

2021 Code Review - First Consultation: Questions to Discuss and Consider

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Article 2 - Fraudulent Conduct (29)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Indeed this could be addressed in ADRV Art. 2.5 subject to deletion of "with any part of Doping Control" in the title. The above suggestion could be added as follows: ".... providing fraudulent information or documents to an Anti-Doping Organization or during an investigation or a results management process, or intimidating, etc....."

World Rugby

SUBMITTED

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

We consider that some amendments are needed to this clause in order to assist with cases where a player or representative may attempt to intentionally mislead a panel.
For example lying under oath would be fraudulent conduct. Is there a way to put the onus on the athlete to make sure that the case is not fabricated?

We understand this may already fall under tampering however we have proposed the following wording:

2.5 Tampering or Attempted Tampering with any part of Doping Control Conduct which subverts any part of 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, misleading and/or deceptive information, statements and/or documentation and/or calling an expert or witness who provides fraudulent, misleading and/or deceptive information, statements and/or documentation to an Anti-Doping Organization and/or hearing body and/or intimidating or attempting to intimidate a potential witness.

Tampering: Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading and/or engaging in any fraudulent and/or deceptive conduct.

Union Cycliste Internationale

SUBMITTED

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

Doping control is defined in the Appendix 1 "Definitions" as follows:

All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.

Therefore, in the UCI's view, "doping control" includes the RM process and most probably the investigation phase. The latter could be mentioned in the definition for the sake of clarity. Article 2.5 itself also expressly states that an example of Tampering is "providing fraudulent information to an Anti-Doping Organization" – however WADA could consider widening the scope by not only referring to ADOs.

In general the UCI agrees that art. 2.5 could be fine-tuned. With that said, in furtherance of the decisions CAS 2013/A/3080, CAS 2015/0/4128 and UCI ADT Decision, UCI v. Mr. Jure Kocjan, 28 June 2017, not all conduct akin to "lying or submitting fraudulent documents" qualifies as Tampering and this should be distinguished. Conduct that falls within the boundaries of legitimate defense does not qualify as an ADRV as per 2.5 and it is important to take into account the statement of the Panel in CAS 2015/0/4128 that "the CAS jurisprudence displayed reticence when treating an athlete's procedural behaviour as an aggravating behaviour, since the sword of Damocles of an increased sanction in a case where a panel is not prepared to accept the athlete's submission would render his or her defence and, thus, access to justice disproportionately difficult".

The UCI understands that on the basis of this jurisprudence it is accepted that tampering occurs where the threshold of legitimate defense is trespassed, such as committing a criminal offence with a view of obstructing justice (by recording a phone call without consent or forgery). As pointed out in the abovementioned decisions, subversive conduct qualifies under 2.5 "only where the administration of justice is put fundamentally in danger by the behavior of the athlete".

Be it in under article 2.5 itself or in its comment, the distinguishing elements or levels to be met to fall within the ambit of Tampering in this sense could be clarified. In any case, to include "lying" in the definition may be a step too far – an athlete is not required to admit to an ADRV and has the right to put the ADO to its proof (see CAS 2013/A/3080) yet any athlete whose explanation is eventually not accepted could be deemed to have "lied" during the process.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

■

■

Agree that this should be addressed explicitly as a violation. It could be dealt with as part of the definition of "Tampering" and Article 2.5. At least the presumptive 4-year period of ineligibility set out in Article 10.3.1 should apply, if not a more severe consequence.

■

Note: the current definition of "Doping Control" already includes the results management process so the suggested amendment need not include lying or submitting fraudulent documents during the results management process.

Guatemalan Olympic Committee

SUBMITTED

Gustavo Rehwooldt, Legal Affairs Director (Guatemala)
Sport - National Olympic Committee

In the case of an athlete who tested positive, he argues that since he lives in another place where the notification or preliminary hearing will not be able to attend. Adducing that he does not have money to transport himself and that if he wants the national anti-doping agency he reaches where he is

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

It is important to also address tampering outside the doping control process, for example, during a hearing or in the TUE process.

