the three actual criterion, two of them to meet to enter in the List of Prohibited Substances and Methods; and also if we follow the only two criterion we are proposing in this document.

The substances prohibited only in competition will be also improving the quantity and quality of training, and improving the sports performance. And to use dangerous substances or methods to improve the training, Out-of-competition do not stop these substances/methods to be harmful to health.

In the other hand we cannot forget the reality of many sports, especially team sports , in which it is very important to perform in training to be in the lineup of the team and to have the opportunity to participate in the competition; so in these sports it is really important for most of these athletes perform on the training sessions (a real and daily competition with their teammates, in which the protection of health and fair play must also prevail).

**So, if a substance or method is clearly performance enhancing and potentially dangerous for individual or public health, must be banned in all the circumstances; if not, is not necessary to include it in the list.**

### Anti-Doping Authority Netherlands

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Expansion of Laboratory Reports (Articles 2.1.4 and 7.4)

· This issue has a link with issues #14 and #15 (trace amounts of substances in an athlete's sample). We would prefer a solution on a population level rather than an individual level for this problem. Generally speaking, the capability of laboratories to detect lower and lower concentrations of banned substances opens the door to more and more unintentional anti-doping rule violations for the presence of a prohibited substance. It would be better to acknowledge this, for example by introducing a new rule that very low levels may be reported as an 'atypical finding', so the relevant Testing Authority may include this information in their future testing strategy, but without the immediate consequences regarding sanctions.

### CITA

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

SUBMITTED

Addressing the Problem of Common Contaminants in Supplements and Other Products and the Problem of Substances Which are Not Prohibited Out-of-Competition Appearing, in Trace Amounts, in In-Competition Samples

This matter can be and should be dealt in the way of raising the reporting limits for those substances as the principal of fairness demands that the Code should follow the scientific developments of the WADA accredited laboratories where there are such possibilities. Never the less, these thresholds should be such that it must beyond the doubt be obvious the substances were used out-of-competition and/or could not possibly have had an in-competition effect

**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

CCES strongly supports raising the reporting thresholds in these situations.

**UK Anti-Doping**

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

**Other / 2.1 / 10.2** We support a reconsideration of sanctions for Athletes who test positive for "recreational" drugs (that are not prohibited Out-of Competition) In-Competition. From a psychological perspective, the motivation for taking such drugs is often completely at odds with the motivation for taking performance-enhancing substances.

We understand that WADA is proposing to partly address this through raising reporting thresholds. However, UKAD is in favour of a re-assessment of this issue as a whole. One possible approach is a uniform one-year or eighteen-month suspension, if the use was Out of Competition and not connected to sport. This would save a lot of time and money currently spent arguing over "fault", and particularly about mental health issues, such as depression. Each sport could also be permitted to stipulate in its own rules that an Athlete must undergo therapy or rehabilitation (as appropriate), in addition to the applicable suspension, before they return to sport. Such therapy or rehabilitation programs would be delivered by the sport.

**Kamber-Consulting**

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

As a rule, for all non specified substances, laboratories shall only report findings as Adverse Analytical Findings, when the concentration of the substance or its relevant metabolites are higher than 50% of the Minimum Required Performance Limit. Below this level, a laboratory shall report the findings as Atypical Findings (with an estimate of the found concentration).

**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

While some may object to this on the basis of difficulty to draw lines this is arguably the most important proposal in this Code review. The Code is patently unfair to many athletes given the ability of the labs to detect minuscule levels of substances which cannot realistically impact performance. Many athletes are completely surprised at reports of positive tests and while wealthy athletes may have the ability to test and identify sources more athletes have neither the understanding nor the resource to challenge the presumption of guilt. Sometimes this leads to bans of many months and even years when, again, there can not realistically have been any performance advantage. The agreed sanction approach (without hearing) adopted by many ADOs means that the appalling impact of such cases on the lives and aspirations of dedicated athletes goes unseen. Warning letters and/or "strikes", resulting in ADRVs if repeated, are possible additional considerations if there is a sense that there needs to be some consequence. (Precedent already exists in the whereabouts programme where it is recognised that athletes can "innocently" breach the demanding requirements and there can be no certainty of an intent to break the rules or that advantage has been gained. It is repeated failures which are penalised.) Those who resist such a change in a determination to demonstrate no tolerance need to sit in the hearings for such athletes to understand the impact of the current rules on dedicated athletes who want to compete cleanly but have been unable (for understandable reasons - often lack of education) to avoid an adverse finding. The Froome case is a classic example where an athlete with almost unlimited resource was able to defend himself where most athletes would have been penalised. The irony is that the ability of the athlete to have, in any meaningful way, improved performance in a one off situation like this (an increased number of puffs of a legitimate and necessary medication) is far from clear and a warning letter would have been a much fairer (and cost effective) response.



**International Paralympic Committee**

James Sclater, Director (Germany)

Other - Other (ex. Media, University, etc.)

SUBMITTED

While the IPC is generally in support, there should be a provision for the labs to report values below the threshold for intelligence purposes. There is no difference between an athlete that recently accidentally ingested a tainted substance with an athlete that is at the end of an excretion period for knowingly using a banned substance.

**GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)

Other - Other (ex. Media, University, etc.)

SUBMITTED

**A New Sanctioning Formula for IC Substances used OOC**

1.A number of Prohibited Substances are Prohibited In-Competition only (referred to here as 'an IC Substance'). Using an IC Substance Out-of-Competition is not a doping violation. However, if an Athlete is tested In-Competition, and retains a trace of that use in his or her system, then that Athlete can receive a lengthy ban. This position is unsatisfactory and requires reform.

2.Article 4.2.1 of the Code explains that certain substances are Prohibited at all times 'because of their potential to enhance performance in future *Competitions* or their masking potential'. Conversely, this means that an IC Substance must lack the potential to enhance performance in future *Competitions*. So, using an IC Substance cannot, according to the Code, have any impact on competition performance. If it did, it would be banned at all times.

3.Once consumed, most IC Substances are broken down by the digestive system fairly rapidly. Stimulants, for example, lose their stimulant effect because they are converted into inactive compounds, and then excreted. These excreted products, or 'metabolites', are most often the products that appear in a urine sample if that sample is collected In Competition.

3.1.The fact that metabolites are included in the Prohibited List makes obvious sense. A metabolite is evidence that a 'parent' substance has been used. If that parent substance is banned at all times, the presence of the metabolite is a crucial piece of evidence in determining that a violation has taken place.

3.2.Metabolites do not have any intrinsic doping significance. If they were used on their own, they would have no doping effect. Using stanozolol will enhance muscle strength; using a stanozolol metabolite will not.

3.3.The metabolites of an IC Substance are only detected in urine samples provided In Competition. Absent cases where they are present in significant concentrations, or in conjunction with the 'parent' substance (both of which indicate that the IC Substance was actually used In Competition), they are most commonly evidence that an IC Substance has been used at a time when its use was not contrary to the doping rules – that is, Out of Competition.

3.4.Despite this, the presence of these metabolites routinely attracts significant sanctions.

4.Metabolites of Prohibited Substances are included in the Prohibited List because they can – and often do – provide key evidence of doping behaviour. The metabolite of an IC Substance is – in most cases – evidence of non-doping behaviour, that is, the use of an IC Substance at a time when that use was permitted. The metabolite is evidence of permitted behaviour.

5.Despite this, the presence of such metabolites routinely results in significant sanctions. An obvious and unavoidable example is cocaine.

5.1.Cocaine is almost never used In-Competition: to suggest that it is specious. It is an expensive social drug used by people who lack any social conscience and who diminish themselves by their association with the substance. Lacking a social conscience is not, however, a doping violation.

5.2.Cocaine is rapidly metabolised by the human body, one metabolite being benzoecgonine ('benzo'). Many cocaine cases concern benzo, and many result in two year sanctions (in one egregious case, a four year sanction resulted, it is hoped to the shame of all those involved).

6. Athletes have for many years been receiving long bans for having evidence of non-doping activity in their urine sample. A technical legal reading of the Code suggests that 'doping' is one of the doping violations contained in Article 2, and so the presence of benzo in a urine sample is 'doping'. That is not a realistic view. It is both a construction that suits those who espouse it, and a view put forward by people who lack the energy to think or lead anymore. Neither is persuasive, least of all to those that it affects the most.

7. The presence of the metabolite of an IC Substance in a urine sample is not 'doping'. It is nothing more than a technical doping violation. It should be treated as such.

8. A solution to this issue would be to supplement Article 10.5.1.1 as follows –

#### 10.5.1.4

Where the anti-doping rule violation is a violation of Article 2.1 and involves the Presence of a Prohibited Substance that is Prohibited In-Competition, if the Athlete can establish that the relevant Prohibited Substance was used solely Out-of-Competition, the period of Ineligibility shall not exceed one year, subject to any further reduction provided for in Article 10.

[Comment: an Athlete will be able to demonstrate that the relevant Prohibited Substance was used solely Out-of-Competition if the relevant Adverse Analytical Finding is in respect of metabolites of the relevant Prohibited Substance only, and the level of the metabolites is consistent with Out-of-Competition use]

9. At a stroke this would reduce the costs of a large number of (in the doping sense) irrelevant and low-value matters, and provide long-overdue fairness to athletes.

## Whether certain minimum good governance standards impacting anti-doping activities should be made a Code requirement for all Signatories. (5)

### EU and its Member States

SUBMITTED

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

### *Good governance*

Acknowledging that discussions on the reform of the governance of WADA are ongoing, the EU and its Member States would like to recall that good governance is a necessary process and fundamental component to ensure public confidence in the contribution of the anti-doping system to the integrity of sport.

All actors in the anti-doping system, including WADA itself, should implement the basic principles of good governance, such as accountability, transparency, democracy and participation (Article 20 of the Code). In order to fully protect the rights of clean athletes, WADA's and Signatories' and governments' governance structures must be free from any conflicts of interests.

Recalling that WADA should be the sole regulator of the anti-doping system, the EU and its Member States invite WADA to consider how its compliance with the Code, as well as compliance by the IOC, could be evaluated and monitored, by an independent monitoring body.

### NADA Austria

SUBMITTED

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

NADA Austria strongly agrees. Given the fact that athletes have to be accurate and very precise in all their tasks regarding doping, the signatories and WADA shall not only act according to "certain minimum" good governance standards but to very high standards. Credibility is the most important currency.

In order to guarantee not only symbolic, but also de facto autonomy, former and especially current officials from sports, business, politics and the media must not work in leading positions of anti-doping organisations. Furthermore, a long-term continuity of personnel, especially in the fields of planning, conducting and analysing doping controls as well as prosecuting and judging anti-doping rule violations, must be prevented to make sure that the objectivity and independence of these persons does not suffer unintentionally or unconsciously through personal relationships, routinization or professional “tunnel vision”.

### AEPSAD

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

The World Anti-Doping Agency (WADA) has introduced new features in the first draft of the global anti-doping code in relation to its sanctioning role in the sanctioning procedure. We can also see it in other articles like in 10 and 5.

In many countries the fight against doping is structured in public laws body whose rules are in laws and regulations of general application and approved by national parliaments, so the participation of private sector entities, and also private foreign institutions, is not possible. This system is based on popular sovereignty and the public law body holds the mandate for this popular representation, so the interferences by foreign and private entities is neither possible nor acceptable.

The WADA intervention in the assessment or approval of measures or agreements adopted by national administrative entities will not be accepted by the bodies that have to approve the rules in which the provisions of the new world anti-doping code should be implemented.

**In this regard, the development of a sanctioning procedure subject to public law by WADA, in the terms that the draft is written, cannot accept by neither the legislative and judicial bodies.**

**Within the framework of the possible implementation of the rules proposed in the draft of the new World Anti-doping Code 2021, the executive decisions proposed must be replaced by queries and reports that in no case may imply exercise of public powers.**

### Kamber-Consulting

SUBMITTED

Matthias Kamber, Independent Expert (Switzerland)  
Other - Other (ex. Media, University, etc.)

A board of an Anti-Doping Organization should be independent from the organizations that provide finances to avoid potential conflict of interest. As well, members of a board should not hold key positions in national or international sports organizations or in CAS.

### GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

Good governance should be a fundamental requirement for all NADOs. This is consistent with the Council of Europe Recommendation on Operational Independence of NADOs.

Good governance requires that there is accountability for decision-making throughout an organisation, and to support that aim good governance principles are adopted. These include –

· **Being accountable:** Anti-Doping Organisations must report, explain and be answerable for the consequences of decisions they make to their stakeholders (a ‘stakeholder’ being a person or organisation that is affected by the Anti-Doping Organisations’ decisions).

· **Transparency:** Stakeholders should be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made. Anti-Doping Organisations should make and publish reports as to their activities, strategy and expenditure on at least an annual basis.

· **Rule of law:** Anti-Doping Organisations' decisions must be consistent with the Code and national laws.

· **Responsiveness:** Anti-Doping Organisations should always try to serve the needs of all their stakeholders while balancing competing interests in a timely, appropriate and responsive manner.

· **Inclusivity:** All stakeholders should feel that their interests have been considered by an Anti-Doping Organisation in its decision-making process.

· **Efficiency:** Anti-Doping Organisations should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their stakeholders.

· **Conflicts:** Anti-Doping Organisations should at all times avoid conflicts of interest in respect of their operational activities.

## How should WADA's performance be monitored and enforced? In fact, WADA is not a Code Signatory and its structure, jurisdiction and mandate are not compatible with those of a Code Signatory. (8)

### Union Cycliste Internationale

Union Cycliste Internationale  
Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

SUBMITTED

The current "structure, jurisdiction and mandate" of WADA should not exclude developments in the Code which provide for duties with which WADA must at least undertake to comply.

Whilst the consequences of breaching such duties are difficult to envisage, WADA should commit at a minimum to respect certain key principles that WADA stakeholders consider WADA ought to respect

### Norwegian Olympic and Paralympic Committee and Confederation of Sports

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

## Regarding Article 20.7 Roles and Responsibilities of WADA

### WADA's structure

Stakeholders have suggested changes affecting the organizational structure of WADA. Acknowledging the importance of good governance, we ask WADA to provide stakeholders with the opportunity to submit proposals in a separate open WADA Statutes review process.

### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

WADA's responsibilities and obligations can be increased moderately since it has less responsibilities and obligations compared with those of other signatories, athletes, and athlete support personnel.

### Council of Europe

Council of Europe, Sport Convention Division (France)

SUBMITTED

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

### Article 23.1.1

WADA, as a body coordinating the elimination of doping in sport, must remain a signatory.

#### NADA

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

### WADA`s own Code Compliance

NADA supports the Counsel of Europe's opinion on WADA's Compliance and good Governance structure in the

future:

"Good governance should be a fundamental requirement.

Good governance requires that there is accountability for decision-making throughout an organisation, and to support that aim good governance principles are adopted. These include –

- **Being accountable:** Anti-Doping Organisations must report, explain and be answerable for the consequences of

decisions they make to their stakeholders (a 'stakeholder' being a person or organisation that is affected by the Anti-

Doping Organisations' decisions).

- **Transparency:** Stakeholders should be able to follow and understand the decision-making process. This means

that they will be able to clearly see how and why a decision was made. Anti-Doping Organisations should make and

publish reports as to their activities, strategy and expenditure on at least an annual basis.

- **Rule of law:** Anti-Doping Organisations' decisions must be consistent with the Code and national laws.

- **Responsiveness:** Anti-Doping Organisations should always try to serve the needs of all their stakeholders while

balancing competing interests in a timely, appropriate and responsive manner.

- **Inclusivity:** All stakeholders should feel that their interests have been considered by an Anti-Doping Organisation

in its decision-making process.

- **Efficiency:** Anti-Doping Organisations should implement decisions and follow processes that make the best use

of the available people, resources and time to ensure the best possible results for their stakeholders.

- **Conflicts:** Anti-Doping Organisations should at all times avoid conflicts of interest in respect of their operational

activities."

### Independent Anti-Doping Service Providers

WADA should also obtain ISO-certification as required by WADA for Laboratories, SCAs and NADOs.

Likewise, service providers (IDTM, PWC, etc.) and the ITA should be signatories to the WADC and code compliance to ensure consistent quality Standards.

### NADA Austria

Alexander Sammer, Head of Legal (Austria)  
NADO - NADO

SUBMITTED

WADA cannot be code compliant, since WADA itself sets and regulates the compliance rules. Compliance rules for WADA must be set by an independent external board/commission (e.g. Price Waterhouse, Ernst&Young etc.)

WADA's task is to establish a legal framework and monitor compliance with these regulations. In democratic societies the legislative authority must not have executive or even judicative powers. Hence there is a need for another independent organisation to bear this responsibility.

National Anti-Doping Organisations (NADOs) exist to be the main service providers on a national level (doping controls, results management, therapeutic use exemptions, appeal of national panel decisions, information and education) and national panels are responsible for judgement. In parts of the world where infrastructural and / or financial challenges prevail, Regional Anti-Doping Organisations (RADOs) and regional panels shall cover the same scope of duties.

In addition to these already existing institutions an internationally operating organisation must be installed which we may call "International Anti-Doping Service" (IADS) for the purpose of this article. IADS's agenda is to perform "special missions" (e.g. doping controls in areas with insufficient infrastructure or intelligence-led target testing) and to appeal national decisions.

It shall have no member organisations, but regional subsidiaries to conduct its work. IADS is not intended to coordinate or guide national approaches, but rather maintains its own anti-doping program. Cooperation and partnerships with NADOs are possible, but all aforementioned principles of independence must apply to IADS as well.

The proposed IADS as executive body is the missing link in the international anti-doping framework besides WADA as legislative body and the Court of Arbitration for Sport (CAS) as juridical body (figure 1).

### New structure

The new orientation of the international anti-doping work must include a change in the structure of WADA. The current favors two stakeholders, the International Federations and governments. A substantial part of the work is conducted by ADOs and anti-doping laboratories, which in the present constellation have only minor participation rights. These representatives of the operational anti-doping work can contribute their expertise only inadequate, but must implement the negotiated conclusions. In the future, representatives of the operational anti-doping work are to be included in boards and committees (eg Foundation Board, Executive Board, Advisory Board, Committees).

### Benchmarking

WADA remains to be responsible for the development of anti-doping rules and regulations, upon consultation and in cooperation with athlete associations, international federations, governments, IOC and International Paralympic Committee (IPC), IADS, NADOs, RADOs, World Association of Anti-Doping Scientists (WAADS), other scientific associations and CAS (figure 2).

To ensure that the WADC and International Standards are implemented, WADA shall act as regulatory body. In this design, WADA's compliance system must be strengthened and focus on monitoring of national and international sports federations and major event organizers as well as NADOs, RADOs and IADS. Benchmarking of several aspects is a first important step, but to assess the quality of the realization of the WADC, random and intelligence-led on-site inspections of the daily routines are inevitable to ensure harmonisation. Anti-Doping Laboratories need to fulfil strict accreditation and review processes already; the same must apply to Anti-Doping Organisations.