Australian Government

SUBMITTED

Dean Ebejer, Drug Analyst (Australia)
Sport - Other

The application of a maximum four-year sanction encourages some athletes to provide misleading information to delay the anti-doping rule violation process. It is recommended that WADA consider the reintroduction of a clause like the old Article 10.6 to provide an additional sanction for aggravated circumstances.

Sport New Zealand

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

Article 2

We support the suggestion made in WADA's *2021 World Anti-Doping Code Review: Questions to Discuss and Consider* document that fraudulent conduct which does not involve "doping control" is a potential gap that should be addressed in the Code.

Council of Europe

SUBMITTED

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

Article 2.5 – Tampering

The Council of Europe has identified at least two issues:

a) Tampering is 'conduct which subverts the Doping Control process'. Although 'Tampering' is defined in the Code Glossary, there are a number of areas in which the nature of the Anti-Doping Rule Violation needs to be made clearer.

These include introducing some precision as to what 'subvert' means. 'Subverting the Doping Control process' is a pre-condition for Tampering: is this necessary? One of the issues with this is that an Anti-Doping Organisation has to prove both that a person has behaved in a way that falls within the definition of Tampering, but also that that behaviour 'subverted' the process. This is not of itself objectionable: there has to be a connection between the behaviour and the process. But

some clarity as to whether this is an objective standard (the person did not mean to tamper but that was the effect of the behaviour) or a subjective standard (the person meant to tamper) would be helpful.

The definition of Tampering includes (as does Article 2.5) references to 'fraudulent' conduct, which carries a high burden of proof. But some aspects of Tampering do not require proof of 'fraud' – meaning that there is a disparity in the burden of proof. This is not a simple curiosity: if there is a difference in standard of proof, there is an implicit difference in the seriousness of the violation. Violations involving fraud are more serious than other violations because they involve an intention to deceive: but they all receive the same sanction.

b) It would assist if Tampering included an express reference to the bribing or attempted bribing of Doping Control Officials: and some measures that should be applied to Doping Control Officials that are found to have taken bribes. Doping Control Officials are not Athletes or Athlete Support Persons and so cannot be 'banned' from sport, but it would assist if some guidance was provided to Anti-Doping Organisations as to what action should be taken, and if a register of such Doping Control Officials was maintained.

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Comment - Group of South American Lawyers from NADOs: "In relation to the term "complicity", it is suggested that the expression should be also understood as a degree of participation in the violations, that is to say: author, accomplices or accessories, without prejudice to the conduct described in the Article 2, paragraph 2.9 of the Code".

AEPSAD

SUBMITTED

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

It is intended to extend the scope of the 'fraudulent behaviour' in an Anti-Doping Organization, reflected in article 2.6, beyond doping tests, in which such behaviour is already classified in article 2.5. We are of the opinion that athletes should not be punished for lying or submitting forged documents during the process for the imposition of sanctions as, depending on the regulations in certain countries, this would run counter to their right to defend themselves. For this reason, this Agency proposes the consideration of such behaviour as an aggravating circumstance and not as a violation in and of itself.

Anti Doping Denmark

SUBMITTED

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

We suggest that fraudulent conduct such as Athletes or Athlete Support Personnel lying or submitting fraudulent documents during an investigation or during the results management process, and offensive conduct towards a Doping Control official or other Person involved in Doping Control should be included in the definition of Tampering, and be prohibited according to article 2.5. It is not enough to refer such misdemeanors to the disciplinary rules of sports organisations.

The article could read: "Tampering or Attempted Tampering with any part of Doping Control Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods." The definition should be amended to include the mentioned misdemeanors.

SADA

SUBMITTED

Lubomir Gulán, Education Manager (Slovakia)
NADO - NADO

"providing fraudulent information to an Anti-Doping Organization" is already in the Code under 2.5 : Tampering or Attempted Tampering with "any part" of Doping Control. This should cover also investigation and result management process.

Doping Control is defined as: All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

La définition de la falsification, article 2, 5° du Code est actuellement très large et recouvre, de facto, un très grand nombre potentiel de cas.

Si l'on met cette définition large en relation avec le système des sanctions en principe applicable pour cette violation, à l'article 10.3.1 du Code, on constate que celles-ci sont probablement trop rigides et manquent probablement d'une certaine forme de souplesse puisque la falsification, si elle est établie, est soit punissable de 4 ans ou de 2 ans (si le sportif établit que la violation n'était pas intentionnelle). Or, certains comportements rentrant dans la définition de la falsification ne "valent" probablement pas non plus une sanction de deux ans. Une plus grande forme de souplesse pourrait donc être prévue au niveau des sanctions potentiellement applicables en cas de falsification.

Irish Sports Council

SUBMITTED

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

Ø Sport Ireland supports addressing the issue of Athletes or Athlete Support Personnel lying or submitting fraudulent documents during an investigation or during the results management process. While the existing definition of "Doping Control" includes results management, the issue is most likely to arise in relation to investigations and before a results management process is commenced.

Ø The definition of Tampering includes (as does Article 2.5) references to 'fraudulent' conduct, which carries a high burden of proof. However, some aspects of Tampering do not require proof of 'fraud' – meaning that there is a disparity in the burden of proof. If there is a difference in standard of proof, there is an implicit difference in the seriousness of the violation. Violations involving fraud

are more serious than other violations because they involve an intention to deceive: but they all receive the same sanction.

Ø Therefore, it may be appropriate to have a separate anti-doping rule violation for fraudulent conduct. This may also necessitate amending the definition of Tampering and the wording of Article 2.5.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

Agree that this conduct should be included. Eventually in broadening the definition of "doping controls". It should also be reflected what happens when a support personnel (or in an out-of-competition control a family member like parent, brother....) is trying to interfere with the controls (e.g. denying the athletes presence, threatening verbally and or physically). It is not clear if an athlete can be accountable for the behavior of a family member.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

▪ Article 2.3 / 2.5

Relation between Art. 2.5 and Art. 2.3 and 2.4 WADC

Comment: There must be a clearer distinction between "intentionally interfering" by fraudulent information to an Anti-Doping Organization, refusal to commit to sample collection and a "strike" due to entering false or inadequate whereabouts information.

Example: An athlete states a specific location where he is available for testing. The testing attempt at this place fails. In the subsequent results management process, the athlete still states that he has not been absent and was available for testing at the previously indicated location. He just did not hear the bell, etc. As a result, the athlete receives a "strike".

How do you interpret the same situation if - due to Intelligence & Investigation measures - it appears that the athlete (intentionally) lied (e.g. selfie post on Facebook showing a holiday resort far from the designated location)? Does this already constitute the offense of Art. 2.3 WADC or 2.5 WADC?

Furthermore, 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".

▪ Article 2.5

Strengthen DCOs' position and protect DCOs from offensive conducts

Comment: 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.“

NADA Austria

SUBMITTED

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

The privilege against self-incrimination is one of the fundamental rights in the European law system. If lying or submitting fraudulent documents leads to Anti-Doping proceedings this principle would be undermined.

UK Anti-Doping

SUBMITTED

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

UKAD is in favour of broadening Article 2.5 so that Tampering expressly covers fraudulent conduct at all stages of investigations or results management (to the extent that it doesn't already). Any action to subvert doping control either by athletes or support personnel, including but not limited to lying or submitting fraudulent documents, should be considered as tampering. UKAD would also propose that a failure to co-operate with an investigation should be an ADRV. In conjunction with an expansion of Tampering, UKAD is in favour of consideration of the reintroduction of increased sanctions for ADRVs where “aggravating circumstances” falling short of Tampering are present.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Las conductas fraudulentas que no involucran el “Control de Dopaje”.

Según la AMA, este problema se refiere a la situación en que “...*un atleta o un miembro del entorno del atleta, miente o somete documentos falsos durante una investigación o durante el proceso de gestión de resultados. Tal vez esto podría abordarse en la definición de “Manipulación”* (NDR: Término relacionado directamente con el Artículo 2.5 del CMA).

Opinión/Sugerencia:

La definición de “Dopaje”, expuesta en el Artículo 1° del Código Mundial Antidopaje, indica claramente que es la infracción a cualquiera de las 10 normas antidopaje dispuestas en el Artículo 2, desde el inciso 2.1 al inciso 2.10.