This benchmarking system could include:

- Code compliance; Implementation of the UNESCO Convention; national legislation.
- Anti-doping provisions in criminal law; coordination of national investigation authorities and ADOs
- Independence of ADOs; legal form; organizational structure; staff
- Budget; breakdown of budget items; balance between doping control system, research and prevention
- Certification according to quality standards (e.g. ISO standards).
- Number of federations for which ADOs are responsible; responsibility for results management and sanctions
- Composition of testing pools; ratio of testing pools and number of athletes to whom the anti-doping rules apply
- Testing statistics (number, ratio IC – OOC, blood tests, analysis methods applied, athlete biological passport, tests failed, tests ordered, test orders denied, etc.)
- TUE statistics (number of applications, TUEs granted, TUEs denied, time elapsed between application and decision, etc.)
- Violations of anti-doping rules (adverse analytical findings, atypical findings, missed tests, non-analytical evidence, etc.)
-

Initiation of anti-doping rule violation proceeding; time elapsed between initiation and decision

- 
- Acquittals; Acquittals because of formal defects; procedural defects
- 
- Doping prevention statistics (presentations and seminars held, training sessions, workshops held, number of information roadshow venues, page views, social media use, etc.)

The implementation of a mentoring program that requires every NADO to cooperate with one or two other NADOs to facilitate exchange programs and external audits should be a first step to enhance quality and harmonisation. In the beginning, these efforts must focus on countries that are top ranked at major events like world championships or Olympic and Paralympic Games. In addition to a sustainable support to develop NADOs in these countries, other NADOs and the proposed IADS shall conduct doping controls and investigations to secure independent anti-doping work.

If the requirements of the WADC and the International Standards are not fulfilled, WADA must have the authority to sanction sports federations or organisations accordingly. As last resort disciplines, sports, countries or regions are not allowed to enter or host international competitions if WADA concludes that the sports federation, NADO or RADO is non-compliant.

#### Funding of anti-doping organisations

This new anti-doping framework needs sufficient funding. Since cash flows create potential dependency - which has to be reduced to an absolute minimum - a global anti-doping fund must be launched to provide the budgets for NADOs, RADOs, IADS, laboratories, decision panels, research and WADA (figure 3). Obviously, it makes a huge difference if an organisation is funded directly on a national level or via an internationally operating financier.

Sports federations and major event organizers must reallocate the budgets currently used for doping controls as contributions to this fund. Sport sponsors and media institutes broadcasting major sport events have to co-finance as well since they also benefit from marketing clean sport. Public authorities must reroute their subsidies to the fund as well. One percent of the budgets of sports federations and major event organizers, one percent of every major sponsorship and broadcasting contract as well as one percent of the national sports funding expenses should be the lower limit.

It must not be ignored that many of these proposed fund-contributors have vested interest in keeping up the "clean sport" image and may show reluctance to change the situation, at least behind closed doors. However, there is some leverage: Public authorities could link their national funding programs (e.g. infrastructure for mayor events, media subsidies) to the willingness to contribute to the fund. Media institutions could tailor their broadcasts on cooperative sports. IOC and IPC are known to have great influence on their members. A strong commitment of all major sport organisations to accept only like-minded sponsors would prove beneficial. Nevertheless, it will be a formidable challenge to achieve a general agreement, but one that is worth the effort.

Instead of running diverse anti-doping programs by numerous sports federations and major event organizers, the concentrated funding and joint course of action will enhance the quality of anti-doping work significantly and allow flexibility. But as aforementioned this must go hand in hand with an enhancement of the doping control programs.



## NADO - NADO

**WADA AS ANTIDOPING ORGANIZATION AND CODE SIGNATORY.** In this first version of Code 2021, we find on ARTICLE 23 ACCEPTANCE, COMPLIANCE AND MODIFICATION, 23.1 Acceptance of Code, 23.1.1. a list of entities who shall be signatories accepting the Code. An in this version WADA is barred (WADA). And AEPSAD find that totally unacceptable.

On Code 2003, 2009 and 2015, in the same Article 23, 23.1, 23.1.1 WADA is always in this list as an Anti-Doping Organization, and suddenly in 2021 WADA will not be more a Code Signatory. But we do not find any explanation about this important modification, no word about changes in WADA status.

First of all we must always bear in mind that the Definition of Anti-Doping Organization in this Code 2021 states very clearly what an Anti-Doping Organization is, and the status of WADA as an Anti-Doping Organization:

*“Anti-Doping Organization: A Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, WADA, International Federations, and National Anti-Doping Organizations.”*

What is the meaning of this change?

Is the Code 2021 meaning WADA will be not more an *Anti-Doping Organization*?

Or it is meaning WADA will be not more responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process?

Or maybe, WADA is not willing to implement applicable *Code* provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility, as stated for Signatories on 23.2.1?

So, what will be on 2021 the significance and the place of WADA in the anti-doping system?

Too many questions without answer, and too important to remain unanswered.

AEPSAD thinks that from 2003 to 2020 WADA was a signatory, and in 2021 WADA must continue being an Anti-doping Organization and a Signatory, there is nothing new coming to change a so important status. And because all that AEPSAD thinks that WADA status, scope, compliance and governance rules must be very clearly defined on the Code.

It's clear that WADA definition as it appears on the APPENDIX 1. DEFINITIONS: **WADA: “The World Anti-Doping Agency”** is not acceptable as a definition, this is not a definition it is only the explanation of an acronym with four letters.

**It will be necessary to write a new ARTICLE 23 THE WORLD ANTI-DOPING AGENCY, its definition, its scope, its roles and responsibilities and its compliance to the Code and its Governance.**

**Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we are proposing that WADA should continue being a Code Signatory and an Anti-Doping Organization.**

**WE CONSIDER THAT WADA AS CODE COMPLIANT IS A DIFFERENT THING THAN WADA WITH A GOOD GOVERNANCE MONITORING.**

**AEPSAD CONSIDERS THIS IS A VERY IMPORTANT ISSUE, AS WADA COMPLIANCE AND GOVERNANCE IS NOT GOING TO BE LET TO A WORKING GROUP AND NEEDS TO BE ADRESSED BY ALL THE ANTIDOPING COMMUNITY IN A VERY CLEAR AND TRANSPARENT WAY. THESE POINTS WILL BE DIFFICULT TO ADDRESS BY STAKEHOLDERS IF IN THIS MOMENT WE DO NOT HAVE ANY DRAFT REGARDING THIS ISSUE.**

**WE PROPOSE THIS NEW ARTICLE 23 THE WORLD ANTI-DOPING AGENCY WITH POINTS:**

**23.4 Governance of the World Anti-Doping Agency****23.5 Compliance of the World Anti-Doping Agency with the Code.****Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

EADA agrees that WADA's own code compliance is of great importance and all measures should be taken asap to restore WADA's strong position within the sports community.

**Suggestions concerning the References to the Anti-Doping Charter of Athletes' Rights in the Code (6)****Canadian Olympic Committee**

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

We look forward to recommendations in these important areas. It is particularly important to proceed more quickly with the Athletes' Charter. The COC supports the adoption of an Athletes' Charter into this round of changes to the Code.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

SUBMITTED

**Anti-Doping Charter of Athletes' Rights**

Some stakeholders have asked for the incorporation of the Anti-Doping Charter of Athletes' Rights. We welcome all initiatives from the athletes, and ask WADA to ensure that rights found in the proposed charter not already enshrined in the current WADC, be implemented into the Code.

However, for reasons outlined in the following we do not concur with this proposed amendment; *"and the protection of Athletes' health and right to compete on a doping free level playing field as set forth in the Anti-Doping Charter of Athletes' Rights.*

First, we consider the reference to the protection of athletes' health and right to compete on a doping free level playing field in the charter, superfluous as this already is expressed in the purpose of the Code under the heading *"Purpose, scope and organization of the world antidoping program and the Code"*. Secondly, the Code should avoid referring to any document that is not under the jurisdiction of WADA.

In addition, using a simple reference to such document as the legal basis for a possible ADRV is not acceptable, cf. drafting note *"depending on the final format of the Charter, Article 2 (Anti-Doping Rule Violations) could be amended to add a new anti-doping rule violation for violations of specific provisions of the Charter."*

**China Anti-Doping Agency**

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

The Anti-Doping Charter of Athletes' Rights is incorporated into the Fundamental Rationale of the Code, which points out that upon the finalization of the Anti-Doping Charter of Athletes' Rights, **Article 2** (Anti-Doping Rule Violations) could be amended to add a new anti-doping rule violation for violations of specific provisions of the Charter. However, the definition of ADRV is one of the core contents of the Code and the premise of the entire doping control such as testing, analysis, results management and sanctions. As a result, this definition shall be clear and accurate. If an abstract, generalized, and vaguely defined Anti-Doping Charter of Athletes' Rights becomes one of the criteria for defining ADRVs, the premise of the Code will be rather uncertain. Therefore, it is recommended to reconsider the above necessity.

### **EU and its Member States**

SUBMITTED

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

### ***Athletes' rights***

The EU and its Member States consider that the rights of athletes, including minors, must be properly guaranteed in the Code. The Charter of Athletes' Rights could become an integral part of the Code, depending on its final content.

### **NADO Flanders**

SUBMITTED

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

Since the Charter is still being developed, it does not seem appropriate to include such references in the Code without clarity on the Athletes' Rights Charter.

### **Institute of National Anti-Doping Organisations**

SUBMITTED

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

A Charter which sets out and supports fundamental athlete rights (including not to be treated unfairly as the current Code does in some instances) is an important advance which needs to be made. It is supported.

## **Other suggestions (37)**

### **International Cricket Council**

SUBMITTED

Vanessa Hobkirk, Anti-Doping Manager (United Arab Emirates)  
Sport - IF – IOC-Recognized

SUBMITTED BY WADA

The ICC believe there is a strong need for lab reports to be in simple language with an interpretation opinion as to its significance.

### **IAF**

SUBMITTED

Wilko Vriesman, General Secretary (Nederland)  
Sport - IF – Non IOC-Recognized SportAccord

Definition of a Sport without competition.

### **International SAMBO Federation**

SUBMITTED

Kamila Vokoun Hajkova, Anti-Doping Manager (Switzerland)  
Sport - IF – Non IOC-Recognized SportAccord

**Article 7.9.2** –We suggest removing or modifying this article for following reason.

In case of furosemide (specified substance) the ADO is not obligated to impose provisional suspension to the athlete – it is only option which normally is ignored by the athlete. From our experiences in case of furosemide it always turned to ADRV. So as the investigation related to each case takes approximately 2 months – the athlete can compete without any limitation at other events. Those events/ event results are than influenced by participation of athlete who will be most likely stopped for ADRV. We understand that sanction could be imposed by date of the decision, but still we consider it as rule against of right of other “CLEAN” athletes.

We even experienced the situation when athlete (tested positive for furosemide in September) competed until February next year and the NADO concluded the case with 4 years sanction which started by the date of the sample collection (based on article 7.9.2 firstly and then 10.11.1 – of 2015 WADA Code). We are sorry, but this decision influenced our events and we as IF are here to protect our clean athletes!!

### **International Triathlon Union**

Leslie Buchanan, Anti-doping Director (Canada)  
Sport - IF – Summer Olympic

SUBMITTED

### **Contaminated supplements**

ITU also agrees with the various comments that were made in the first round of consultations that something needs to be done regarding contaminated supplement cases.

Increasing the laboratory’s minimum reporting limit is a great start.

Another important concern with many of these contaminated supplement cases remains that most athletes simply do not have the funds to pay for the required lot and batch analysis and if they do Labs (if accredited) are often not willing to do the testing.

Therefore, considering the goal remains to catch real cheaters, outlining alternative ways of establishing that a supplement may be contaminated on a balance of probabilities (other than lot and batch analyses) would be useful for athletes, ADO’s and hearing panels.

Comments:

- Given the prevalence of these cases and the ever-present chances that athletes will unintentionally use one of many contaminated supplements without their knowledge and thus may be unable to determine which supplement was the source of the AAF, basic evidentiary benchmark minimums should be fulfilled to assist a hearing panel decide on an athlete’s degree of fault in alleged contamination cases.

- o E.g. Were manufacturer’s certificates obtained? Were online searches conducted? Was the product bought from a reputable vendor? Was the product recommended by a registered nutritionist? Was the contamination environmental? etc.

- Perhaps these examples can also be added in our examples in the Annex or included in a separate WADA Guideline on how to address alleged contaminated supplement cases.

### **World Rugby**

David Ho, Anti-Doping Manager - Compliance and Results (Ireland)  
Sport - IF – Summer Olympic

SUBMITTED

We thank WADA for their consideration of our comments made in the 1st Consultation Phase and are pleased to see some were reflected in the first draft of the new Code. Those comments that did not make their way into the initial draft we have not repeated in this second phase review but nevertheless still believe they have merit.

**Union Cycliste Internationale**

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)  
Sport - IF – Summer Olympic

The UCI understands that WADA intends to address certain issues (contamination, not proving source, substances prohibited in competition which were clearly used out of competition) by implementing decision limits, technical documents, etc. The UCI agrees with this approach in principle, however wishes to highlight that it is often reactive: for example, considering “reporting limits for those prohibited substances which are known contaminants” will necessarily only apply to known contaminants and does not anticipate other contaminants.

Whilst the UCI understands that the above process will be ongoing and that the technical documents etc will be routinely updated, the UCI believes that the Code remains inherently inflexible when it comes to unanticipated situations where an athlete has proven a lack of intention and no significant fault or negligence for the use/presence of a Prohibited non-Specified Substance. Considering the basis on which non Specified and Specified Substances are distinguished (i.e. the likelihood that a substance was used for a purpose other than performance enhancement) the UCI would respectfully suggest that WADA revisit whether different levels of sanctions remain appropriate for specified/non Specified substances once intention has been ruled out.

**Article 7.9.1:**

The UCI understands (from the wording of article 7.5), that a Provisional Suspension should only be applicable once the ABP experts have reviewed the athlete’s explanations and confirmed their previous opinion. If this understanding is correct, then the UCI agrees with this amendment which has already been included in its Anti-Doping Rules since 2015. For the sake of clarity, the UCI does not think that a provisional suspension should be applicable as soon as an APF is declared, in particular as it has been consistently held in CAS cases that – due to the nature of the ABP – the athlete’s explanation is fundamental in the assessment of the likelihood that the atypical results are caused by doping (whereas for presence the test is simply positive for the relevant substance). The UCI believes that this should be clarified in the Code.

---

**Article 10.5:**

The UCI considers that there should be a specific regime for recreational drugs (for example cocaine) that is consistent with that applied to cannabis.

--

**Article 10.5.1.2:**

Regarding the comment to article 10.5.1.2, the UCI believes it should be only “significant” and not “highly significant” that the athlete declared the product on the DCF.

---

**Article 10.9:**

The UCI believes the disqualification of results in case of Retesting/further analysis should be clarified.

The UCI also believes that WADA should clarify which results should be disqualified in case of an ADRV of Use based on the athlete's ABP. In that regard, the UCI would propose to add the following paragraph at the end of article 10.9:

"In the case of an Anti-Doping Rule Violation of Use asserted on the basis of an athlete's Biological Passport, all other competitive results of the Athlete obtained from the date the first sample of the rider's hematological profile, through the duration of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes. "

## ISU

SUBMITTED

Christine Cardis, Anti-Doping Administrator (Switzerland)  
Sport - IF – Winter Olympic

### CODE 4.4 Therapeutic Use Exemption («TUEs»)

**4.4.3.2** If the *National Anti-Doping Organization* considers that the *TUE* does not meet the criteria set out in the International Standard for Therapeutic Use Exemptions, **it has 21 days from such notification to refer the matter to WADA for review.** If the *National Anti-Doping Organization* refers the matter to *WADA* for review, the *TUE* granted by the International Federation remains valid for International-level *Competition* and *Out-of-Competition Testing* (**but is not valid for national-level *Competition***) pending *WADA's* decision. If the *National Anti-Doping Organization* does not refer the matter to *WADA* for review, the *TUE* granted by the International Federation **becomes valid for national-level *Competition* as well when the 21-day review deadline expires.**

#### ISU Question:

Could an athlete be considered as having committed an ADRV within the 21 days if he/she is competing at national competition and his/her testing result being reported as AAF?

#### 4.4.9

A failure to take action within **a reasonable time** on a properly submitted application for grant/recognition of a *TUE* or for review of a *TUE* **decision shall be considered a denial of the application.**

#### ISU Proposal 1:

Why a properly submitted TUE would be denied when the fault lies to the organization not properly reviewing TUE; the athlete should not bear the fault of denied treatment when it is the organization fault

#### ISU Proposal 2:

What is reasonable time? Following the guideline, as for WADA review, is it 21 days?

### CODE 5.2 Scope of Testing

#### Comment to Article 5.2

Unless the Athlete has identified a 60-minute Testing window during the following-described time period, or otherwise consented to Testing during that period, before Testing an Athlete between the hours of **11:00 p.m. and 6:00 a.m.**, an Anti-Doping Organization should have **serious and specific suspicion** that the Athlete may be engaged in doping.

### I.3 Whereabouts Filing Requirements

I.3.2 Subject to Article I.3.3, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between **5 a.m. and 11 p.m.** each day where the Athlete will be available and accessible for Testing at a specific location.

[Comment to I.3.2: The Athlete can choose which 60-minute time slot between **5 a.m. and 11 p.m.** to use for this purpose, provided that during the time slot in question he/she is somewhere accessible by the DCO.

#### **ISU Proposal 1:**

To define one specific 60-minute time slot between 5 a.m. and 11 p.m. and to correct accordingly “Code Article 5 Testing and Investigations”

#### **ISU Proposal 2:**

An example of definition to guide us on what is **serious and specific suspicious** should be given

### **International Ice Hockey Federation**

Adriaan Wijckmans, Junior Legal Counsel (Switzerland)  
Sport - IF – Winter Olympic

SUBMITTED

#### 1. Definition of fault

In numerous doping cases, the Court of Arbitration for Sport (“CAS”) reduced the imposed period of ineligibility based on No Significant Fault or Negligence by applying the so-called Cilic guidelines which were established by the CAS Panel in CAS 2013/A/3327 & 2013/A/3335[1]. The application of these guidelines to the 2015 WADC was confirmed by the CAS in CAS 2016/A/4371[2].

The Cilic guidelines make a distinction between “significant”, “normal”, and “light” degrees of fault and allocated a time span to each of those categories: 24 to 16 months for a “significant” degree with a “standard” significant fault leading to 20 months, 16 to 8 months for a “normal” degree with a “standard” normal degree leading to 12 months, and 8 to 0 months for a “light” degree of fault with a “standard” light degree leading to a period of 4 months.

Moreover, with respect to the determination of the sanction, the Cilic guidelines consider that an “objective” and a “subjective” level of fault must be taken into consideration. The objective level of fault or negligence points to “what standard of care could have been expected from a reasonable person in the athlete’s situation” and the subjective level consists of “what could have been expected from that particular athlete, in the light of his particular capacities.” The objective elements should be “foremost in determining” the category of fault.

Elements brought forward in the Cilic doctrine as being determining to assess the objective level of fault are whether or not the athlete:

- (i) read the label of the product used (or otherwise ascertain the ingredients)
- (ii) cross-check all the ingredients on the label with the list of prohibited substances
- (iii) make an internet search of the product
- (iv) ensure the product is reliably sourced
- (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.

Subjective elements to assess the athlete’s level of fault are:

- (i) An athlete’s youth and/or inexperience

- (ii) The extent of anti-doping education received by the athlete
- (iii) Any other “personal impairments” such as those suffered by:
  - i. an athlete who has taken a certain product over a long period of time without incident
  - ii. an athlete who has previously checked the product’s ingredients
  - iii. an athlete is suffering from a high degree of stress
  - iv. an athlete whose level of awareness has been reduced by a careless but understandable mistake

In this context, the IIHF is of the opinion that the implementation of these Cilic guidelines in the WADC would give anti-doping organizations and deciding bodies more guidance when making a decision on the reduction of a period of ineligibility by assessing the athlete’s degree of fault. Moreover, this should ultimately contribute to more consistency in the adoption of decisions in doping cases. Lastly, the IIHF is convinced that it will give athletes a clearer view on which steps they should undertake before consuming a substance so that it could help athletes to prevent the inadvertent ingestion of a prohibited substance.

Therefore, the IIHF would like to request WADA to incorporate these Cilic guidelines in the definition of Fault that is now mentioned on p. 134 of the 2015 WADC.

[1] CAS 2013/A/3327 Marin Cilic v. International Tennis Federation (ITF) & CAS 2013/A/3335 International Tennis Federation (ITF) v. Marin Cilic, award of 11 April 2014.

[2] CAS 2016/A/4371 Robert Lea v. USADA.

## 2. Proportionality

The introduction of the WADC mentions the following with respect to the principle of proportionality: “The Code has been drafted giving consideration to the principles of proportionality and human rights”.

It is however apparent that on numerous occasions, the CAS or other hearing bodies, decided to impose a sanction which was lighter than the minimum sanction prescribed in the WADC, by applying the principle of proportionality. In these cases, the deciding bodies were of the opinion that the strict application of the WADC would lead to a disproportionate sanction so that a decision was rendered which went beyond the wording of the WADC. The fundamental problem here is that there is no consistency with respect to the application of the principle of proportionality in doping cases, as the application of this principle was also rejected by the CAS and other deciding bodies in several cases.

It is for this reason that the IIHF would like the WADC to give a clear signal with respect to the application of the principle of proportionality in doping cases. The WADC should give guidance with respect to the principle of proportionality and specifically, indicate whether this principle is embedded in the WADC so that a further application of the proportionality principle is therefore excluded, or mention that deciding bodies can always take into account the principle of proportionality when making a decision in a doping case.

## 3. Article 10.5: Medications prescribed by a doctor

The IIHF is of the opinion that a very similar level of Fault or Negligence is applicable to an athlete that ingests a specified or a non-specified substance by taking medication that was prescribed by a doctor. However, the athlete that ingested a non-specified substance can receive a minimum sanction of a 1-year ban, there where the athlete that ingested a specified substance can receive a sanction as low as a reprimand. In this regard, the IIHF deems it manifestly unfair that 2 athletes with a same degree of Fault or Negligence are sanctioned differently, and this solely as a result of what medication was prescribed to them by a doctor.



Therefore, the IIHF would like to request WADA to adjust Article 10.5 of the WADC by stating that in case an athlete upon a doctors prescription ingests a non-specified substance and when the athlete can establish No Significant Fault or Negligence, that the the period of Ineligibility shall then be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the his degree of Fault.

## Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

### GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY

#### The Code review process

The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF), are grateful for the opportunity to contribute in the Code review process, and we remain confident that our remarks will be received in the good faith in which they are delivered. We fully share WADA's notion that constructive views are instrumental to ensuring that the Code is robust and strengthened over time to secure protection of fair and clean sport, and a level playing field

NIF, as an ADO, holds the primary and overall responsibility for the implementation of the WADC in Norway. Because of how Norwegian sport is organized, 1,3 million persons are currently under our jurisdiction and thus subject to the WADC. This being the consequence of their individual membership in sport clubs affiliated to our 54 national sports federations.

We have implemented an internal review process within our organisation, the outcome of which was presented to our Executive Board on the 30 August, serving as the basis for the comments made in this document.

On a general note, it would be highly appreciated if the document "Summary of Major Proposed changes found in the first draft of the 2021 Code", had included not only the summary of proposed changes but also the Code Review Team's view on stakeholders' suggestions that have not resulted in proposed changes. We have reviewed the 263 pages of stakeholders' submissions, and noticed also the suggestions submitted but not reflected in the version 0.1. One cannot assume that all stakeholders have the capacity to conduct a thorough review of all submissions and identify submissions that have not resulted in proposed changes. We believe this should be a task for the Code Review Team and not the individual stakeholder.

The above reflects on the concern regarding the level of transparency necessary to conduct a constructive and overarching review process, and secure a beneficial outcome. On the WADA website, the following is stated:

*"In anticipation of the 2021 Code Review Process, WADA has been compiling a running list of stakeholder feedback related to the Code which has come about through a variety of means. For example, as part of its regulatory oversight responsibility, WADA reviews all legal decisions by Anti-Doping Organizations and CAS in application of the Code (approximately 2,500 / year); and therefore, has a good understanding of the Code provisions that are subject to misinterpretation or misapplication. Also, WADA has taken due note of suggestions submitted by stakeholders and solicited Code amendment suggestions from its ad-hoc legal committee and other lawyers that are regularly involved in advising clients and arguing cases applying the Code."*

As we fully understand that not all these suggestions are presented before WADA/the team in a form suitable for publication, we suggest that minutes from meetings held between the Code Review Team and others, be it legal units or persons, should be made public. This measure would facilitate a more transparent process.

We also question why WADA/the team have chosen not to respond and address the number of stakeholders - ranging from athletes and sports organisations to NADOs and governments - explicitly expressing the need for amending the criteria for placing a substance/method on the prohibited list. Instead of addressing the issue as such, WADA/the team is referring to a decision from the European Court of Human Rights and

suggestions made by “a number of stakeholders”, and opt for moving “health” to the top of the list of the rationales for the Code.

Firstly, we were not aware of any order of importance of this bullet point list. Secondly, in our readthrough of all the comments from the stakeholders, we found only one stakeholder referring to the decision from the European Court of Human Rights and only three asking to move health on top of the list. Furthermore, when moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such amendments have been made. Instead, the decision to move health to the top of the list has made the lack of logic between the Code, the list and the consequences more accentuated. Also, we question the reference to the decision from the European Court of Human Rights as the sole legal basis and only reason for moving health to the top of the list. The Court found the French Government’s Order as being in line with the European Convention on Human Rights (ECHR) Article 8, hence there should be no need for amending the bullet point list. Furthermore, any radical change in the rationale behind the Code requires a thorough analysis and reasoning. Simply referring to one single decision dealing with whereabouts requirements within a system that has other aims to protect (ECHR) than the Code, is in our view not sufficient nor satisfactory.

### **Reasons for amendments**

We urge WADA to provide reasons for all proposed amendments in WADC 2021 1.0 and not only the major changes. It is a challenging task for the stakeholders to give opinions on an alteration without knowing the rationale behind the proposal. If the Code is proposed amended, the proposals must be reasoned, as knowledge of the legislative background is useful in the interpretation of the Code.

### **The legal status of the comments**

According to Article 24.2, the comments annotating various provisions of the Code shall be used to interpret the Code. However, we find some of these comments to be too vague, others too descriptive while others not suited to serve as a comment to a legally binding text. We believe that comments should only serve as an aid of interpretation of the Articles, and that comments should be made to all Articles of the Code that may give rise to interpretation difficulties. We urge WADA to establish a separate document where all provisions are accompanied by an explanatory note/comment, with additional reference to relevant case law. Such document should be published by WADA and revised frequently.

### **The complexity of the Code requires further emphasis on the protection of legal rights**

The Code and the Standards are increasingly becoming more extended and complex with detailed wording. The complexity itself requires further emphasis on the legal rights of persons being accused of an ADRV. This may be mitigated by WADA implementing more detailed requirements on the hearing process and other means to guarantee due process. We believe this would safeguard and further strengthen the efforts of protecting fair play and clean sport. Considering this, we are pleased that a new International Standard for Results Management and Hearings (ISRMA) is being developed and will be circulated for stakeholder consultation during both the third phase of the Code review and the second phase of the Standard review. Please confer Article 8.

### **CAS’ jurisprudence**

The WADC was established, not only to protect the athletes’ fundamental right to participate in a fair, doping-free sport, but also to ensure harmonized anti-doping programs at both international and national level. Against this backdrop we advise WADA to consider how to also accomplish and ensure harmonized jurisprudence. Today there are many hearing bodies rendering decisions based on the Code, and there is undoubtedly a need for an appeal body whose decisions are considered binding for the various hearing bodies, which will provide guidance in deciding subsequent cases with similar legal issues or facts. We are concerned that CAS panels, when organized as individual arbitral tribunals, are not structurally equipped for ensuring such uniformity of jurisprudence. We hope that the ISRMA will contain provisions and regulations for the procedural rules in cases brought before CAS. Please confer Article 13.

## **FUNDAMENTAL RATIONALE FOR THE WORLD ANTI-DOPING CODE**

### **General remark**

Please confer comments submitted under “GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY” and the heading “The Code review process”.

## **Anti-Doping Charter of Athletes’ Rights**

Some stakeholders have asked for the incorporation of the Anti-Doping Charter of Athletes’ Rights. We welcome all initiatives from the athletes, and ask WADA to ensure that rights found in the proposed charter not already enshrined in the current WADC, be implemented into the Code.

However, for reasons outlined in the following we do not concur with this proposed amendment; *“and the protection of Athletes’ health and right to compete on a doping free level playing field as set forth in the Anti-Doping Charter of Athletes’ Rights.*

First, we consider the reference to the protection of athletes’ health and right to compete on a doping free level playing field in the charter, superfluous as this already is expressed in the purpose of the Code under the heading *“Purpose, scope and organization of the world antidoping program and the Code”*. Secondly, the Code should avoid referring to any document that is not under the jurisdiction of WADA.

In addition, using a simple reference to such document as the legal basis for a possible ADRV is not acceptable, cf. drafting note *“depending on the final format of the Charter, Article 2 (Anti-Doping Rule Violations) could be amended to add a new anti-doping rule violation for violations of specific provisions of the Charter.”*

## **PART 1 DOPING CONTROL**

### **INTRODUCTION**

We ask WADA to consider the following amendment in the last paragraph:

*“As provided in this Part One of the Code, each Anti-Doping Organization shall be responsible for conducting all aspects of Doping Control. Any aspect of Doping Control may be delegated by an Anti-Doping Organization to another Person, however, the delegating Anti-Doping Organization shall remain fully responsible for ensuring that any delegated aspects are performed in compliance with the Code and the International Standards.”*

### **ARTICLE 2 ANTI-DOPING RULE VIOLATIONS**

#### **Article 2.1.2**

Unfortunately, the proposed amendment to this Article (*“or the Athlete waives analysis of the second bottle”*) does not contribute to any clarification, and we still find the Article confusing regarding the third alternative; the division of a B-sample into two bottles. We ask WADA to consider rewording the Article.

#### **Article 2.6.2**

Footnote 11 last part reads: *“Tampering includes misconduct which occurs during the results management and hearing process. See Articles 10.3.1 and 10.7.2. However, actions taken as part of a Person’s legitimate defense to an anti-doping rule violation charge shall not be considered Tampering.”*

The last sentence is an exception, and we ask WADA to consider lifting the sentence from the comment and place it in the article.

We also suggest including the content of this part of the footnote in ISRMA.

#### **Article 2.9 Complicity**

The use of the word “complicity” in the Article is a bit troublesome as the Article itself reads “complicity”. If the title of the heading remains unchanged, the word “complicity” in the Article should be changed to “conduct” or a synonym.

#### **Article 2.10 Prohibited Association**

## Articles 2.10.1 and 2.10.2

A person who has been sanctioned under the Code is free to engage in an association with an athlete as soon as the period of ineligibility has ended. However, a person not sanctioned under the Code but *“convicted or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if Code compliant rules had been applicable to such Person”* is given 6 years disqualifying status.

It seems unlogic that a person who has been subject to the authority of an ADO and is serving a period of ineligibility, receives a relief compared to persons that was not bound by anti-doping rules in compliance with the Code. One would assume it was the opposite, hence we ask WADA to at consider adding the same 6 years disqualifying status to Article 2.10.1 as is found in Article 2.10.2.

## Article 2.10.3

The last three paragraphs of this Article, starting with *“To establish a violation of Article 2.10»*, should be moved to the left to prevent them from appearing as sub-paragraphs to Article 2.10.3.

## Article 2.11 Other Anti-Doping Rule Violations

Article 2.11.1.1 should read:

*“Any act which threatens another Person for the purpose of discouraging the Person from the good-faith reporting of a potential anti-doping rule violation, non-compliance with the Code or other doping activity to WADA, an Anti-Doping Organization, law enforcement or a professional disciplinary body.”*

We also ask WADA to clarify what *“or other doping activity”* includes.

## ARTICLE 4: THE PROHIBITED LIST

### Article 4.3 Criteria for including substances and methods on the Prohibited List

Please confer our comments above to *“GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY”*.

We support the need for an amendment, and this is in line with our concerns outlined in our last submission to WADA, an extract of which will be presented in the following.

Obviously, any sanctioning rule must have legitimacy both in its essence and in its effect, and doping is, amongst most people, unquestionably perceived as an athlete's use of prohibited substances/methods to improve sport performance damaging the overarching standard of fair play. The definition of doping in the WADC is wider, and performance enhancing potential is not a requirement when considering placing a substance/method on the prohibited list. It is sufficient that the substance/method has a potential health risk and contravenes the spirit of sport. We, representing the sport movement, are concerned about this divergence, and the risk that it may create confusion among the public and eventually could influence on the legitimacy of the anti-doping rules and be detrimental to the important fight against doping in sport. We are also concerned that the wide definition of doping, where all athletes are being perceived as *“cheaters”*, does not sufficiently differ between athletes that use prohibited performance enhancing substances/methods, and athletes that use unhealthy and non-performance enhancing substances/methods. Furthermore, there is a lack of logic between the three criteria for including a substance/method on the prohibited list, and the prohibited list itself, e.g. the distinction between in- and out-of-competition testing; If a substance/method is performance enhancing and damaging to health it should be prohibited both in- and out-of-competition. The same should apply to substances/methods that are not performance enhancing but pose a danger to health and is deemed to violate the spirit of sport.

Considering the above, a substance/method should only be included on the prohibited list if it meets the criteria of performance enhancement and in addition at least one of the other two current criteria; potential health risk and violation of the spirit of sport.

As a logical consequence, the two lists will merge into one single list for both in- competition-testing and out-of-competition-testing, so that all substances/methods on the list are prohibited at all time. This will also solve

the problem of small traces of prohibited substances found in samples taken in-competition but results from use out-of-competition.

In line with this, Article 4.3.1 could read:

*“4.3.1 A substance or method shall be considered for inclusion on the Prohibited List if WADA, in its sole discretion, determines that the substance or method meets the following criteria:*

*4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance, and*

*4.3.1.1.1 Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete; or*

*4.3.1.1.2 WADA's determination that the Use of the substance or method violates the spirit of sport described in the Introduction to the Code.”*

We also request WADA for transparency regarding how substances and methods are added to the prohibited list, and to release the criteria met for each of the substances/methods listed on the current prohibited list.

#### **Article 4.4 Therapeutic Use Exemptions (“TUE”)**

Regarding TUE, we concur with stakeholders asking for a more harmonized approach in the managing of TUEs. Recognizing the importance for a robust system for TUE application, we find the current TUE system in its unharmonized structure an unnecessary burden on the anti-doping community in general and athletes in particular. Harmonized mandatory rules and a centralized system will secure a level playing field. We ask WADAS to consider whether ADAMS could serve as a common database for applications and handling of TUEs.

### **ARTICLE 5: TESTING AND INVESTIGATIONS**

#### **General remarks**

To protect the integrity of sport and a level playing field, the testing and the subsequent analysis must be flawless. Today there are several bodies responsible for sample collection, i.a. NADOs, IFs, ITA as well as private entities. Each ADO is responsible for the education and accreditation of DCOs, and although all must comply with the Code and the International Standards, given the potential impact a failure in the doping control procedure could have on the outcome, we worry that the diversity in structures responsible to perform these tasks, leaves room for different approaches and practices that may compromise the protection of the clean athletes. Hence, we repeat our suggestion from our last submission that WADA establishes procedures to ensure that all DCOs have the same high-quality level of education, training and competence.

In the document "2021 World Anti-Doping Code Review: Questions to Discuss and Consider", WADA referred to a “continuing debate involving which organizations have the right to conduct result management in different circumstances.” Some stakeholders have submitted comments indicating the need for a better coordination between ADOs wishing to conduct testing at a given event.

In our last submission, we underlined that questions about jurisdiction between ADOs wishing to conduct testing, draw the attention away from what should be our focus; protecting the integrity of sport and the clean athletes. Hence, we asked WADA to consider whether a solution to this could be establishing one single organisation responsible for all testing worldwide. By doing so, no questions of jurisdiction will be addressed.

Furthermore, this body may be linked to the efforts taken to ensure that all DCOs have the same high-level of competence, mentioned above. Some stakeholders have submitted concerns about NADOs not being on equal footing across the world, and the need for a global anti-doping fund. If all Signatories provided funding, one centralized organisation could collect doping samples across the world and all athletes would be subject to the same and equally competent testing regime. We ask WADA to consider whether the already established ITA could extend its mandate and fulfill this role, or alternatively establish a similar structure.

Regarding delegation, please confer our comments to Article 20.

## Article 5.2 Scope of Testing

Regarding delegation, please confer our comments to Article 20.

## ARTICLE 6: ANALYSIS OF SAMPLES

### General remark

As mentioned under Article 5, protecting the clean athletes, requires that the analysis of samples must be flawless. Today there are several WADA-accredited laboratories responsible for sample analyses. Again, given recent historic events, we believe it is necessary to centralize also the analysis of samples, i.e. establish one organisation responsible for distributing the A- and B-samples randomly to various WADA-accredited laboratories. We ask WADA to consider whether the already established ITA could extend its mandate and serve to fulfill this role as well, or alternatively establish a similar structure.

### Article 6.6 Further Analysis of Samples After a Sample has Been Reported as Negative

The Article should read:

*“6.6 Further Analysis of Samples After a Sample has Been Reported as Negative*

*After a Laboratory has reported a Sample as negative, it may be stored and subjected to further analyses for the purpose of Article 6.2 at any time exclusively at the direction of either the Anti-Doping Organization that initiated and directed Sample collection or WADA. (Any other Anti-Doping Organization that wishes to conduct further analysis on a stored Sample may do so with the permission of the Anti-Doping Organization that initiated or directed Sample collection or WADA. Any Sample storage or further analysis initiated by WADA or an Anti-Doping Organization shall be at WADA's or that Organization's expense.) Further analysis of Samples shall conform with the requirements of the International Standard for Laboratories and the International Standard for Testing and Investigations”*

### Article 6.7 WADA's Right to Take Possession of Samples

WADA should consider rewording the Article and delete “stored by a Laboratory or Anti-Doping Organization” as WADA should be able to take physical possession at any stage of the Doping Control process, also prior to such storage.

## ARTICLE 7: RESULTS MANAGEMENT

Please confer Article 5.

### Article 7.1 Responsibility for Conducting Results Management

#### Article 7.1.1

Attorney's fees are “costs”. Superfluous words should be omitted; hence, we suggest deleting “attorney's fees” in this Article.

### Article 7.9 Principles applicable to provisional suspensions

We ask WADA to consider expanding the concept of mandatory provisional suspension beyond Article 7.9.1 as this will contribute to equal treatment and a level playing field for the athletes.

## ARTICLE 8: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISIONS

### Article 8.1 Fair Hearings

Please confer our comments to “GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY”.

We commend WADA for establishing ISRMA. This is line with the concerns and suggestions presented in our last submission, and we hope WADA will consider our proposals for inclusion in the new standard. Please confer below where our last submission is repeated.