En consecuencia, la expresión “Control de Dopaje” debe tener un significado coherente con esta definición, lo cual, a la hora actual, no es meridianamente claro. La definición de “Control de Dopaje” hace claramente referencia al control ejercido sobre potenciales infracciones por presencia de una (o más) sustancia(s) prohibida(s) en la muestra del deportista (llamadas por nosotros “infracciones analíticas”), a potenciales infracciones del uso de sustancias prohibidas o de entrega de información de localización/paradero.

En nuestra opinión, esta definición “sesgada”, o al menos imprecisa de Control de Dopaje es la que origina esta sensación de carencia o de confusión. Una definición de Control de Dopaje que abarque explícitamente todas y cada una de las potenciales infracciones soluciona el problema planteado.

Por ejemplo, si un atleta miente en el transcurso de un proceso de gestión de resultados por complicidad, en la nueva definición de Control de Dopaje, como un proceso que incluye control “analítico” y “no analítico”, no cabría la más mínima duda que habría que aplicar el Artículo 2.5, precisamente por manipulación de una etapa del proceso de control de dopaje.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA fully supports the updating the definition of Tampering, involving the Fraudulent Conduct.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees. Article 2.5 adequately addresses tampering during the doping control process. However, it does not address tampering in other situations, for example, during a hearing or in the Therapeutic Use Exemption process. The violation of tampering should be expanded beyond the sample collection session. It is recommended to adjust Article 2.5 and edit the definition of Tampering.

CCES proposes the following wording:

- Article 2.5 Tampering or Attempted Tampering with any part of Doping Control: Conduct which subverts the processes for Doping Control, investigations, results management, or Therapeutic Use Exemptions 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, lying, bribery or attempted bribery, providing fraudulent information or documentation to an Anti-Doping Organization, or other behaviours which attempt to subvert the anti-doping process in connection with Doping Control, investigations, results management, or Therapeutic Use Exemptions or intimidating or attempting to intimidate a potential witness.
- Definition of Tampering: Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent or pervert normal procedures from occurring.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that the problem of Athletes or Support Personnel lying or submitting fraudulent documents during an investigation or the results management process needs to be addressed. Dealing with this issue in the definition of Tampering may be one way of doing so. DFSNZ notes that a CAS panel has decided that the provision can apply outside of a narrow view of 'doping control', but also notes that differing views about the scope of when the article can apply have been reached by other ADOs.

In any event, the definition of Tampering would benefit from clarification. Although the reach of Article 2.5 appears clear, DFSNZ has encountered apparent resistance to a broad reading of the clause on the basis that "real" Tampering relates to the manipulation of physical samples or objects, a reading more in line with the traditional connotations of "tampering". This is at odds with the purpose of the provision, and it ought to be clarified to remove any doubt as to its breadth.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

[Article 2 - Fraudulent Conduct](#)

NADO Flanders supports the amendment, but would like to indicate a possible problem when there is tampering after charges have been made.

There are different phases of the results management in which false information can be given, and this can be done before or after an ADRV has been established.

If the giving of false information is to be seen as a separate ADRV, this can have implications on the charge, and on the multiple violations rule (10.7.4.1 WADC).

For example: if an athlete provides false medical documents after a positive test of which he has been notified, should this be seen as a second ADRV? In fact, the athlete has received notification of his first ADRV and can be charged with an additional ADRV that has occurred after initial charges have been made. If however he presents a false document at the time of the doping control on which occasion he delivers a positive sample, he can only be charged with a single ADRV.

So there should be a distinction made between deceiving the DCO before any other ADRV has been established, so such behaviour could be brought forward, or fraudulent behaviour which is the result of an established possible ADRV of which notification has been given (a form of perjury).

CITA

SUBMITTED

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

CITA agrees there should be broader definition of Tampering that would involve not only „doping control“ but also investigation or results management process. We propose that these terms be included in the 2.5 as follows:

Conduct which subverts *the investigation of an anti-doping rule violation, or an attempted anti-doping rule violation, doping Control process, or the result management 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 *an anti-doping organization investigation or a doping Control official*, providing fraudulent information to an *anti-doping organization* or intimidating or attempting to intimidate a potential witness.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable à la possibilité de réprimer ces situations dans le cadre du Code. Cela pourrait effectivement être réalisé par une insertion dans la définition de la falsification.