Regarding the proposed amendment to Article 8 in the WADC 2021 version 1.0, we find it unclear if WADA intends to propose independent hearing panels and public hearings as requirements in the new standard. Either WADA should limit the Article to a simple reference to ISRM (alternative 1), or all the requirements found in the ECHR Article 6 must follow from Article 8 (alternative 2); As Article 8 is the fundamental guarantee for ensuring fair hearings, the reference should include all the guarantees enshrined in ECHR Article 6. The hearings must be public and the hearing panel must be independent.

Alternative 1:

“Fair Hearings

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide a hearing in compliance with the *WADA International Standard for Results Management and Hearings*.”

Alternative 2:

“Fair Hearings

For any *Person* who is asserted to have committed an anti-doping rule violation, each *Anti-Doping Organization* with responsibility for results management shall provide, at a minimum, a fair and public hearing within a reasonable time by an independent and impartial hearing panel in compliance with the *WADA International Standard for Results Management and Hearings*. A timely reasoned decision specifically including an explanation of the reason(s) for any period of *Ineligibility* shall be *Publicly Disclosed* as provided in Article 14.3.”

For the sake of good order, please find in the following our last submission on this subject:

### **“Requirements of the hearing bodies**

*The Code and the Standards are increasingly becoming extended and complex with detailed wording. The complexity itself requires further emphasis on the protection of the legal rights of persons being accused of an ADRV. Hence, these persons’ fundamental right to legal protection and due process must be further strengthened. Legal protection is secured through several means and methods such as ensuring transparent processes, independence and competent hearing bodies.*

*According to Article 8, “each anti-doping organization with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair and impartial hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of Ineligibility shall be Publicly disclosed as provided in Article 14.3.”*

*Firstly, we recommend that the Code uses the accurate phrasing found in the ECHR Article 6.1., cf. “fair and public hearing within a reasonable time by an independent and impartial tribunal.” We strongly believe that public hearings secure transparency which is crucial to provide legitimacy to the judicial procedures. Hence, we suggest that hearings should be public unless there are exceptional circumstances that justify a non-public hearing, and that this is introduced as an added requirement. Article 14.3.3 must in this case be amended accordingly. Furthermore, we suggest that the Code should require that dissents are publicly disclosed.*

*Secondly, the mechanism of the disciplinary process is left largely to the ADOs under the Code, provided that these minimum procedural safeguards are met. We urge WADA to strengthen these safeguards by implementing more specified requirements. In the following we will present additional examples of safeguards that are currently enshrined in our Statutes, and we ask WADA to consider implementing similar requirements in the Code:*

*- Every case shall be decided as quickly as possible. The hearing body shall ensure that the case is not unduly delayed and may set deadlines, exclude evidence and carry out other preparatory proceedings. Every case shall be thoroughly considered before a decision is made.*

*- If oral statements are taken from parties or witnesses, the parties shall be notified and be entitled to be present with an advisor if necessary.*

- The decision shall be based exclusively on the evidence submitted in the case and of which both parties have been informed.

- If the athlete or person charged needs an interpreter, this shall be provided by the hearing body.

- If the hearing body has decided on a provisional suspension, the hearing body shall, for the further handling of the case, if possible be set with other members than the ones who decided the provisional suspension.

- No person in the hearing body may participate in the preparation of, or deciding the case if he or she is an interested party, has submitted a complaint or participated in the proceedings at a lower level, previously has publicly made known his or her opinion on the case, or if there are other reasons likely to undermine confidence in his or her impartiality.

- In addition, according to our Statutes, judicial competence for members of the hearing bodies is required, the hearing bodies may appoint expert witnesses, and the reasoned decision is public unless the hearing body decides otherwise due to special circumstances.”

### **CAS' procedural rules**

In our last submission, we pointed out that since CAS is the final hearing body and it is of utmost importance for the athletes how these proceedings are managed, the Code should contain rules for the proceedings before CAS. CAS has its own procedural rules. We emphasized the importance for the athletes that also the procedural rules are found in the Code, and advised WADA to ensure that the procedural rules of appeals to CAS in accordance with the Code, was integrated into the Code. With the new ISRMA, we repeat our suggestion to WADA, that the procedural rules in the hearings before CAS are integrated into the new standard.

### **First instance hearing bodies**

Although the Code explicitly states that it has been drafted giving consideration to the principles of proportionality and human rights, it makes use of non-flexible regulations and allows only some mitigation of sanctions based on the degree of fault. The use of non-flexible regulations may be based on a general concern and caution regarding the quality of the first instance hearing bodies. We fully understand and support the need for harmonization of the rules and the jurisprudence, however the absence of discretionary assessment is likely to contravene basic legal principles such as equal treatment and proportionality. Hence, in our last submission we suggested that WADA would consider establishing a similar arrangement in all doping cases as was done during the PyeongChang 2018 Olympic Winter Games, with CAS acting as a first-instance hearing body and as an appeal body. In our readthrough of the submissions from the stakeholders we find a number of stakeholders addressing the same issue and the need for more flexibility, hence we allow ourselves to suggest once again to establish a two-instance body within the CAS, as we trust that once established the Code can be amended providing more room for discretionary assessment for the athletes' subject to the Code, i.e. International Level Athletes and National Level Athletes.

### **Article 8.5 Single Hearing Before CAS**

This Article should read:

*“Anti-doping rule violations asserted against Athletes or other Persons may, with the consent of the Athlete or other Person, the Anti-Doping Organization with results management responsibility, WADA, and any other Anti-Doping Organization that would have had a right to appeal a first instance hearing decision to CAS, be heard directly at CAS, with no requirement for a prior hearing.”*

### **ARTICLE 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS**

According to Article 9 an anti-doping rule violation in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition in addition to following consequences. The mere presence of a prohibited substance will be sufficient to cause the disqualification of the results. This is because the athlete assumingly had a potential advantage over the other athletes. However, the AAF could be caused by an unhealthy non-performance enhancing substance. An automatic disqualification of results could be more severe for an athlete than a period of ineligibility, depending on when period of ineligibility is endured. If the presence of a prohibited substance is sufficient to cause the disqualification of the results, and the prohibited list does not require substances to have a possible performance enhancing potential, an



automatic disqualification may not serve the intended purpose of rectifying an unlevel playing field. Hence, in our last submission we asked WADA to consider amending this rule. However, if WADA is amending the criteria for including a substance/method on the prohibited list in line with our suggestion, please confer Article 4.3 above, Article 9 is reasonable, if not, we ask WADA to reword this Article in line with the suggestion below:

#### **“Article 9 Disqualification of individual results**

An anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes, if the *Athlete’s* results in the *Competition* were likely to have been affected by the anti-doping rule violation.”

### **ARTICLE 10: SANCTIONS ON INDIVIDUALS**

#### **General remarks**

Please confer Article 8 and “First-instance hearing bodies”, and below on Article 13.

Some of the Articles in Article 10 provides for a certain degree of flexibility regarding the sanctions, however there seems to be no red line or similar approach, as some of the Articles depend the length of the sanction on the degree of fault (10.3.2), others on the degree of fault and other circumstances of the case (10.3.5), and other on the seriousness of the violation (10.3.3, 10.3.4). In addition, some of the Articles start with the minimum and provides for aggravating circumstances (10.3.3), and others start on the maximum and provides for mitigating circumstances (10.2, 10.3.2).

We ask WADA to review Article 10 and establish similar mechanisms for each sanction.

#### **Article 10.3 Ineligibility for Other Anti-Doping Rule Violations**

##### **Article 10.3.2.4**

According to this Article, the period of Ineligibility imposed shall be a minimum of two years, up to lifetime ineligibility, depending on the seriousness of the violation, however no guidance is provided on how to apply this Article within this broad span.

#### **Article 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

##### **Article 10.5.1.3**

Please confer the definition of “Athlete”.

#### **Article 10.7 Aggravating Circumstances which may Increase the Period of Ineligibility**

We question how WADA can reintroduce aggravating circumstances, but no equivalent mitigating circumstances, as WADA, by introducing aggravating circumstances, is accepting that there are specific circumstances of the case that must influence on the period of ineligibility. For obvious reasons, such circumstances could be either aggravating or mitigating.

#### **Article 10.10 Forfeited Prize Money**

According to this Article “All prize money required to be forfeited as a result of an anti-doping rule violation shall be (..)”, however it is not clear on what basis these prize moneys are required to be forfeited.

#### **Article 10.13 Status during *Ineligibility* or *Mandatory Provisional Suspension***

The content of “ineligibility” and “provisional suspension” must be clear and unambiguous. In our last submission, we asked WADA to clarify the definition of “provisional suspension” as to the restrictions laid on an athlete during a period of provisional suspension. We commend WADA for clarifying that the restrictions on an athlete during mandatory provisional suspension equate to restrictions laid on an athlete during a period of ineligibility. However, our main concern addressed in our last submission was the content of these

restrictions. We concur with other stakeholders that have asked for more clarification and guidance on how to educate/explain the definition of “ineligibility”.

For the sake of good order, we address the following issues with this Article:

- The term “train with a team” in Article 10.13.2 is not explained.
- If WADA considers that the term “activity” as used in the Article should be read broadly and also cover activities not related to training or competitions, i.a. marketing activities related to sponsor agreements, or purely social gatherings organized by a signatory or its members, this must be explained in the Article.
- The relation between 10.13.1 and 10.13.2 needs further clarification.
- The use of facilities of a signatory is not mentioned in Article 10.13.2.

The content of a specific sanction or restriction must be clear. For time being it is not. It cannot be up to each signatory to monitor and interpret the scope of this Article. An unharmonious application of this Article, will not contribute to a level playing field for the athletes worldwide.

Please note that the last sentence in Article 10.13.1 must read (our underlining): “*An Athlete or other Person subject to a period of Ineligibility or Mandatory Provisional Suspension shall remain subject to Testing.*”

## **ARTICLE 12: SANCTIONS AGAINST SIGNATORIES AND AGAINST SPORTING BODIES**

### **THAT ARE NOT SIGNATORIES**

#### **Article 12.2 Proceedings Against Other Sporting Body**

We recommend the following rewording of the last paragraph of this Article:

“These rules may include the exclusion of all, or some group of, persons affiliated with or representing a sporting body from specified *Events* or competitions or all *Events* or competitions conducted within a specified period of time.”

## **ARTICLE 13: APPEALS**

Please confer our comments to “GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY” and article 8.

In general, courts of arbitration have an underlying contractual nature which defines the courts’ mission as resolving the dispute at hand irrespective of any doctrine of binding judicial precedent. However, as mentioned under “General Comments and Observations on the Code in its Entirety” and “CAS jurisprudence”, CAS must be strengthened in its role as a court of precedence. In fact, rendering decisions that are mandatory precedent on other hearing panels deciding subsequent cases with similar issues or facts, is the reason of existence for CAS as the final appeal body in the Code. Hence, it is important that CAS is organized as a supreme court of sport that harmonizes the adjudication of doping disputes. Hence, we call on WADA to consider how to evolve CAS to strengthen its role as a court of precedence for anti-doping cases. We suggest for WADA’s consideration whether doping proceedings should be organized by an antidoping division in both first and second instance with a limited number of arbitrators. Our suggestion may also include the introduction of plenary hearings in cases dealing with fundamental questions or interpretations of the Code.

The principle of equality of arms is an essential part of the right to a fair trial. However, the cost of CAS proceedings is of such a level that only the most affluent athletes are in a position to engage lawyers, experts witnesses etc. We therefore call upon WADA to consider measures to reduce the costs of CAS proceedings for the athletes, including strengthening the legal aid available to athletes and other persons being accused of an anti-doping rule violation.”

We also call upon WADA to simplify the rules regulating the deadlines for filing appeals to CAS.

## **ARTICLE 14: CONFIDENTIALITY AND REPORTING**

### **Article 14.2 Notice of Anti-Doping Rule Violation Decisions and Request for Files**

We suggest the following rewording of the Article:

*“14.2.1 Anti-doping rule violation decisions rendered pursuant to the Code shall include the full reasons for the decision, including, if applicable, a justification for why the maximum potential sanction was not imposed. Where the decision is not in English or French, the Anti-Doping Organization responsible for the decision shall provide a short English or French summary of the decision and the supporting reasons.*

*14.2.2 An Anti-Doping Organization having a right to appeal a decision received pursuant to the Code may, within 15 days of receipt, request from the Anti-Doping Organization responsible for the decision a copy of the full case file pertaining to the decision.”*

### **Article 14.3 Public disclosure**

#### **Article 14.3.3**

Please confer Article 8 and the “Requirements of the hearing bodies.”

#### **Article 14.3.6**

“Recreational athlete” must be added to the last sentence.

### **Article 14.5 Doping Control Information Clearinghouse and Monitoring of Compliance**

#### **Article 14.5.3**

In our last submission, we recommended WADA to consider establishing a database containing all decisions rendered according to the WADC. We commend WADA for putting in place a system for notification of all decisions. However, to enforce automatic implementation of ADOs decisions by other signatories worldwide, cf. the new Article 15.1, this database must be accessible to all signatories and not only serve to facilitate WADA’s oversight and appeal rights for result management. Hence, we propose the following:

*“To facilitate WADA’s oversight and appeal rights for results management and the automatic implementation of Anti-Doping Organizations decision by other Signatories, Anti-Doping Organizations shall report the following information into ADAMS or another system approved by WADA in accordance with the requirements and timelines outlined in the International Standard for Results Management and Hearings: (a) notifications of antidoping rule violations and related decisions for Adverse Analytical Findings; (b) notifications and related decisions for other anti-doping rule violations that are not Adverse Analytical Findings; and (c) whereabouts failures.”*

## **PART THREE ROLES AND RESPONSIBILITIES**

### **ARTICLE 20: ADDITIONAL ROLES AND RESPONSIBILITIES OF SIGNATORIES AND WADA**

#### **Preamble**

WADA has proposed the following amendment to the preamble of Article 20:

*“Each Anti-Doping Organization may delegate aspects of Doping Control for which it is responsible but remains fully responsible for ensuring that any delegated aspect is performed in compliance with the Code.*

*To the extent such delegation is made to a service provider that is not a Signatory, the agreement with the service provider should require its compliance with applicable Code provisions and Technical Documents.”*

Considering the recently adopted “International Standard for Code Compliance by Signatories”, NIF welcomes a clarification of roles and responsibilities for the delegating organ and the subsidiary organ. However, more guidance would be appreciated as delegation differs, as some or all aspects of the Doping Control may be delegated. For example, some delegate the responsibility for developing test planning requirements and conducting the testing in accordance with these requirements, with the overall responsibility for the anti-doping program remaining with the ADO, while some delegate more, as is the situation in Norway where NIF has delegated the conducting of testing and the management of test results prior to the hearing, to the foundation Anti-Doping Norway. Such guidance should be accompanied with model agreements that regulates the roles and responsibilities between the two parties and clarifies the mandate of the subsidiary organ, thus reducing the risk of non-compliance for the delegating organ.

## **Article 20.5 Roles and Responsibilities of National Anti-Doping Organizations**

Please confer the definition of “National Anti-Doping Organization”.

## **Article 20.7 Roles and Responsibilities of WADA**

### **WADA’s structure**

Stakeholders have suggested changes affecting the organizational structure of WADA. Acknowledging the importance of good governance, we ask WADA to provide stakeholders with the opportunity to submit proposals in a separate open WADA Statutes review process.

## **ARTICLE 24: INTERPRETATION OF THE CODE**

### **Article 24.2**

According to this Article, the comments annotating various provisions of the Code shall be used to interpret the Code. However, we find some of these comments to be too vague, others too descriptive while others not suited to serve as a comment to a legally binding text. We believe that comments should merely be serving as an aid of interpretation of the Articles, and that comments should be made to all Articles of the Code that may give rise to interpretation difficulties. We urge WADA to establish a separate document where all provisions are accompanied by an explanatory note/comment, with additional reference to relevant case law. Such document should be published by WADA and revised frequently.

### **Article 24.6**

The reference to the “Examples of the Application of Article 10” should be deleted.

## **DEFINITIONS**

### **CONSEQUENCES**

Please confer Article 10.13.

### **ATHLETE**

According to this definition, the Code applies only to international level athletes and national level athletes. ADOs have full discretion to apply the Code to lower level athletes, however, by doing so and these athletes take part in competitions, there is no discretion in terms of the application of consequences, cf. *“However, if an Article 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any Athlete over whom an Anti-Doping Organization has authority who competes below the international or national level, then the Consequences set forth in the Code (except Article 14.3.2) must be applied.”*

The definition of an athlete is a key point in the Code. We find the definition of “athlete” problematic, complicated and the proposed amendment in version 1.0 does not resolve these issues.

In Norway, NIF, has chosen to apply anti-doping rules to athletes on all levels under our authority. In our last submission, we called on WADA to amend the definition thus recognizing that anti-doping work is organized

differently in each country and provide the necessary flexibility to ADOs that want to apply the Code on lower level athletes that compete under its authority. For this group of athletes, the current use of non-flexible regulations could easily lead to i.a. unproportionate sanctions. Several other stakeholders have submitted similar opinions.

ADOs have full discretion to leave the lower level athletes outside the scope of the Code. Any logical consequence would be that ADOs deciding to apply anti-doping rules on this group of athletes, would have full discretion to establish their own anti-doping rules without being forced to apply the consequences set forth in the Code.

We commend WADA for addressing the issue of lower level athletes in version 1.0, cf. Article 10.5.1.3, however we do not find the amendment sufficient to solve the problem of non-flexible regulations. The flexibility should apply not only to reduction of sanctions for specified substances/contaminated products for violations of Article 2.1, 2.2 or 2.6. but should be reflected in other part of the Code as well, i.a. violations of other Articles, and appeals to CAS. Instead of assessing, and considering amending, each and one of the Articles in the Code, simply amending the definition of “athlete” will, in our opinion, provide the flexibility asked for by the stakeholders.

In addition, we find that a lot of the text in the definition does not serve the purpose of defining “athlete”, and should be deleted.

Finally, athletes do not represent a country when participating in an international event, but a NOC/NPC, national sports federation etc.

In line with the above, we propose the following definition:

*“Athlete: Any Person who*

- *competes in sport at the international level as defined by each International Federation (International Level athlete) or the national level as defined by each National Anti-Doping Organization (National Level Athlete),*
- *for the prior five years has competed in sport as an International Level Athlete or a National Level Athlete,*
- *for the prior five years has participated in an International Event either as an individual or team member,*
- *at the time of the anti-doping rule violation*
  - *was ranked in the top fifty (50) in the national rankings as an individual or team member in any Competition category, or*
  - *was included in any Registered Testing Pool or other whereabouts information pool maintained by an International Federation or National Anti-Doping Organization.”*

## **National Anti-Doping Organisations (“NADO”)**

We concur with stakeholders that have asked for a clarification of the requirement of independence found in Article 20.5. In addition to this clarification, we propose a rewording of the definition of a NADO. NADOs are set up and funded quite differently. Some are public some are private. Some base their authority on national legislation, some on sports rules. Some have been designated the authority by their NOC, some by public authorities.

Furthermore, result management is more than management of test results.

Considering the tasks of a NADO and the legal nature of a NOC, if the NOC or one of its designee is not the NADO in a specific country, the only alternative, as we see it, is that the NADO is established in accordance with national legislation. To our knowledge the latter is by far most common, and this should be reflected in the definition.