L'article 2.5 doit cependant être revu en profondeur. La définition de la falsification comme "comportement préjudiciable au processus de contrôle" est d'une part trop vague et, d'autre part liée à un quantum de sanction trop rigide (4 ans ou rien).

Il ne faudrait pas que cette situation conduise les autorités de gestion des résultats à renoncer à l'ouverture d'une procédure disciplinaire ou à rendre une décision non conforme au CMA.

Il y a un décalage apparent entre la définition de la falsification (en annexe du Code) et la falsification en tant que violation des règles antidopage (article 2.5).

Les comportements susceptibles d'entrer dans le champ de la définition de «volontairement perturber ou tenter de perturber dans son travail un agent de contrôle du dopage» doivent être précisés et illustrés par des exemples concrets.

Institute of National Anti-Doping Organisations

SUBMITTED

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

This problem is exemplified in relation to potential breaches of the terms of ineligibility (i.e. "participation") which is not obviously covered by the definition of "Doping Control". The requirements to co-operate and not tamper or act fraudulently in relation to such an investigation require considerable purposive interpretation rather than being explicit. This needs to change and it may be that the definition of "doping control" needs to be broadened to accommodate this.

GM Arthur Sports Representation

SUBMITTED

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

Tampering as a violation would benefit from being both clarified and expanded: in turn, the sanctions for Tampering will need to be reviewed to ensure a proportionate outcome. For example, the ADRV could be formulated along the lines of

'Tampering shall constitute –

i) [behaviour]

ii) [behaviour]

iii) anything else not covered by i or ii that a hearing panel is satisfied is conduct that is intended to subvert the Doping Control process'

At present, the Code in effect defines Tampering as (iii) above. A review of Tampering cases and decisions should assist in identifying the specific conduct that should be called out as Tampering. In turn, that would assist hearing panels in imposing proportionate and appropriate sanctions.

This would ideally mean that the sanctions formulation would be more proportionate and fair. Using the formulation above, 'category (i) behaviour' would be serious cheating (for example, adulterating a sample or attempting to bribe a Doping Control official), 'category (ii) behaviour' would be misconduct that does not involve any obvious doping (for example, abuse of Doping Control officials) and 'category (iii) behaviour', which would be a useful catch-all to cover conduct which as a matter of policy should be discouraged.

Further remarks are made below regarding the sanctions imposed in Tampering cases, which are not appropriate for every case.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

Article 2.3 would benefit from a clearer distinction between intentional and negligent conduct and between 'refusing', 'failing to submit to sample collection' and 'evading'.

Article 2 - Overlapping Definitions (11)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Tampering: make the definition consistent in Art.2.5 and Definitions

Trafficking: remove: "(or Possessing for any such purpose)" in the Definitions

Administration: make the definition consistent in Art.2.8 and Definitions, especially, the situation referring to the IC/OOC administration is not clear. For example, Administering a stimulant during an IC period is prohibited in Art. 2.8, but the definition states that "it does not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing, etc...". For the sake of clarity, it should also refer to the actual period of the administration, eg "it does not include actions occurring Out of Competition involving Prohibited Substances which are not prohibited in OOC testing, etc..."

In order to avoid the perception of apparent overlapping terms in "Administration" and "Trafficking": it should be made more clear in the wording that in "Administration" the Person is the "object", whereas in "Trafficking", Athlete, Athlete Support Person, or any other Person are the "subject"

Union Cycliste Internationale

SUBMITTED

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

Art. 2.1.2: when splitting of a B-sample (B1 and B2) is required and the athlete waives his/her right to the B-2 sample counter-analysis, it must be clarified that the B2 confirmation is not mandatory to assert the ADRV of presence.

On that note, the UCI understands that the ISL is being amended to explicitly provide for the splitting of B samples that are not yet in long-term storage. However, both with respect to the Code and the ISL, WADA could consider more widespread use of terminology such as in the comment to article 2.2. ("it has always been the case"), or ensure that any changes are accompanied by clear explanatory documents, to make clear when an amendment is a clarification as opposed to a rule change. This could avoid unnecessary ancillary disputes about the intention behind an amendment.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree that any additional clarity is welcome. One proposal could be to consider greater clarity in the definition of 'Tampering' between the Code and the Prohibited List. For instance, "Tampering" is (widely) defined in the Prohibited List as a Prohibited Method. As such, the offence of "Tampering" could potentially fall under Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) or Article 2.5 (Tampering of Attempted Tampering with any part of Doping Control). To establish an anti-doping rule violation under Article 2.2 it is not necessary that intent, negligence or knowing use on the athletes' part be demonstrated. Conversely, intent is required under Article 2.5. While Article 2.5 only applies to conduct not otherwise included in the definition of Prohibited Methods, the wide definition of "Tampering" in the Prohibited List does not make it clear the type of conduct not included.

Council of Europe

SUBMITTED

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

See the comment for Article 2 - Fraudulent Conduct and comments below in the section "Other Suggestions"

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Comment - Group of South American Lawyers from NADOs:

In relation to the term "complicity", it is suggested that the expression should be also understood as a degree of participation in the violations, that is to say: author, accomplices or accessories, without prejudice to the conduct described in the Article 2, paragraph 2.9 of the Code.

SUBMITTED

RUSADA

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

1. To expand the definition of “Tampering or attempted tampering” given in Article 2.5 to include:

- a. bribery or attempted bribery of doping control officials
- b. threatening or attempt to threaten doping control officials

2. To expand the definition of “Complicity” given in Article 2.9 to include:

a. psychological assistance (as already defined in a number of CAS cases as an anti-doping rule violation in accordance with Article 2.9, for example, in CAS 2007/A/1286, CAS 2007/A/1288, CAS 2007/A/1289, CAS has established that in the absence of proof of physical assistance, a violation can also be established by what might be termed “psychological assistance”, “assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation”. Psychological assistance would be any assistance that was not physical assistance, such as, for example, any action that had the effect of encouraging the violation.

b. negligent inaction (in cases when, e.g., athlete support personnel receives information about a prescription of any medications to an athlete and fails to fulfill their duties properly and to check the list of ingredients for the presence of substances included in the Prohibited List, etc).

3. To expand the definition of “Prohibited Association” to include:

not only association with athlete support personnel who are serving a period of ineligibility, but also professional association with athletes who are found guilty of violating anti-doping rules and serving a period of ineligibility.

NADA

Regine Reiser, Result Management (Deutschland)
NADO - NADO

SUBMITTED

- Revision of the Art. 2.8, 2.9 and 2.10 WADC

Revision of 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.

- Review terminology WADC/ ISCCS for "Consequences":

As "Consequences" is a defined term of the WADC, it is also used broadly within the ISCCS without being related to the defined term in the WADC.

NADA Austria

SUBMITTED

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

No changes are necessary.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES has previously mentioned concerns to WADA with respect to the wording in Article 2.1 around presence of a substance in the athlete's body and presence of a substance in the athlete's sample, stemming from the conclusions drawn by an arbitrator his decisions in a case involving a Canadian athlete.

In Article 2.1, the CCES is concerned that if a Prohibited Substance is found in the athlete's sample but the Prohibited Substance was not in the athlete's body, the well accepted principle of strict liability and the wording in Article 2.1 would result in an anti-doping rule violation being registered against the athlete. This would be the case even when there was no sanction imposed due to the athlete's total lack of fault. This is not acceptable. The express duty resting on an athlete is to ensure that no Prohibited Substance enters the body. When this is proven and when the athlete is at "no fault" there should not be an anti-doping rule violation registered.