Hence, we propose the following new wording of the definition:

*“National Anti-Doping Organization: The entity established in accordance with national legislation as possessing the primary authority and responsibility to adopt and implement the Code and the International Standards, and for the Doping Control in a specific country, or the country’s National Olympic Committee or its designee.”*

### Canadian Olympic Committee

Tricia Smith, CM, OBC, President (Canada)  
Sport - National Olympic Committee

SUBMITTED

1. The whole anti-doping program is very pragmatic by nature. The system learns through experience. Therefore, continuous improvement is needed. A general comment would be; can or should a fast track mechanism to change an approach between Code revisions be allowed and a process built in to allow for it? Perhaps this can be done through more regular revisions to various standards as needed?
2. Proportionality has been decided (and should be taken to have been decided) by the Signatories when they adopt the Code and provide for the appropriate sanctions.
3. We recommend that it be expressly stated that a failure by ADOs to report to WADA the status of ADRV charges under their jurisdiction to becomes a breach of the Code by any such ADO.
4. Generally, the only way to ensure compliant conduct is for non-compliant conduct to constitute an ADRV. It would take only a few instances for the message to be understood.

### 5. EDITS TO RULE 11 AND SUGGESTED NEW RULE

We propose the following edits to Article 11 for Sanctions to Teams as well as new sections to Article 11 for the Code drafting team’s consideration:

#### ARTICLE 11 CONSEQUENCES TO TEAMS

Article 11.1 – if one member of a team in a Team Sport is found to have been notified of an anti-doping rule violation under Article 7 in connection with an Event, the ruling body of the Event shall conduct appropriate Target Testing of the team during the Event Period.

Article 11.2 If two members of a team in a Team Sport are found to have committed an anti-doping rule violation during an Event Period, the team is disqualified from the event.

Article 11.3 No change.

#### ARTICLE 11 (new section):

Discussion: Re sanctioning of NFs and NOCs - we recommend the WADA Code incorporates a sanctioning rule consistent with that of FISA, weightlifting and FINA, based on the principle of (discretionary or) mandatory suspension of a Signatory, when a defined number of ADRVs has been confirmed by Signatories’ athletes/members within a defined period of time, combined with an appeal process for individual

athletes/participants to demonstrate they have not been part of the system so clean athletes/participants from that NF or NOC have a chance to compete (e.g. like IAAF).

By making this a requirement of the WADA Code, it will be the same rule for everyone- all NFs all NOCs- across the board. This rule could be under the jurisdiction of the Code Compliance Review Committee (see proposal below). The deciding body would have to appreciate the circumstances of each case and establish a process and set of criteria to re-instate the athletes/participants.

We propose the following new sections to Article 11 and following for the Code drafting team's consideration:

ARTICLE 11 (new section wording proposal):

#### CONSEQUENCES TO NATIONAL FEDERATIONS (NF)

If an NF of a sport of the programme of the Olympic Games has # (six?) or more anti-doping rule violations conducted by Anti-Doping Organizations other than the NF or its NADO, in Olympic disciplines (other than violations involving Article 2.4) by its Athletes, Athlete Support Personnel or other Persons affiliated with the NF within a 12-month period, the NF will be suspended from membership in the IF for a minimum period of 2 years and all active Athletes, Athlete Support Personnel and NF board members and staff shall be declared ineligible from any activities in the NF for that period of time."

The IF may elect to establish rules which impose consequences stricter than those in Article 11##.

Athletes or Athlete Support Personnel who can prove, by providing documented evidence that they were training and/or regularly tested outside of the NF programs and as per criteria set by (the WADA Compliance Committee or the IF?), may appeal their own suspension and if successful, may compete or participate during the suspension as Neutrals. This determination can be appealed by the Athlete, the Athlete Support Personnel or by WADA to CAS.

(The WADA Compliance Committee or the IF?) has the authority to establish rules including a process for the eligibility of Neutrals as referenced in Article 11xx

#### CONSEQUENCES TO NATIONAL OLYMPIC COMMITTEE (NOC)

If a NOC has # (three?) or more member NFs on the programme of the Olympic Games with six or more anti-doping rule violations, conducted by Anti-Doping Organizations other than the NF or its NADO, in Olympic disciplines (other than violations involving Article 2.4) by its Athletes, Athlete Support Personnel or other Persons affiliated with the NF within a 12-month period, the NOC will be suspended from participation in the subsequent Olympic Games and all active Athletes, Athlete Support Personnel and NOC board members and staff shall be declared ineligible from any activities in the NOC for that period of time."

The IOC may elect to establish rules for the Olympic Games which impose consequences stricter than those in Article ##.

Athletes or Athlete Support Personnel who can prove, by providing documented evidence that they were training and/or regularly tested outside of the NF/NOC programs and as per criteria set by (the WADA Compliance Committee or the IF), may appeal their own suspension and if successful, may compete or participate during the suspension as Neutrals. This determination can be appealed by the Athlete, the Athlete Support Personnel or by WADA to CAS.

The (WADA Compliance Committee or the IOC?) has the authority to establish rules including a process for the eligibility of Neutrals as referenced in Article 11xx

(Note: Same Rules to be applied for Paralympic sport)

#### China Anti-Doping Agency

Zhaoqian LUAN, . (China)  
Sport - Other

SUBMITTED

#### 1. To increase investigation into the liability of athlete support personnel

The 2021 Code strengthens the restraint on athlete support personnel, but there is no specific provision on how to investigate the liability of athlete support personnel, except in the Comment to Article 23.2.2 which states that “Nothing in the Code precludes an Anti-Doping Organization from adopting and enforcing its own specific disciplinary rules for conduct by Athlete Support Personnel related to doping but which does not, in and of itself, constitute an anti-doping rule violation under the Code.” Although it provides some basis for investigating the liability of athlete support personnel, it fails to provide the uniform standard, which will inevitably lead to distinctions in practice, thus prejudicing the core objective of the Code in imposing harmonized sanctions. For example, it turned out that athlete support personnel played a role in a large majority of cases of knowing use handled by CHINADA. In this regard, it is recommended that the 2021 Code further increase the investigation into the liability of athlete support personnel or make more specific interpretation of the Comment to Article 23.2.2.

## 2. International Standards

“International Standards for different technical and operational areas within the anti-doping program have been and will be developed in consultation with the Signatories and governments and approved by WADA”. “Adherence to the International Standards is mandatory for compliance with the Code”. At present, the international standards are constantly being revised, and new international standards will be issued. In order the signatories to have accurate understanding of and strict compliance with international standards, we recommend that the Code should make clearer provisions for the development, revision and interpretation of the international standards and a more transparent procedure should be in place.

## 3. To establish an error correction mechanism

With the development of science and technology, samples are subject to longer-term storage and further analysis in accordance with the current technology and specifications. On the other hand, with the development of knowledge, people have acquired new understanding of meat contamination by clenbuterol and individual biological parameters and technical documents, and have made adjustments in the rules. Some individual cases brought forward as ADRVs may not be reasonable. Correcting mistakes whenever discovered is the basic principle of the rule of law. Anti-doping work should also respect science and have the courage to correct mistakes. To carry on the spirit of fairness, justice and seeking truth from facts, it is recommended that a reasonable correction and re-assertion mechanism should be established in the Code for the sanctions or disciplinary decisions which are still within the period of eligibility.

**4. Article 10.9:** Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation, “unless fairness requires otherwise”. What are the circumstances of fairness? It is recommended to explain it in the Comment or Examples of Application.

**5. Article 10.11:** Financial consequences. It is recommended that particular protection for minors be included in this Article since minors usually lack sufficient personal property to bear this responsibility. Instead, the severe financial consequences are often transferred to their parents or other guardians, so it is difficult to achieve the due educational effect. It is recommended to supplement the principle on the use of financial consequences and the emphasis on education and reprimand for minors, and the financial consequences for minors should be reduced depending on the economic situation of their families and the seriousness of fault on the part of the other relevant persons.

6. The degree of fault and negligence in Appendix I. Whether it is No Fault or Negligence or No Significant Fault or Negligence, the requirement remains the same that “for any violation of Article 2.1, the athlete must establish how the Prohibited Substance entered his or her system”. This mandatory requirement sets a high standard of proof and is very harsh for athletes of misuse. Many times there is the possibility of one or more contaminations, and it is very difficult to confirm the specific causes. In the process of handling ADRV cases, in fact, the hearers or arbitrators independently make personal opinions through the inference of free proof. Therefore, it is recommended to revise “must establish how the Prohibited Substance entered his or her system” into “explain how the Prohibited Substance entered his or her system”.

## EU and its Member States

Barbara Spindler-Oswald on behalf of the EU and its Member States, Chair of the Working Party on Sport (Austria)  
Public Authorities

SUBMITTED

## Introduction



The EU and its Member States took note that, in the first draft of the Code 2021, WADA did not yet address comments related to data privacy, education, WADA governance and mechanisms for monitoring WADA's performance and appropriate references to the Anti-Doping Charter of Athletes' Rights. The EU and its Member States therefore reiterates comments related to these topics.

The EU and its Member States are of the view that the following elements could be considered in the World Anti-Doping Code Review process.

### **Department of Health - National Integrity of Sport Unit**

Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

SUBMITTED

#### **A AND B SAMPLES**

The Code (Article 2.1) is only explicit about the splitting of a B sample. The ISL allows for the splitting of an A sample.

Australia suggests that the Code should reflect the provisions in ISL by recognising the permitted process of splitting the A sample into a new A Sample and B Sample (if necessary).

#### **GENE-DOPING**

It is important WADA remains forward thinking and proactive in preventing future threats such as gene-doping. Given the Code enters into force on 1 January 2021, accessibility to gene-doping technology may have advanced to the point of being a pronounced threat to the integrity of sport. Comprehensively addressing the issue now sends a signal to the sporting community that this practice will not be tolerated and, if a person is caught, the potential sanction is severe.

#### **DEFINITION OF A TUE**

The Code should provide a definition of a TUE. Currently, Appendix 1 defines a TUE as it is described in Article 4.4. However, Article 4.4 does not expressly state what a TUE is, rather the process through which an athlete may be granted a TUE.

As a starting point, a possible definition for a TUE could be 'an authority to allow an athlete to use an otherwise prohibited substance or method for legitimate medical reasons.' Australia would welcome the opportunity to work with WADA on a suitable definition.

#### **BROADENING CIRCUMSTANCES OF PUBLIC DISCLOSURE**

In the modern era of electronic communications and 24-hour news cycles, the standing of many anti-doping organisations (and hence, the anti-doping process) is often undermined by public allegations, accusations and innuendo on individual cases that go unchallenged because, under the Code, ADOs may only respond to public comment attributed to the athlete, their support person, or their representatives.

In particular, high-profile doping cases covered in the media often invite speculation and comment by persons outside those captured by Article 14.3.5. A non-response by the ADO may be taken to be tacit agreement to what is being said. In light of this, the Code should be revised to give the ADO the option of clarifying any misinformation regardless of to whom it be attributed.

#### **SIGNATORY STATUS OF NADOs**

Ambiguity continues to exist when considering the signatory status of NADOs that are established as agencies of government. Article 22 recognises that governments cannot be bound by private non-governmental instruments such as the Code. However, Article 23.1.1 requires a NADO to be a signatory by signing a declaration of acceptance. In the case of Australia, ASADA is designated by legislation to be Australia's NADO. However, as ASADA is a statutory agency of the Australian Government, it falls under the

auspices of Article 22. Notwithstanding these definitional interpretations, ASADA and the Australian Government remain fully committed to global compliance measures.

To remove this ambiguity and re-affirm that a NADO established under government legislation can be subject to an assessment of its Code-compliance, there are suggested Code amendments enclosed for your consideration. However, given the significance of this issue further dialogue would be welcome between officials from WADA and the National Integrity of Sport Unit to reach an effective resolution.

#### DEFINITIONS OF NO FAULT OR NEGLIGENCE AND NO SIGNIFICANT FAULT OR NEGLIGENCE

These definitions should be amended to reflect the introduction of 'recreational athletes'. Where the definition refers to a 'minor', it should also include 'recreational athlete' for consistency with new Article 10.5.1.3.

#### ARTICLE 5.8.1

The Article would be improved by including the sharing of anti-doping intelligence thereby reflecting the wording of the ISTI.

### **Sport New Zealand**

Sam Anderson, Senior Advisor (Legal) (New Zealand)  
Public Authorities - Government

SUBMITTED

### **Strengthening the Court of Arbitration for Sport (CAS)**

1.

The Code establishes CAS as the global appeal body for anti-doping matters. In most instances, the Code ensures that CAS will have the final say on legal questions regarding anti-doping. Given this, we consider WADA should seek to improve the operation and function of CAS so that anti-doping cases remain subject to fair, transparent and independent appeal processes.

2.

We continue to support the existence of a global court that specialises in hearing sports-related matters. However, we suggest WADA should seek to strengthen CAS by calling for processes that:

1.

remove actual or perceived conflicts of interest

2.

establish rigorous and transparent criteria for the appointment of CAS arbitrators

3.

establish rigorous and transparent criteria that applies to the hearing of cases

4.

require the prompt publishing of written decisions

### **Article 13**

1.

We agree that the wording of Article 13.1.2 needs to be amended. Currently, this article is unclear about whether CAS may defer to the findings being appealed. In other words, it is not clear whether all CAS appeals *must* be heard de novo. It would be unusual for a court to be forced to rehear all evidence and submissions, even those aspects that are accepted by both parties. Article 13.1.2 should be amended to make it clear that CAS *may* defer to the findings being appealed. This would provide CAS with the discretion to hold de novo hearings where necessary.

2.

A rule that prevented CAS from ever deferring to the discretion exercised by the body whose decision is being appealed would be both inefficient and inconsistent with general legal principle. We consider a discretion to defer to the findings being appealed is appropriate and would also be consistent with the approach currently set out in Rule 57 of the *CAS Code of Sports-related Arbitration*.

### Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

CommentsComments in the WADC, which have in fact intended to have as much effect as the Articles themselves should to be moved into the Code as Articles.

Comments should be made part of the Articles in the Code wherever appropriate, so there is minimal room for confusion as to the status of points made in the comments.

The draft document does not contain provisions on the procedure for the entry into force of the amendments to the WADA Code and the existence of their retroactive force.

Amendments to the WADA Code should not be retroactive and be applied to pending investigations or other matters on which decisions should be made based on the provisions of the WADA Code.

The text repeatedly contains documents that are not currently published and are being developed at various levels. We believe it is incorrect to refer to the documents that do not currently exist. A similar remark exists on the whole text of the changes, since such references are found repeatedly

#### Others

Specify what is meant by 'his/her NADO', e.g. NADO of country where athlete practises sport? Country where athlete is resident? Both (and any conflict determined by WADA)? This seems an easy clarification to make. It applies to Articles 4.4.3.2, 4.4.4.2 and 21.2.4.

#### Prohibited Association

It is necessary to extend the concept "Prohibited Association" as in the current version of the Code and in the draft Code the definition of the concept "Prohibited Association" is about athlete's association with disqualified athlete support person. Literally, this article implies that such individual should be a disqualified athlete support person. Taking into account the risks that disqualified athletes, who are not officially registered as coaches (as it is prohibited pursuant to paragraph 10.12) can render professional services to current athletes, and the current athletes will not bear any responsibility for this, it is expedient to extend (and to directly state this in the Code) as follows: "Association is prohibited by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Person who..."

In addition, we request to add to this article (as it should be transferred into the rules in full, without changes), one more type of investigations and responsibility, to which the person was held accountable – administrative responsibility.

#### Compliance

The role of Compliance Review Committee should be specifically mentioned in the Code, and that clarification is required around the roles of IFs and NOCs/NPCs in monitoring and enforcing Code compliance by National Federations.

Regarding whether certain minimum good governance standards impacting anti-doping activities should be made a Code requirement for all Signatories: this may mean some only aspire to do the minimum, perhaps more of an assurance framework, with peer / WADA input to get all signatories doing more than the minimum would be an alternative.

As the consequences for signatory non-compliance listed in the ISCCS may be a bit lengthy to be incorporated in the Code, we suggest that a summary of consequences, and reference to the ISCCS, could be listed in the Code instead.

## Definitions

To amend the Appendix 1 of the WADA Code with the following definitions: «Para-athlete – is a sportsperson with physical disabilities, visual impairment or intellectual disabilities, participating in the International Paralympic movement.»

**Athlete:** The main rule to this definition relates to national and international level athletes and is defined in the first sentence. The exception to this definition relating to Recreational Athletes is now unclear. It reads (third sentence): *“In relation to Athletes who are neither International-Level nor National-Level Athletes, or are Recreational Athletes, an Anti-Doping Organization may elect to: conduct limited.....”*. The exception has previously made it clear that it only involved “Recreational Athletes” (i.e. limited testing, less than full menu etc). To maintain this understanding, we suggest the following: *“In relation to a Recreational Athlete, an Anti-Doping Organization may elect to: conduct limited.....”*.

## Article 9

Add the wording to the section:

The anti-doping organization has a right, in exceptional cases, not to cancel the athlete's results achieved in the competition where he/she was tested positive. An anti-doping organization should be given such a right in case the athlete can prove there is No Fault or Negligence, as well as provide evidence that the use of specific prohibited substance could not enhance sports performance in this specific case.

The need to introduce such amendment is related to the fact that, in some cases, the prohibited substance comes from Contaminated Products or because of sabotage by third parties, and the concentration of the prohibited substance is so small that excludes the possibility to enhance athlete's performance. In such cases, the anti-doping organization should have a right to keep in force the results of the athlete, considering exceptional circumstances.

## Independent Anti-Doping Service Providers

The status of anti-doping service providers must be clarified in the WADC. There is the definition of "Anti-Doping Organization" and the term "Service Provider". Both are provided with a corresponding definition.

WADA must define whether the ITA is considered as an anti-doping organization or a service provider (such as PWC, IDTM, GQS, etc.). This classification is relevant to the legal relationships of NADOs and IFs / NFs with the ITA. A reference to the fundamental responsibility of the ADOs / IFs, even if they "outsource" parts of the doping control process, is not enough. It is about a general and landmark decision of WADA.

We note that the Introduction to the redline version of the Code emphasises that ADOs remain responsible for all aspects of Doping Control, and therefore for the conduct of sample collection authorities.

We would prefer sample collection authorities to be directly subject to the Code. We propose that the Code should require sample collection authorities at major events to be bound by the Code. At present, the Independent Testing Authority and the commercial sample collection agencies are neither Code signatories nor are they bound by the Code, so there is no mechanism to ensure that their processes comply with the Code and the Standards, whereas ADOs are required to comply with both. This means that their processes can be sub-standard and non-compliant but WADA would not be able to issue a sanction of any kind or declare them non-compliant. It also means that athletes will have less confidence in their processes. To make this change it would be necessary to define “major events” but we envisage that this would include all large-scale international events where an ADO would not automatically have jurisdiction over the participating athletes.

**Antidoping Switzerland**

Ernst König, CEO (Switzerland)  
NADO - NADO

SUBMITTED

Other areas that are not directly embedded in the Code:List Application: In light of the recent Froome-case, it is of highest importance that the Code does not allow this kind of legal fight again. It is against the fundamental principles of the Code when an effective fight against the rules is only available to those with significant resources.

TDSSA: ADCH strongly thinks that a review of the TDSSA in principle is needed. In the discussion it should be acknowledged that many ADOs have sophisticated intelligence departments (investigations, APMU etc) that allow an intelligence based allocation of additional analysis. This allows the most efficient use of the analytics budget, which is expected from all our stakeholders. Given that most ADOs have very limited resources, we must not divert from using the newest science available to guarantee the biggest bang for the buck.

**NADA**

Regine Reiser, Result Management (Deutschland)  
NADO - NADO

SUBMITTED

**Art. 2.4**

The wording of Art. 2.4 should be adopted, since the situation described above would neither constitute a "missed test" (out of the 1-h-testing slot) nor a "filing failure" (as the whereabouts were accurate, but the athlete missed to be available for testing). Still the situation would constitute a "strike".

**Art. 2.8 (Administration or Attempted Administration)**

Comment: Parts of the definition in Art. 2.8 are missing. It is unclear to whom the administration should happen. The elements of the article are currently not applicable.

**Art. 10.5.2**

Further clarification (in addition to the comment at 10.4) of what will be regarded as No Significant Fault or Negligence would be helpful, as it is difficult to discern consistent principles in the case law.

Also, more specifically re 10.5.2 (Current drafting: Article 10.5.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault) - the Code should expressly clarify the position in relation to Art 2.3, in particular in light of decisions applying 10.5.2 (or 10.4) to Article 2.3 cases. Should Articles 10.4 and 10.5.2 apply to intentional breaches of Article 2.3?

This would help not only to clarify the application of no significant fault or negligence, but also with respect to whether intention (as defined in article 10.2.3) must be proved to establish an ADRV of evasion or refusal contrary to Article 2.3 (see further the comment on this below).

**Comments**

Comments in the WADC, which have in fact intended to have as much effect as the Articles themselves should to be moved into the Code as Articles.

Comments should be made part of the Articles in the Code wherever appropriate, so there is minimal room for confusion as to the status of points made in the comments.

## Whistleblower Policy

Implement an independent Whistleblower Policy with independent, experienced experts (from economy, investigating authorities), located out of the ADOs, IFs.

## Anti Doping Denmark

Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

SUBMITTED

### Article 2.8- Administration:

We repeat our proposal that article 2.8 "administration" should provide for sanctioning negligent and not just intentional administration. Currently, intent is a precondition for the use of the article.

The article could read: "Administration, Attempted Administration or negligent Administration to any Athlete In-Competition of any Prohibited Substance or Prohibited Method, or Administration or Attempted Administration to any Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method that is prohibited Out-of-Competition."

The definition of "Administration" could be amended likewise.

### Article 4.4 - TUE:

On the surface, article 4.4.3.1 should grant that a TUE granted by any ADO in accordance with the ISTUE and registered in ADAMS is by default automatically recognized by all other ADOs, be it NADOs, International Federations or others without additional examination or paperwork, as it reads: "Where the Athlete already has a TUE granted by his or her National Anti Doping Organization for the substance or method in question, if that TUE meets the criteria set out in the ISTUE, then the International Federation must recognize it. If the International Federation considers that the TUE does not meet those criteria and so refuses to recognize it, it must notify the Athlete and his or her National Anti-Doping Organization promptly, with reasons."

However, in reality this is far from always the case, leading to the

administration of TUEs being a major burden on ADOs, athletes and the National Health Authorities. Steps should be taken to limit these burdens, thus freeing money and manpower to other important anti-doping tasks.

In particular, the obligation of an IF to consider if a TUE issued by a NADO meets the criteria is a burden on both IFs and NADOs.

WADA should still have the authority to review and, if need be, alter the decision of granting or denying a TUE. To achieve this, it should be made mandatory that in order to be valid, all TUEs must be registered in ADAMS by the issuing ADO. We believe that this is not always the case today.

Accordingly, article 4.4.3.1 could be amended so that the following sentence is deleted: "If the International Federation considers that the TUE does not meet those criteria and so refuses to recognize it, it must notify the Athlete and his or her National Anti-Doping Organization promptly, with reasons", and the article could simply read: "Where the Athlete already has a TUE granted by his or her National Anti-Doping Organization for the substance or method in question, and if that TUE meets the criteria set out in the International Standard for Therapeutic Use Exemptions, it is valid both at the national and international level."

In particular, disagreements on the interpretation of WADA's Guidelines can lead to disputes between NADOs and IFs over TUEs which, in the opinion of the NADO, are consistent with the ISTUE even though they may differ from the Guidelines in a minor way due to, for instance, regional medical practices. The

Guidelines are guidelines, not the Code or a Standard, and thus minor deviations which can be properly explained should be acceptable. However, this is not the opinion of certain IFs who insist that the Guidelines are followed to the word by NADOs.

Furthermore, bearing in mind that there are 209 official languages in the world, and that in most countries, English or French is not the national language, the obligation for an ADO to provide all medical documentation regarding a TUE in English or French is a heavy and unfair burden on many ADOs. This problem should be addressed.

In addition, we refer to our specific comments to the ISTUE.

#### Article 5.3.2 - Event testing:

We repeat our proposal that Article 5.3.2 should be amended to allow for a more flexible access to testing for NADOs at international events and IFs at national events.

In principle, an Anti-Doping Organization which would otherwise have Testing authority should be allowed to conduct testing at an event, be it an international or national event. An ADO should not have the possibility to veto another ADO's testing at an event.

Obviously, for the sake of the athletes and the organisers there should be coordination between ADOs wishing to conduct testing at a given event.

The current wording in article 5.3.2 that "such tests shall be considered Out-of-Competition tests" does not make sense if the testing is done in-competition. The normal distinction between out-of-competition and in-competition testing should be used.

Accordingly, article 5.3.2 could read:

"If an Anti-Doping Organization which would otherwise have Testing authority but is not responsible for initiating and directing Testing at an Event desires to conduct Testing of Athletes at the Event Venues during the Event Period, the Anti-Doping Organization shall inform the ruling body of the Event of its intent to conduct such Testing. The ruling body of the Event and the Anti-Doping Organisation shall coordinate the Testing at the Event. Results management for any such test shall be the responsibility of the Anti-Doping Organization initiating the test."

#### Article 8.3 - Waiver of hearing:

We repeat our proposal to amend article 8.3 - Waiver of Hearing, as this article is not used by a number of ADOs where judicial tradition does not allow for plea bargaining etc. This has been accepted by WADA and should be reflected in the Code.

Accordingly, article 8.3 could read:

"An Anti-Doping Organisation may in its own anti-doping rules have provisions whereby the right to a hearing may be waived either expressly or by the Athlete's or other Person's failure to challenge an Anti-Doping Organization's assertion that an anti-doping rule violation has occurred within the specific time period provided in the Anti-Doping Organization's rules."

#### Article 10.5 - No Significant Fault or Negligence:

We repeat our proposal concerning article 10.5 - Reduction of the Period of Ineligibility based on No Significant Fault or Negligence. The difference between the consequences between specified and non-specified substances when No Significant Fault or Negligence is established is too big and unfair to athletes.

We appreciate that the sporting advantage gained from a non-specified substance may be significant and that, accordingly, too short suspensions may be unfair to clean athletes.

However, a minimum sanction of one year's suspension for the non-intentional use of a non-specified substance where No Significant Fault or Negligence is established is unfairly hard on athletes.

We suggest that specified and non-specified substances are basically treated equally, but that the substance in question is taken into consideration when determining the sentence.

Accordingly, article 10.5.1 and 10.5.1.1 could read:

" 10.5.1 Reduction of Sanctions for Prohibited Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

#### 10.5.1.1 Prohibited Substances

Where the anti-doping rule violation involves a Prohibited Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault and the substance involved."

### Anti-Doping Norway

Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

SUBMITTED

#### Article 10 Sanctions on individuals

Art. 10.6.2 Anti-Doping Norway believe that an athlete that voluntarily admits to a possible rule violation, irrespective of later proof, should be entitled to a reduction without WADAs consent in an art. 2.1 -case. The principle of a reduction is commonly applied because admittance will reduce the financial complications of a criminal procedure. The length of reduction should depend on at what time the admission was forwarded.

10.13.2 All international Level Athletes will argue that they cannot exercise effectively on their own. It is not clear if the exemption relates to every individual athlete as long as they are part of a team. If this is not so, then it should be clearly expressed.

#### DEFINITIONS

**Athlete:** The main rule to this definition relates to national and international level athletes and is defined in the first sentence. The exception to this definition relating to Recreational Athletes is now unclear. It reads (third sentence): *"In relation to Athletes who are neither International-Level nor National-Level Athletes, or are Recreational Athletes, an Anti-Doping Organization may elect to: conduct limited....."*. The exception has previously made it clear that it only involved "Recreational Athletes" (i.e. limited testing, less than full menu etc). To maintain this understanding, we suggest the following: *"In relation to a Recreational Athlete, an Anti-Doping Organization may elect to: conduct limited....."*.

**Athlete:** Anti-Doping Norway support the definition of a recreational athlete. All athletes under the sports umbrella in Norway is subject to the Code, them being national, international or recreational athletes. This means that Anti-doping Norway is also obliged to react to tip-offs even if the athlete is a recreational athlete, such as testing activities. In cases where the Athlete is a minor or a recreational athlete it should be possible to emphasize other mitigating circumstances as well when determining a sanction. There are some cases where a Recreational Athlete (or minor) may have acted "intentionally", but where there are other mitigating circumstances not related to intent. (Example: A Recreational Athlete also being a refugee with a documented posttraumatic stress syndrome and, in addition, being suicidal should be able to benefit from a more lenient sanction even if the use was intentional. In these very special circumstances, before the introduction of the Code, we could allow an athlete to exercise, but not participate in competitions – as a first offence).



The word “prevention” is often used in the WADC. With the introduction of the ISE, definitions could be considered as follows:

Prevention: The action of avoiding anti-doping rule violations from arising and promoting clean sport values

**Education:** Activities to increase knowledge and awareness of anti-doping

Additional definitions relating to education should be addressed in the ISE.

### Japan Anti-Doping Agency

Akira Kataoka, Senior Manager, Results Management & Intelligence (Japan)

NADO - NADO

SUBMITTED

The Code Draft stipulates the comment to Article 10.5.1.2 as below;

*"57 In assessing whether the Athlete can establish the source of the substance in his or her body, it, for example, be highly significant, whether the Athlete had declared the product which was subsequently determined to be contaminated on his or her Doping Control form."*

The question remains on the weight of whether the Athlete had declared in Doping Control or not to assess the degree of proof by the Anti-Doping Disciplinary Panels (“Panels”). In other words, should Panels be satisfied with the proof of how the substance enters into the body when the Athlete had declared the product in DCF? Or should Panels have to conclude failure to prove how the substance enters into the body when the Athlete had not declared in DCF?

To avoid inconsistency of interpretation or evaluation on whether the source of the products is established, the meaning of *"highly significant"* should be clarified.

### NADA Austria

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

SUBMITTED

Article 2.1:

There is a disconnect between the Athlete’s duty to not have a drug in the body and yet the ADRV is automatic when the drug is in the sample. Whilst rare, a situation can occur with any disabled athlete (that is entitled to use their own catheter for sample collection) where the catheter has been tampered with or a substance like cocaine is detected which may never have been in the Athlete’s body or was not in the Athlete’s body during an ‘in-competition’ period. It would not offend strict liability for an ADO to demonstrate that the substance was in the sample, but that the onus shift to the Athlete to demonstrate that it was never in the body when it was prohibited and that the Athlete was at no fault in order for there to be no ADRV registered. Suggested new wording to Article 2.1.3.1 could be, “As an exception to the general rule in 2.1.3, there shall be no anti-doping rule violation if the Athlete can demonstrate the Prohibited Substance or its Metabolites or Markers found to be present in the Athlete’s Sample was not present in the Athlete’s body when it was prohibited”.

Article 23 - Acceptance, Compliance and Modification

This Article could be shortened since there is a respective International Standard (ISCCS).

## Annex 1 of the Code:

## Definitions

We propose to implement the definition for Anti-Doping Activities of the ISCCS into the WADC since it is a good definition and summary of our activities:

“Anti-doping education and information, test distribution planning, maintenance of a Registered Testing Pool, managing Athlete Biological Passports, conducting Testing, organizing analysis of Samples, gathering of intelligence and conduct of investigations, processing of TUE applications, results management, hearings, monitoring and enforcing compliance with any consequences imposed, and all other activities related to anti-doping to be carried out by or on behalf of a Signatory, as set out in the Code and/or the International Standards.”

## Other suggestions:

- Due to the complexity of the doping phenomenon, both person-centered and structural measures may show no immediate effect. Prevention (consisting of Education, Deterrence, Detection, Enforcement) is an investment in the future and needs to be planned well and consistently. Right now, there is little to no evaluation of concepts to prevent doping and doping-equivalent behaviour for various reasons. Testing programs are only evaluated on a very superficial level – it is questionable if they really contribute to Deterrence and Detection. Often, Education programs (which in reality are often mere delivery of information) are not evaluated at all. To put it straight: Education without research is like testing without intelligence. Prevention without Evaluation is like searching a needle in a haystack: A waste of time, money and effort.

**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)  
NADO - NADO

SUBMITTED

We consider that there are some articles of the Code that should be changed. This changes are the following:

## article 4.3

Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing to eliminate the concepts of In Competition and Out-of Competition.

We also consider that the comment to article 4.2.1 must disappear.

The wording should be as follows: The *Prohibited List* shall identify those *Prohibited Substances* and *Prohibited Methods* which are prohibited as doping because of their potential to enhance performance or their masking potential. The *Prohibited List* may be expanded by WADA for a particular sport. *Prohibited Substances* and *Prohibited Methods* may be included in the *Prohibited List* by general category (e.g., anabolic agents) or by specific reference to a particular substance or method

We also consider that the Comment to Article 4.2.1 must disappear.

4.3 Criteria for Including Substances and Methods on the *Prohibited List*

Same remark as in 4.2.1

Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing to eliminate the violation of this “spirit of sport” as an approach to include a substance or method in the Prohibited List. The approach should be only based on objective criteria.

The discretion of WADA need to meet scientific evidence. We propose to eliminate this phrase and to write 4.3.1 as follows:

4.3.1 A substance or method shall be considered for inclusion on the *Prohibited List* if it meets the two following criteria

AEPSAD thinks also that a potential health risk must be mentioned before the performance enhancing capacity.

In addition we are asking to stress the danger of doping to PUBLIC HEALTH, not only to the athlete’s health. So we propose to place health risks before (4.3.1.1), and after (4.3.1.2) the enhancing of sport performance.

**We consider that, in order to include substances and methods on the Prohibited list, it would be advisable to add the establishment of certain thresholds for certain substances.**

4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the *Use* of the substance or method represents an actual or **potential health risk to the Athlete or to PUBLIC HEALTH**

4.3.1.2 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to **enhance or enhances sport performance**

**We propose to delete 4.3.1.3 (read before)**

4.3.3: Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we still consider that the concepts of In Competition and Out-of Competition, and the figure of the “spirit of sport” should be removed.

Also we propose to place Health risk before Performance Enhancing.

Also Past Verb Times would be revised:

4.3.3: *WADA’s determination of the Prohibited Substances and Prohibited Methods that will be included on the Prohibited List, the classification of substances into categories on the Prohibited List, the classification of a substance as prohibited is final and shall not be subject to challenge by an Athlete or other Person based on an argument that the substance or method was not a masking agent or did not represent a health risk nor have the potential to enhance performance.*

4.5 Monitoring Program:

We propose to use WADA “may” establish this monitoring program, instead of “shall” (may be or sometime, WADA will be not needing or wishing to monitor any substance).

Again there is no need to mention this In-Competition Out-of-Competition issue. So the proposed text runs as follows: ‘*WADA, in consultation with Signatories and governments, may establish a monitoring program regarding substances which are not on the Prohibited List, but which WADA wishes to monitor in order to detect patterns of misuse in sport. WADA shall publish, in advance of any Testing, the substances that will be monitored. Laboratories will report the instances of reported Use or detected presence of these substances to WADA periodically on an aggregate basis by sport. Such reports shall not contain additional information regarding specific Samples. WADA shall make available to International Federations and National Anti-Doping Organizations, on at least an annual basis, aggregate statistical information by sport regarding the additional substances. WADA shall implement measures to ensure that strict anonymity of individual Athletes is maintained with respect to such reports. The reported Use or detected presence of a monitored substance shall not constitute an anti-doping rule violation.*

### 5.3 Event Testing

There are more International Major Sport Events Organizations (like Federation International du Sport Universitaire (FISU), Asiatic Games, Mediterranean Games, and more and more. But in the e.g. paragraph the word “**and**” makes believe that only the listed ones are International Major Sport Events Organizations. So the text of the article 5.3.1 would read as follows: Except as otherwise provided below, only a single organization should be responsible for initiating and directing *Testing at Event Venues* during an *Event Period*. At *International Events*, the collection of *Samples* shall be initiated and directed by the international organization which is the ruling body for the *Event* (e.g., the International Olympic Committee for the Olympic Games, the International Federation for a World Championship, the Pan-American Sports Organization for the Pan American Games, **and others**). At *National Events*, the collection of *Samples* shall be initiated and directed by the *National Anti-Doping Organization* of that country. At the request of the ruling body for an *Event*, any *Testing* during the *Event Period* outside of the *Event Venues* shall be coordinated with that ruling body

**10.6.1.3: WE CONSIDER THAT A DATA PROTECTION PROVISION SHOULD BE MADE IN THIS ARTICLE, IN THIS SENSE: ‘THIS PROVISION WILL BE MADE AS LONG AS THE DATA PROTECTION LEGISLATION, WHICH IS APPLICABLE TO EACH NADO, ALLOWS IT’.**

In accordance with the foregoing, articles 10.6.1.3 and 10.6.3 would be worded as stated below:

10.6.1.3 If an *Anti-Doping Organization* suspends any part of an otherwise applicable sanction because of *Substantial Assistance*, then notice providing justification for the decision shall be provided to the other *Anti-Doping Organizations* with a right to appeal under Article 13.2.3 as provided in Article 14.2.

Where necessary and that it would be in the best interest of anti-doping, WADA should include certain data protection clauses to enter into appropriate confidentiality agreements limiting or delaying the disclosure of the Substantial Assistance agreement or the nature of Substantial Assistance being provided.

10.9 *Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection or Commission of an Anti-Doping Rule Violation

**FOLLOWING THE SAME ARGUMENTS INCLUDED IN OUR COMMENTS TO THE WADA REVISION DOCUMENT, AND THE EXPOSITION OF GENERAL REMARKS IN THIS DOCUMENT, WE REMAIN OF THE OPINION THAT THE WORDING ‘IN COMPETITION AND OUT OF COMPETITION’ SHOULD BE REMOVED. WE CONSIDER THAT IT SHOULD BE USED “AN” INSTEAD OF “ANOTHER”**

The new wording would be: 10.9 *Disqualification* of Results Subsequent to *Sample* Collection or Commission of another Anti-Doping Rule Violation<sup>5462</sup>

In addition to the automatic *Disqualification* of the results if a *Competition* produced the positive *Sample* positive *Sample* under Article 9, all other competitive results of the *Athlete* obtained from the date a positive *Sample* was collected or other antidoping rule violation occurred, through the duration of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting *Consequences* including forfeiture of any medals, points and prizes

10.13.4 Withholding of Financial Support during *Ineligibility*

We propose to remove the wording ‘and governments’, so the text should be: In addition, for any anti-doping rule violation not involving a reduced sanction as described in Article 10.4 or 10.5, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by *Signatories*, *Signatories*’ member organizations.

10.14 Automatic Publication of Sanction

IN CASE OF MINOR ATHLETES, THE SANCTION WILL BE NEVER PUBLISHED. THE NEW EUROPEAN DATA PROTECTION REGULATION IS VERY RESTRICTIVE WITH MINOR’S RIGHTS AND ALSO VERY PROTECTIVE WITH THEM. In this context, the proposed version of the article 10.14 is as follows: ‘A mandatory part of each sanction shall include automatic publication, as provided in Article 14.3, except if the sanction, except if the sanction falls on a Minor, in this case the sanction must never be published’.