CCES proposes to add the following clarifying Article below 2.1.3:

- 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.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

Institute of National Anti-Doping Organisations

SUBMITTED

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

There is in fact a problem of failure to "overlap" or at least adequately integrate. The Prohibited Association rule 2.10 makes it very clear that a bound person (once notified) may not associate "in a sport related capacity" with a person serving ineligibility. The wording of this new offence is not adequately replicated at 10.12 where a persons status during ineligibility is set out. This should be exactly the other side the coin so that it is clear that a person serving a ban may not associate "in a sport related capacity" with another person who is bound. It is a breach of the terms. The reference to "participation in a competition or activity" is far more opaque and creates a significant window to argue that e.g. coaching of a bound person ostensibly unrelated to a competition may be permitted. That circle must be closed.

Were a breach of terms of ineligibility to be regarded as a rule violation in itself it would provide

both greater clarity and effect to the Code. It would ensure that the manner in which breaches are dealt with are consistent with other breaches of the Rules.

Article 4 - Decision Limits (19)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of such consideration

Union Cycliste Internationale

SUBMITTED

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

The scientific basis behind a decision limit should remain challengeable.

FIBA (International Basketball Federation)

SUBMITTED

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

FIBA recommends that rather than detection limits, for prohibited substances banned in-competition, there should be a threshold at which there would be a performance enhancing effect.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree

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 has some concerns regarding the Article 4. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 4 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

AEPSAD

SUBMITTED

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

ARTICLE4. THE PROHIBITED LIST

4.3 Criteria for Including Substances and Methods on the Prohibited List.

After considering the disappearance of the term “*sporting spirit*” as a foundation for the Code (please refer to the section on **Other Comments** in this document), and bearing in mind that, as with all indeterminate legal concepts, the use of terms that are not uniquely defined may give rise to distortions and erratic or incomprehensible decisions, as has recently happened with alcohol, as it is difficult to understand how a substance is against or ceases to be against that “*spirit of sport*”. The very concept of “*spirit of sport*” refers to values, principles or behaviours that humans may or may not decide to observe, but it can never refer to substances that are or may be used as the material object of such behaviour. The substances in and of themselves cannot align their virtuousness with any human spirit or condition.

The vague and imprecise terms in which the concept “*sporting spirit*” is applied in the text of the Code do not allow the technical or scientific individualization predicated for the other two criteria, thus necessarily obliging an interpretation or exegesis of the concept and, in consequence, a value judgement, incompatible with a subject matter such as this that is allegedly technical and scientific.

All this necessarily leads to the amendment of the criteria for including substances/methods on the List of Prohibited Substances and Methods.

In consequence, the List of Prohibited Substances and Methods must comprise solely those that meet criteria that do not require any subjective assessment. Criteria supported by scientific tests, observable objective realities, not just value judgements.

In addition, we propose an alteration in the order of the criteria, with Health Protection appearing in first place, as the Main Cornerstone for the Fight against Doping, with the Protection of Clean Sport in second place, as an Accessory Foundation.

4.3.1.1 Medical or scientific test, pharmacological effect or experiment whereby the substance or method in question poses a real or potential risk for the athlete’s health, for the health of others or for the Collective.

We propose to add the risk to others or to the Collective as a whole, understood as the risk of harm to the health of third parties that may arise from Genetic Doping or other kinds of doping.

4.3.1.2 Medical or scientific test, pharmacological effect or experiment whereby the substance or method in question has the potential to improve Sports Performance.

These must be taken together and not one by one as, if the substance or method is harmful to health but does not improve performance (tobacco, alcohol, saturated fats, etc.), their prohibition would make the list of substances endless, rendering its application practically impossible, as well as falling clearly outside the scope of sports. If, on the other hand, the substance improves performance but is not harmful for the athlete’s health, this situation is no different from others that we consider recommendable such as, for instance, the design of a balanced diet that is suitable for a specific sports practice.

In this way, the definition of “*fair play*” would be safeguarded as equivalent to the “*spirit of sport*” (no dangerous substances or methods would be used so as to improve performance).

It is necessary to demand a High Degree of Evidence for these Prohibited Substances and Methods in both of the criteria needed for them to be included on the List of Prohibited Substances and Methods. The inclusion of substances and methods might be made more modular in each criterion so as to avoid controversies and discussions that undermine the credibility of the fight against doping. The cases of Meldonium in the past or alcohol more recently have called into question the criterion followed in the drafting of the list.