ARTICLE 11:

As stated in POINT 10.5.1.3, and following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we consider that it is necessary to write a new minors article that should include::

## **NEW ARTICLE 11 MINORS**

11.1 Minors and different doping types

11.2 Minors and Control Planning (when, where, how)

11.3 Management of results and minors (sanctions, environment)

11.4 Doping in Minors and Ordinary Justice.

11.5 Substitute measures of the sanctions of ineligibility in response to the interests of the minor.

11.6. develop minors anti-doping controls (consent)

11.7. controls out of competition.

11.1 *Testing of Team Sports*

**We fully agree with this WORDING FOR CONSEQUENCES OF TEAMS, but we think this article must be completed:**

**It is very usual to find clubs in almost any sport with different teams of different ages, gender, categories, and also it is usual to find Multisport clubs, with different sports and different teams in each sport.**

**We think it is necessary to introduce a point in the Code regarding cases of repeated violations in the same club or evidences of a systematized doping.**

**Regarding the wording of article 11, the ruling body of the Event shall determine the possible consequences for teams in which two or more athletes have committed an antidoping rule violation, under its own rules. We consider that this issue should be clarified and broadly developed and all clubs should follow the same consequences regulations.**

## **SO WE THINK IT IS NECESSARY TO DEVELOP HERE**

### **11.4 Consequences for Clubs**

As was said before, AEPSAD thinks the contents of 20.7 must go to 23.3 **Roles and Responsibilities of WADA.**

23.3 Roles and Responsibilities of the World Anti-doping Agency

23.3.1 To adopt and implement policies and procedures which conform with the *Code*.

23.3.2 To provide support and guidance to *Signatories* in their efforts to comply with the *Code* and the *International Standards*, to monitor such compliance by *Signatories*, to notify *Signatories* of instances of non-conformity and explain what must be done to correct them, to secure the imposition of appropriate consequences when a *Signatory* does not correct the non-conformity, as well as conditions that the *Signatory* must satisfy in order to be reinstated to the list of *Code*-compliant *Signatories*, and to verify the fulfilment of those conditions, all in accordance with the *International Standard for Code Compliance by Signatories*.

23.3.3 To approve *International Standards* applicable to the implementation of the *Code*.

23.3.4 To accredit and reaccredit laboratories to conduct *Sample* analysis or to approve others to conduct *Sample* analysis.

23.3.5 To develop and publish guidelines and models of best practice.

23.3.6 To promote, conduct, commission, fund and coordinate anti-doping research and to promote anti-doping education.

23.3.7 To design and conduct an effective *Independent Observer Program* and other types of *Event* advisory programs.

23.3.8 To conduct, in exceptional circumstances and at the direction of the *WADA Director General*, *Doping Controls* on its own initiative or as requested by other *Anti-Doping Organizations*, and to cooperate with relevant national and international organizations and agencies, including but not limited to, facilitating inquiries and investigations.<sup>7788</sup>

23.3.9 To approve, in consultation with International Federations, *National Anti-Doping Organizations*, and *Major Event Organizations*, defined *Testing* and *Sample* analysis programs.

23.3.10 To initiate its own investigations of anti-doping rule violations and other activities that may facilitate doping

23.4 Membership and elections

23.5 Governance of the World Anti-Doping Agency

23.6 Structure and Departments

23.7 Compliance of the World Anti-Doping Agency with the Code.

23.8 Finance and economic regime

**It has been exposed before and following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Comments on this Document, we are proposing WADA has to continue being a Code Signatory and an Anti-Doping Organization.**

**WE ARE PROPOSING A NEW ARTICLE 23 THE WORLD ANTI-DOPING AGENCY WITH A POINT**

**23.5 Compliance of the World Anti-Doping Agency with the Code.**

ARTICLE 23 ACCEPTANCE, COMPLIANCE AND MODIFICATION

**We propose the following text:** 23.1 Acceptance of the *Code*

23.1.1 The following entities shall be *Signatories* accepting the *Code*: WADA, the International Olympic Committee, International Federations, the International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, and *National Anti-Doping Organizations*. These entities shall accept the *Code* by signing a declaration of acceptance upon approval by each of their respective governing bodies.

**WE PROPOSE NEW ARTICLES: BE IMPLEMENTED BY SIGNATORIES WITHOUT SUBSTANTIVE CHANGE:**

**NEW ARTICLE 11 MINORS**

**NEW ARTICLE 23 THE WORLD ANTI-DOPING AGENCY**

And the following wording: 23.2.2 The following Articles as applicable to the scope of the anti-doping activity which the *Anti-Doping Organization* performs must be implemented by *Signatories* without substantive change (allowing for any non-substantive changes to the language in order to refer to the organization's name, sport, section numbers, etc.):

Article 1 (Definition of Doping)

▪

Article 2 (Anti-Doping Rule Violations)

- Article 3 (Proof of Doping)
- Article 4.2.2 (*Specified Substances*)
- Article 4.3.3 (*WADA's Determination of the Prohibited List*)
- Article 7.11 (Retirement from Sport)
- Article 9 (Automatic *Disqualification* of Individual Article 10 (Sanctions on Individuals)
- New Article 11 (Minors)
- Article 11 (*Consequences* to Teams)
- Article 13 (Appeals) with the exception of 13.2.2, 13.6, and 13.7
- Article 15.1 (Recognition of Decisions)
- Article 17 (Statute of Limitations)
- New Article 23 the World Anti-Doping Agency

No additional provision may be added to a *Signatory's* rules which changes the effect of the Articles enumerated in this Article. A *Signatory's* rules must expressly acknowledge the Commentary of the *Code* and endow the Commentary with the same status that it has in the *Code*.

#### ARTICLE 24 INTERPRETATION OF THE CODE

Neither ENGLISH nor FRENCH are the languages more used in the world. The languages that more people speak as a native langue are: 1) MANDARIN CHINESE, 2) SPANISH. French is not even in the list of the 10 most used languages and the number of French speaking people is 6 times less than the SPANISH SPEAKING.

We understand that for practical reasons English is a working language around the world and we agree with the prevalence of the English.

But AEPSAD, and we know our iberoamerican brothers are of the same opinion, why WADA is publishing the Code also in a French version and we, Spanish speaking countries need to pay to have the rules (Code and Standards) translated to our language.

If the reason are historical, we think there is time for a changing, anti-doping fighting is not a political issue and now is time for efficiency and efficacy and to put some stakeholders before others without a efficiency and efficacy criterion

#### **SO WE PROPOSE:**

1.

WADA SHOULD PUBLISH AT ITS COST THE CODE IN THE MOST SPOKEN LANGUAGES IN THE WORLD. This will be very efficient. WE PROPOSE THAT:

The official text of the *Code* shall be maintained by WADA and shall be published in English (as the main language), and we consider that it would be fair and equitable that WADA publishes the CODE and all its publications in the most spoken languages in NADOs and RADOs.

In the event of any conflict between these languages and English versions, the English version shall prevail.

FOLLOWING A CRITERION OF EFFICACY, WADA SHOULD CONSIDER FRENCH AS IMPORTANT AS OTHER POSSIBLE LANGUAGES WITHOUT ANY PRIVILEGE.

#### **24.1 The official text of the *Code* shall be maintained by WADA and shall be published in English...**

**In relation with article 24.6: AEPSAD CONSIDERS THAT IF APPENDIX 2, EXAMPLES OF THE APPLICATION OF ARTICLE 10, SHALL BE CONSIDERED AS AN INTEGRAL PART OF THE CODE, THEY SHOULD NOT BE UPDATED AND INCLUDED IN THE THIRD DRAFT (LAST DRAFT) OF THE CODE, BUT BEFORE.**

**ANY INTEGRAL PART OF THE CODE MUST BE READ AND EXAMINED BY THE STAKEHOLDERS IN A CONJOINT WAY WITH THE REST OF THE CODE.**

**WITH THIS IN MIND WE THINK A FOURTH DRAFT OF THE CODE WILL BE ABSOLUTELY NECESSARY, OTHERWISE WE FEEL WADA IS IMPOSING ITS CRITERIA ON THE STAKEHOLDERS OF THE WHOLE ANTI-DOPING WORLD SYSTEM.**

Regarding definitions AEPSAD proposes the following issues:

**-Attenuating Circumstances: TO BE DEVELOPED**

**-Attenuating Circumstances should be included.**

***Anti-Doping Organization:*** HERE IT IS VERY CLEAR THAT WADA IS AN ANTI-DOPING ORGANIZATION AND MUST BE CODE SIGNATORY.

***In-Competition:*** Following the same arguments included in our comments to the WADA Revision Document, and the exposition of General Remarks on this Document, we continue proposing to eliminate the concepts of In- Competition and Out-of Competition. So we are proposing to take out the definition.

***WADA:*** This is not a definition, this is the meaning of the acronym. For AEPSAD it is clear that it is needed, in this part of the CODE, a very complete and clear definition of WADA, as an Anti-doping Organization and as a Signatory

So we propose to develop a real definition.

#### **APPENDIX TWO EXAMPLES OF THE APPLICATION OF ARTICLE 10**



AEPSAD CONSIDERS THAT IF APPENDIX 2, EXAMPLES OF THE APPLICATION OF ARTICLE 10, SHALL BE CONSIDERED AS AN INTEGRAL PART OF THE CODE, THEY SHOULD NOT BE UPDATED AND INCLUDED IN THE THIRD DRAFT (LAST DRAFT) OF THE CODE, BUT BEFORE.

ANY INTEGRAL PART OF THE CODE MUST BE READ AND EXAMINED BY THE STAKEHOLDERS IN A CONJOINT WAY WITH THE REST OF THE CODE.

WITH THIS IN MIND WE THINK A FOURTH DRAFT OF THE CODE WILL BE ABSOLUTELY NECESSARY, OTHERWISE WE FEEL WADA IS IMPOSING ITS CRITERIA ON THE STAKEHOLDERS OF THE WHOLE ANTI-DOPING WORLD SYSTEM.

**RUSADA**

Tatyana Galeta, Head of the Results Management Department (Russia)  
NADO - NADO

SUBMITTED

**Proposed changes to Prohibited List**

Due to recent advances in sensitivity of analytical instruments used in the WADA accredited laboratories, we propose to establish threshold values for all substances prohibited in-competition only. It would help to avoid unfair sanctioning of athletes on the basis of presence of trace amounts of such substances in their in-competition samples caused by their use during out-of-competition period. The establishment of threshold values will unequivocally answer the question whether this concentration could have influenced the outcome of a competition and whether the presence of a substance in such quantities constitutes an anti-doping rules violation.

The concept of "minimum required performance level" that is currently used and is described in detail in WADA Technical Document TD2018MRPL does not fully meet the requirements for transparency in decision making process and, in addition, section 4.0 of TD2018MRPL "Reporting of Non-Threshold Substances" which lists exceptions on reporting of Adverse Analytical Findings in case of the presence of certain classes of substances or specific substances in concentrations below certain values contradicts Article 2.1.3 of the Code, which clearly states that "*Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation*".

14.1.2 Add the following: In the event of the discovery of violations of criminal legislation, notify and forward information to the law enforcement agencies

21.1.6 Expand by the addition to the obligation of the athlete to provide the inquired documents and being available for giving explanations to the anti-doping organization. Consider adding to the Code sanctions for refusing to cooperate with the Anti-Doping Organization.

21.2.5 Expand by the addition the duty of the athlete support personnel to provide the inquired documents and being available for giving explanations to the anti-doping organization. Consider adding to the Code sanctions for refusing to cooperate with the Anti-Doping Organization.

**CITA**

zoran Manojlovic, head of anti-doping department of CITA (Croatia)  
NADO - NADO

SUBMITTED

The Croatian Institute for Toxicology and Anti-Doping (CITA), once again, urge the draft team to reconsider changes to the Article 4.3 of the Code so that the text of this article should be identical to the one proposed in

the draft version 1.0 of the 2015 Code according to which a mandatory criterion for the inclusion on the Prohibited list is that the substance or method alone or in combination with other substances or methods has the potential to enhance or enhances sport performance.

The proposed text of the Article 4.3 :

#### 4.3 Criteria for Including Substances and Methods on the Prohibited List.

4.3.1 WADA shall consider a substance or method for inclusion on the Prohibited List if it determines in its sole discretion that the substance or method alone or in combination with other substances or methods has the potential to enhance or enhances sport performance and the substance or method meets, in addition, one of the following two criteria:

4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete;

4.3.1.2 WADA's determination that the Use of the substance or method violates the spirit of sport described in the Introduction to the Code.

*[Comment to Article 4.3.1: It is understood that for many substances, especially new designer drugs, there may not be studies which establish the potential of the substance to enhance performance or to be a health risk. In such cases, the decision whether the substance is put on, or left off, the Prohibited List, is left to the expertise and judgment of WADA. This judgment is exercised by WADA in its sole discretion and, as provided in Article 4.3.3, it is not subject to challenge. It is each Athlete's responsibility to avoid substances on the Prohibited List.*

*WADA will consider whether the substance or method, alone or in combination with other substances or methods, has the potential to enhance performance when Used either In-Competition or Out-of-Competition (including, for example, training and injury recover). A substance which is added to the Prohibited List because it has the potential to enhance performance only in combination with another substance shall be so noted and shall be prohibited only if there is evidence relating to both*

*substances in combination.]*

4.3.2 A substance or method shall also be included on the Prohibited List if WADA determines there is medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to mask the Use of other Prohibited Substances or Prohibited Methods.

4.3.3 WADA's determination of the Prohibited Substances and Prohibited Methods that will be included on the Prohibited List and the classification of substances into categories on the Prohibited List is final and shall not be subject to challenge by an Athlete or other Person based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport.

*[Comment to Article 4.3.3: The question of whether a substance or method meets the criteria in Article 4.3 in a particular case cannot be raised as a defense to an anti-doping rule violation. For example, it cannot be argued that the Prohibited Substance detected would not have been performance enhancing. Rather, doping occurs when a substance on the Prohibited List is found in an Athlete's Sample and the Athlete is unable to establish No Fault or Negligence. Similarly, it cannot be argued that a substance listed in the class of substances (e.g., anabolic agents) does not belong in that class.]*

#### **Anti-Doping Authority Netherlands**

Olivier de Hon, Scientific Manager (Netherlands)  
NADO - NADO

SUBMITTED

On behalf of the four stakeholders in the Netherlands, being the Ministry (Health, Welfare and Sports), the NOC (NOC\*NSF), the Athletes Committee, and the NADO (Anti-Doping Authority Netherlands):

Not addressed in WADA's summary, but not supported by us, is the proposed mandatory provisional suspension after an Adverse Passport Finding (article 7.9.1). This can be disproportional. The Passport was originally intended to be an informative tool for testing strategies and an Adverse Passport Finding should not automatically be seen as an ADRV, but should be judged on its individual merits.

Not addressed in the current draft version of the Code, but an issue that we frequently encounter is the (lack of) knowledgeable juridical support to low-income athletes. On a national level we have had frequent discussions on the possibility to support athletes who are confronted with anti-doping rules but who have limited financial means to be legally represented. This is a difficult issue with many potential pitfalls. But a fair trial (Article 8.1) also requires knowledgeable legal representation for all. We suggest this issue might be addressed in the 2021 Code.

And finally, we believe that the rights of athletes must be properly guaranteed in the Code. The Charter of Athletes' Rights could become an integral part of the Code.

[On behalf of Anti-Doping Authority the Netherlands]

#### General remark

1. The majority of the proposals in the first draft of the 2021 Code are improvement and/or clarifications in comparison to the existing Code.
2. One aspect that has not been addressed in the first draft is that the Code contains several rules (i.e. mandatory provisions) that are 'hidden' in the comments. An example of this (and of the adverse effects that this has in practice) is the following comment to Article 10.5.2:

*Article 10.5.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault.*

Not all ADOs copy the comments in the Code into their rules or include a provisions that makes the comments applicable. This led to a case of a Dutch cyclist who tested positive for nandrolone and amphetamine in a European country with doping legislation. The panel in that case concluded that the violation was intentional yet reduced the sanction from 4 to 2 years ineligibility. The panel had the discretion to do so, because the comment to Article 10.5.2 was not included in the applicable national doping decree.

We therefore request to include comments that are in fact mandatory provisions in the relevant Code Article itself. This will improve the globally harmonised application of Code compliant doping rules (which is one of the main objectives of the World Anti-Doping Code).

#### **NADO Flanders**

Jurgen Secember, Legal Adviser (België)  
NADO - NADO

SUBMITTED

- Summary of comments on aggravating circumstances and tampering during results management and hearing process

To summarize the comments provided under articles 2.5, 2.9, 10.3 and 10.7: it is not clear whether the person aiding an athlete in tampering during the results management or hearing phase (which is an aggravating circumstance), should be charged with a violation of 2.5 (tampering) or a violation of article 2.9 (complicity in tampering by the athlete who was charged with the first ADRV). In fact, this has an impact on the possible sanction.

In the opinion of NADOF, if the procuring of false testimony by an athlete charged with a possible ADRV is considered tampering during results management, the person giving the false testimony is to be found accomplice to the act of tampering, rather than being found to have committed an individual act of tampering himself. Without the first athlete being brought under results management and tampering during that process, the latter would not have acted accordingly and would not have given a false testimony.

Also, article 2.9 includes complicity to a violation of the violation of the status of ineligibility that will also

include ineligibility during a provisional suspension. A violation of a provisional suspension is to be considered an aggravating circumstance. Mutatis mutandis, article 2.9 should be applied for complicity to tampering during the results management or hearing process.

- General remarks on reduction of sanction for whistleblowers

Article 10.6.1.1. (ii) describes the criteria for giving credit for substantial assistance. When a whistleblower has information on possible ADRVs that can also result in criminal charges, he can aid a criminal authority in an official investigation. National legislation provides with protection of informants, including anonymity, thus granting them the status of protected informants when there is a significant risk of retaliation. In those cases however, the protection that is guaranteed by Belgian law excludes the possibility of law enforcement officers to disclose information that links the confidential informant to the information he has provided and the criminal proceedings that are based on the information given by the informant. In those cases. Also, the results of the criminal investigations can take years, and the NADO is only allowed access to very general information on the informant status and the progress been made by law enforcement, since even within law enforcement and justice, only a very limited number of investigators is entitled to have information linking the whistleblower to the ongoing investigation. NADO can not be granted access to the investigation, since law prohibits it. With the aim of protecting the whistleblower's safety, he is at the same time denied of a reduction in sanction due to legal restraints. Therefore, the application of article 10.6.1.1 should allow a margin of flexibility, taking into account the specific situation under national law. Otherwise, the incentive for substantial assistance is lost in cases where a whistleblower extends his cooperation to an ongoing criminal investigation.

- NADO Flanders did not yet provided extensive comments on the articles 7 and 8, since the international standard is not drafted yet. It would also be preferable if several rounds of consultation would be applicable, as opposed to proposed single consultation phase. RM and hearings are essential in enforcing the Code and should undergo an extensive consultation.

### Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)  
NADO - NADO

SUBMITTED

Additional comments from the CCES are presented below, in no particular order.

#### Article 2.1 'gap':

CCES' concern is based on the wording in the Presence violation. There is a clear disconnect between the Athlete's duty to not have a drug in the body and yet the violation is automatic when the drug is in the sample. These are not synonymous scenarios. Included below are parts of a letter sent to Richard Young that tries to explain the CCES' concern in this regard.

"You will recall that the issue pertains to the wording of the Presence violation (Code Article 2.1) which requires the presence of the banned substance in the athlete's sample to establish an ADRV but the athlete's personal duty is to ensure that the banned substance never enters the body (Code 2.1.1).

... In the result, the CAS panel found as a fact that the cocaine was **never in the athlete's body** at a time when it was prohibited (in-competition). The cocaine entered the sample collection container at an in-competition test via the previously used catheter. These finding of these facts by the CAS panel led them to conclude the athlete was at "no fault" (so the sanction could be avoided – after the vast majority of time was served) but **an ADRV was nonetheless registered against the athlete**. This was done because the cocaine was in the sample and the CAS Panel wanted to respect the strict liability principle – despite the "unfairness." This outcome has been disputed for years and is now being litigated in Canadian Courts.

A similar outcome might occur again with any disabled athlete using a catheter (as personal sample collection equipment can still be used). It could occur if a collected sample was spiked or manipulated in some way by a third party after the sample was provided by an athlete. It has occurred in the past with

various “active-urine” cases when Nandrolone developed in the sample container after the urine was passed. These are rare occurrences to be sure – but certainly possible to imagine.

At the heart of this matter is the principle of strict liability and the potential ‘gap’ between what can be detected in the sample and what was, in fact, in the athlete’s body. The wording in Code 2.1 creates this discrepancy. I think I can describe the issue this way:

1. For the strict liability principle to be legally justified I believe the banned substance must be both in the collected sample and in the athlete’s body at the time it was prohibited. In such a case, even with “no fault” for the violation (so there is no sanction imposed against the athlete), the registration of an ADRV against the athlete is proper. This will occur in 99.9% of all cases.
2. In contrast, where (i) there is “no fault” and (ii) the athlete can prove that despite the urine sample containing the banned substance the banned substance was never in the body when it was prohibited, an ADRV should not be registered. Doing so registers a violation against an athlete **when the athlete’s personal duty was never breached**. In effect, it becomes an absolute liability offence to provide a sample in which a banned substance is detected. This is problematic in Canadian law and greatly expands the ‘strict liability’ concept in the Code.
3. This issue (when, if an athlete is found to be at “no fault,” should an ADRV be registered) is not treated the same way by arbitral panels in various fact situations. I believe the worldwide anti-doping effort needs consistent outcomes when similar facts present themselves. This demands, in my opinion, a small revision to Article 2.1.
4. We do not envision that an IF or a NADO must demonstrate that the banned substance was in **both** the sample and in the body to be successful proving a Presence violation. Presence in the sample is enough (and all that is needed) to prove a Code 2.1. violation. However, if an athlete can demonstrate that despite the presence in the sample **it was never in the body when it was prohibited** and that the athlete was at “no fault” then I believe there should be no ADRV registered. This outcome does not offend the strict liability principle.

Our comment to WADA was as follows (to add a new exception):

- 2.1.3.1 As an exception to the general rule in 2.1.3, there shall be no anti-doping rule violation if the *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in the *Athlete’s Sample* was not present in the *Athlete’s* body.

Perhaps it can be better expressed as follows:

- 2.1.3.1 As an exception to the general rule in 2.1.3, there shall be no anti-doping rule violation if the Athlete can demonstrate the *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in the *Athlete’s Sample* was not present in the *Athlete’s* body when it was prohibited.

#### Article 4.4.3.1

In Article 4.4.3.1, CCES suggests a clarification regarding the validity of TUEs for international testing. When TUEs are being reviewed by WADA, athletes are uncertain whether their nationally granted TUE is (i) valid in Canada and (ii) valid on the international level. Adding a clarifying statement about international testing would reduce this confusion. Suggested rewording is as follows: “If the matter is referred to WADA for review, the TUE granted by the National Anti-Doping Organization remains valid for national-level in-competition and out-of-competition testing as well as for tests conducted out-of-competition by an International Federation.”

#### Article 4.4.4.1:

In Article 4.4.4.1 CCES recommends modifying the sentence “The MEO must ensure a process is available for an athlete to apply for a TUE...” Most athletes competing at MEOs have difficulty finding the Games anti-doping rules and more specifically the process to follow in order to ensure that their already-existing TUE is

valid for the Games. Suggested rewording is as follows: “The MEO must ensure a process is available and readily accessible for an athlete and supporting staff to apply for a TUE...”

### Interpretation of “Participate” and “Compete”:

More care is required in the Code between the use of the word “participate” and the word “compete” to clarify how each is being used, how each should be interpreted (in each context) and whether additional meaning can or should be ‘read in’ to each word. For example, as used in the title of Article 10.12.1 and throughout the CCES is convinced that the term “participate” must be interpreted broadly to achieve the desired aims – a very broad prohibition from sport involvement. In contrast, in the defined term “in-competition” the word “participate” has now been interpreted by a doping Tribunal rather narrowly to include the implied notion that such participation must include, in addition to merely taking part, some element of meaningful competing. It is not enough to participate in a race if the intent when doing so was to merely conduct training. Furthering the confusion, in the comments in Article 10.12.1 an athlete may not “participate” in a training camp, exhibition, etc. but is directed to not “compete” in a non-Signatory professional league. Why the difference? Is it intended that they mean the same thing? If so, selecting one term and using it consistently would be recommended.

The CCES suggests the following revisions:

- The definition of *Competition* should state at the end of the first sentence “... regardless of the motivation for participating.”
- Any new definition of *Participation* or *Participate* should be suitably broad and should include the notions of “involvement”; “to take part in”; “to engage with” – all without reference to the subjective motivations for so doing.

### Proportionality recognition:

Although it is well recognized that the Code as a whole is drafted in a fashion that reflects proportionality principles, it is also well known that in some rare outlier cases the sanction that is imposed after strictly applying the Code provisions can be less than satisfactory. This inevitable “collateral damage” undercuts the global fight against doping in sport. These outlier results can occur when (i) there is innocent inadvertence and a very low degree of fault associated with a non-specified substance or (ii) an athlete is unable to prove a route of ingestion. Without in any way wanting to risk the highly desirable goal of sanction harmonization, the CCES supports the inclusion of the following text immediately after the first sentence in Article 8.1: “The sanction imposed must be proportionate to the violation committed and must not exceed that which is reasonably required to achieve a justifiable aim.” CCES believes this accurately reflects the proportionality principle underpinning the Code and merely describes what Tribunals must now evaluate in every case. By including it in the actual text of the Code it may serve as a useful reminder of this overarching obligation.

### Jurisdiction:

CCES suggests that a provision be added to the Code to state expressly that no *Athlete* may participate in International sport competition until that *Athlete* has been verifiably under the jurisdiction of a robust Code-compliant anti-doping program for a period of twelve (12) months immediately preceding the International sport competition. The goal is to ensure that an *Athlete* could not be outside the jurisdiction of the NADO or ADO (so as to allow doping) and then quickly join elite level competition. As with the retirement provision in 5.7.1, an exception could be incorporated.

### Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)  
NADO - NADO

SUBMITTED

**Article 7.9.1.** This appears to have been inadvertently amended to refer to Article 9 which is of course incorrect.

**Footnote 49, comment to Article 10.** This appears to set out both sides of the argument in relation to harmonisation but doesn't appear to come down strongly in favour of harmonisation and it should presumably do so.

**Comment to No Significant Fault or Negligence Definition.** The amendment of this comment in relation to cocaine is welcome. However, Sport Ireland's view is that this should apply to all Athletes, not just Minors and Recreational Athletes.

**Definition of Provisional Suspension.** Provisional Suspension is defined as an Athlete being barred temporarily from participation in any Competition or activity prior to a final decision at a hearing conducted under Article 8. Under the current Code, this definition can lead to questions as to whether an Athlete is banned from training while under Provisional Suspension and Sport Ireland would suggest the definition is amended to clarify that an Athlete cannot train with his / her team or use the facilities of teams / clubs etc. there are also the issues highlighted above in Article 10.13.

## UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

SUBMITTED

### Articles 4.4.3.2, 4.4.4.2 and 21.2.4

Specify what is meant by 'his/her NADO', e.g. NADO of country where Athlete practises sport? Country where Athlete is resident? Both (and any conflict determined by WADA)? This seems an easy clarification to make. It applies to Articles 4.4.3.2, 4.4.4.2 and 21.2.4.

**Article 5.2** It is unclear whether an ADO has jurisdiction to test an Athlete who has not retired but no longer holds a licence to compete in their sport. An example of this is professional boxing, as Athletes can apply for a licence shortly before a fight. During the period in which they do not hold a licence, it is unclear whether an ADO would be able to test them (if they have not retired and are not in a testing pool). Whilst some IF rules include a specific provision around this, not all do, and so we propose that this Article be amended to give ADOs authority to test for a set period after a licence has expired, if the Athlete has not retired.

**Article 10.4** Comment 55 (page 40) Further clarification (in addition to the comment at 10.4) of what is to be regarded as No Significant Fault or Negligence would be helpful, as it is difficult to discern consistent principles in the case law.

**Article 10.12.1** (Delays not attributable to the athlete or other person) UKAD agrees that this rule needs to be exercised with caution. To assist, the Article could require tribunals to be satisfied on the balance of probability that delays were not caused by the Athlete, and to record their reasoning on this point.

**COMPLIANCE (Article 23)1.** UKAD's view is that the role of Compliance Review Committee should be specifically mentioned in the Code, and that clarification is required around the roles of IFs and NOCs/NPCs in monitoring and enforcing Code compliance by National Federations. UKAD is in favour of certain minimum good governance standards impacting anti-doping being made a Code requirement for all Signatories.

**2.** As the consequences for signatory non-compliance listed in the ISCCS may be a bit lengthy to be incorporated in the Code, we suggest that a summary of consequences, and reference to the ISCCS, could be listed in the Code instead.

As for subjecting individuals who are responsible for or complicit in non-compliance by Signatories to sanctions, UKAD is in favour where there is clear culpability. Each instance would require careful consideration to ensure that sanctions are not applied inappropriately.

**23.1** - We note that the Introduction to the redline version of the Code emphasises that ADOs remain responsible for all aspects of Doping Control, and therefore for the conduct of Sample Collection Authorities.

We would prefer Sample Collection Authorities to be directly subject to the Code, and so we propose that the Code should require Sample Collection Authorities at major events to be bound by the Code.

At present, the Independent Testing Authority and the commercial Sample Collection Authorities are neither Code signatories nor bound by the Code, so there is no mechanism to ensure that their processes comply with the Code and the Standards, whereas ADOs are required to comply with both. This means that their processes can be sub-standard and non-compliant, but WADA would not be able to issue a sanction of any kind, or to declare them non-compliant. It also means that Athletes will have less confidence in their processes.

To make this change it would be necessary to define "major events", and we envisage that this would include all large-scale international events where an ADO would not automatically have jurisdiction over the participating Athletes.

### **Disqualification of results**

It would be helpful to clarify who it is that makes the determination of whether and which results are to be disqualified following an ADRV, pursuant to Articles 9 and 10 e.g. the ADO with results management, or the relevant tournament organiser(s).

**Definition of No Significant Fault or Negligence** Comment 104 (page 87) Cocaine will not benefit from the "cannabinoids exception" re No Significant Fault or Negligence, except in the case of a minor or recreational Athlete. This seems arbitrary, as the exception currently relates to the nature of the drug, not the consumer. More widely the Code would benefit from more clarity on whether this exception is applicable to all "social" or "recreational" drugs, or any ones other than just cannabis.

### **Estonian Anti-Doping Agency**

Elina Kivinukk, Executive Director (Eesti)  
NADO - NADO

SUBMITTED

- Article 1 – Definition of Doping – should include also ADRV 2.11
- Comment 104 – EADA agrees that cocaine cases should be handled on the same principle as cannabinoids if Minors and Recreational athletes are involved and if not related to enhancement of the sport performance
- Definition of Testing Pool (from International Standard of Education) still needs to be specified (or could be replaced by the term "Education Pool" as offered by CoE Education Advisory Group)

### **International Testing Agency**

International Testing Agency, Legal Affairs Manager (Switzerland)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

In relation to the definition of "Independent Observer Programme", consider clarifying the roles and responsibilities (but also prerogatives) of the IOs; particularly whether the scope of such role is just of "advisory" nature (as expressed in Art. 20.7.7 and in the definition) or whether it also implies powers to direct the MEOs/ADOs on operational grounds.

### **times of india**

BIJU CYRIAC, assistant editor (india)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

### **Article 4.1**

Ecdysterone is widely used to enhance performance by a select group of athletes pointing to the need for more studies on its effect and should be added to the prohibited list.

### **GM Arthur Sports Representation**

Graham Arthur, Independent Expert (UK)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

### **Article 7.9.1**



There are obvious proportionality and fairness issues associated with the imposition of a Mandatory Provisional Suspension in a case where liability has not been proved. A Provisional Suspension in this context has the same effect as a civil injunction, but civil injunctions are only imposed after an impartial body has balanced the rights of the parties. Requiring Mandatory Provisional Suspensions in situations where there is a triable issue as to liability risks such suspensions being routinely challenged.

Definition NSFN

Comment 104

This Comment was introduced as an emergency measure at the 2013 Johannesburg Conference, to avoid a de facto imposition of two-year sanctions on cannabis users.

The policy behind this provision is sound, although –

a) There is no logic to limiting its application to just cocaine and cannabis

b) It is discriminatory and illogical to have a position whereby an Athlete can use cannabis and cocaine away from Competition, and have a different standard of fault applied.

### Institute of National Anti-Doping Organisations

SUBMITTED

Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)

iNADO members were polled with respect to whether they agreed that the 25 goals/issues for this version of the Code (with a 26th open category) were a/ the right ones and b/ were important. There was low response but those that did respond almost universally agreed that these goals had been achieved. There were varying opinions as to the priority of the issues identified. In short it is very encouraging that the generalised goals were both agreed with and also accepted as having been met at least to some degree.

Article 4 The continued inclusion of recreational substances on the prohibited list, when their ingestion is not connected to competition and there is no performance enhancing effect, continues to demonstrate the muddled thinking of the Code. The Code should not presume to try to control the private lives of athletes which is unrelated to sport. The Code is intrusive enough without this. If there is a legitimate role for the Code to intervene in this area then it is to educate and, where applicable, address issues of habituation or dependency and it should explicitly not be to immediately punish. One of many negative impacts of this rule (in its current form) is to drive talented young people away from sport rather than provide them with a healthier lifestyle option.

Note that, other than the above reference to a poll, the comments and opinions presented in response to the Code are those of the CEO and can not be assumed to represent a consensus of all iNADO members.

### UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)  
Other - Other (ex. Media, University, etc.)

**Data protection** all communication regarding anti-doping cases should be sent by encrypted email with the same care and attention that is applied to any medical, patient identifiable information.

**Facilities** There should be an onus put on LOCs to ensure that appropriate facilities are made available for all athletes to be tested. Eg. if the event has disabled athletes then an accessible facility should be provided.

**Minors** When a young person receives a ban from the sport due to taking a banned substance they are heavily impacted upon mentally, physically, financially and indeed their entire reputation. We fully support and feel it is the right course of action the athlete receives a ban from playing sport however we would like to see some modification to the rulings, so they are not lost altogether and indeed benefit a whole host of other people along the way during their ban. Like the criminal justice service putting some emphasis on the offenders' rehabilitation process. Something which benefits them, spreads the message by putting offenders in view of others and ultimately benefiting everyone. At the moment the current rulings state any banned athlete cannot be involved in any capacity of sport outside of delivering or helping deliver anti drug education programmes or rehabilitation programmes. We fully support the principle that the player should be severely punished however not the principle of totally casting them aside. For the young athletes that our caught (18 to 23 years of age) or those at the low end of the semi-professional ladder, we would suggest not banning them from the sport altogether, yes to banning them from playing but no to banning them altogether, especially at a

time they are vulnerable, need some support, feel ashamed and desperately feel the need to give something back to the sport it has seemingly done a disservice to. The counter argument is of course we don't wish to put these people in positions of influence or unduly make a punishment seem less severe however I feel the positives outweigh the negatives should these changes be brought in.

The current code means the banned athlete cannot hold any role that is defined as an athlete support person. Other relevant rulings in the code fall under "Prohibited Association" and "Status During Ineligibility" articles. In essence those in the sport can't associate with them, they can't associate with us and they cannot be involved in delivering anything (other than authorised anti-doping education or rehabilitation programmes). We had a case in January 2015 whereby a professional rugby player upon receiving the ban wanted to give back to the sport. He accepted he would cease being a professional, playing sport at any level however he requested at the time would it be possible to coach in the grassroots game. This would be in a volunteer capacity, no expenses, just helping his local club. This was declined as the current WADA rules prohibited this, making it an offence for him to do so and indeed an offence for those players and teams would potentially work with him. We felt this was a great shame and something missing from the code. A review such as this enables us to put forward such suggestions. We have reviewed the "Review of Proposed Major Changes" document and are in full support of the recommended changes.

### Freelance journalist

SUBMITTED

Karayi Mohan, Freelance journalist (India)  
Other - Other (ex. Media, University, etc.)

- 1 Though the following clause is not available in the Code or in the rules of several other anti-doping authorities, it is there in some. The one in the rules of NADA India says:

#### "7.10 Resolution Without a Hearing

##### 7.10.1 An *Athlete* or other *Person* against whom an anti doping

rule violation is asserted may admit that violation at any time, waive a hearing, and accept the *Consequences* that are mandated by these Anti-Doping Rules or (where some discretion as to *Consequences* exists under these Anti-Doping Rules) that have been offered by NADA.

7.10.2 Alternatively, if the *Athlete* or other *Person* against whom an antidoping rule violation is asserted fails to dispute that assertion within 15 days from the date of receipt of notice issued by the NADA specified in the notice sent by the NADA asserting the violation, then he/she shall be deemed to have admitted the violation, to have waived a hearing, and to have accepted the *Consequences* that are mandated by these Anti-Doping Rules or (where some discretion as to *Consequences* exists under these Anti-doping Rules) that have been offered by NADA.

Does the above (7.10) over-ride the Code provision of 10.6.3? The requirement of a 'prompt admission' is not there in this clause, simply "at any time".

This has the potential to create confusion and may lead to erroneous interpretation.

- 2. Major Event Organizations may be persuaded to undertake extensive pre-games testing covering around one month to two months (in the case of Olympics for example) in different countries and at training locations so as to discourage athletes from indulging in doping practices. An Asian Games having a one-week period as 'Games period' is of no great use in terms of anti-doping effort nor is it of any great use if athletes are tested on arrival at the games venue (though this may yet get a few positive cases).

### International Paralympic Committee

SUBMITTED

James Sclater, Director (Germany)  
Other - Other (ex. Media, University, etc.)

Independent anti-doping service providers should be subject to direct WADA oversight. An anti-doping organization is an anti-doping organization is an anti-doping organization. Otherwise, Signatories are de facto responsible for the Code compliance of these organizations, but without the monitoring and enforcement capacity and mandate of WADA's CRC (the point made above).

Amend Articles 20 and 23 to capture entities like the Cycling Anti-Doping Foundation and the new Athletics Integrity Unit which are not now Code Signatories and therefore not directly subject to Code compliance. In those cases, UCI and IAAF remain the Code Signatories and are "legally" responsible to WADA for the Code compliance of their service providers. This also goes for the private service providers (PWC, IDTM, etc.) and the ITA. The ADOs using them are responsible for the Code compliance and quality of their services (see the support above for clarifying this). But query whether there is at the moment adequate supervision of service providers by ADOs.

At the very least, WADA should provide mandatory language for adherence to Code requirements and for ADO indemnification for Signatories to include in their contracts with independent service providers.