In this same line, an assessment should be made of the possibility of extending the number of substances and methods (e.g. volume/time of intravenous use of injections and perfusions) subject to thresholds, on the basis of the criteria and modularity described above.

4.2. Prohibited Substances and Prohibited Methods

Identified on the Prohibited List

In line with the foregoing (4.3.1), if a substance fulfils both of the criteria required for inclusion on the List of Prohibited Substances and Prohibited Methods, it makes no sense to distinguish between substances prohibited in competition or out of competition. Substances prohibited in competition but used out of competition are still improving the athlete's sports performance and, therefore, the training needed, nor do they cease being harmful for health. We must not overlook the reality of many sports, especially team sports, in which it is very important to perform well in the training sessions in order to be picked for the squad and take part in the competition; thus, the really important phase for most of these athletes is their day-to-day competition with their teammates and, here too, the protection of health and fair play must prevail.

We cannot find any reasons for tolerating their consumption on certain occasions and not on others.

We agree with the determination of the "decision limits" by the WADA with the same presupposition as the inclusion on the list of prohibited substances and methods.

RUSADA

SUBMITTED

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

Amendment related to Therapeutic Use Exemptions

All WADA documents must be recognized and their provisions must be respected equally by all Signatories. Therefore, we propose two options to amending the rules related to TUEs:

1) to eliminate the division of athletes into national and international level athletes. If the athlete needs a TUE, the athlete shall submit his or her request only to his or her National Anti-Doping Organization. In the event that WADA, International Federation or Major Event Organizer do not agree with the NADO's decision on TUE, they can, at their discretion, initiate the review of this decision.

or

2) if the division of athletes to national and international levels is to be maintained, to exclude the provision requirement recognition of TUEs issued by National Anti-Doping Organizations by International Federations or Major Event Organizers, since the criteria for granting TUEs are standardized. This requirement is burdensome for athletes. Detailed information on TUE is available in ADAMS system and, if necessary, WADA, International Federations or Major Events Organizers can use it to review the decision.

Irish Sports Council

SUBMITTED

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

Ø WADA's determination of "decision limits" should be final and should, in the same manner as WADA's determination regarding the substances included on the Prohibited List, not be capable of being reviewed.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

The problem of analytical results with very low doses of prohibited substances has been known for several years. The more sensitive the analytical methods, the longer can a prohibited substance be detected. For an athlete it can pose insurmountable problems to try to show how a substance entered her or his body. This is against the fairness principle. For several classes of substances (at least for specified substances) there should be clearly mentioned decision limits below which a lab should not report an adverse analytical finding but rather a note that the substance had been detected below the decision limit (by the way: within the framework of TDs there should be simplification of definitions. Do we need all limits like MRPL, threshold limit, decision limit, detection limit.....).

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- Article 4.4

Revision and adaptation of Art. 4.4 WADC

Automatic mutual recognition of (national / international) TUEs as well as the regulations for "non-test pool athletes" by the International Federations.

Example: Due to the national regulations, a German "non-test pool athlete" does not need to apply for a TUE. He is able to participate in the competition 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 retro-active approval.

UK Anti-Doping

SUBMITTED

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

If rigorous consultation has been conducted within the relevant scientific community, in principle it should be acceptable not to allow "decision limits" to be challenged. The frequency / process of review of decision limits will have to be considered if new evidence emerges that might alter decision limits.

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 substances, 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 must 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.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

“Estatus” normativo de los límites de decisión en el contexto de la Lista de Prohibiciones. En particular, si la “...*determinación de la AMA de que los “Límites de Decisión” deberían beneficiar de la misma presunción que las otras decisiones sobre la Lista de Prohibiciones (Artículo 4.3.3)* ...”.

Opinión/Sugerencia:

Indudablemente sí. Nos parece indispensable que los “Límites de Decisión” establecidos por AMA tengan el mismo carácter que las demás decisiones relacionadas con la Lista de Prohibiciones, es decir, definitivas e irrevocables por los deportistas u otras personas. La situación contraria le restaría fuerza a las normas técnicas de la AMA.

No obstante, y al igual que los demás elementos de la Lista de Prohibiciones, los límites de decisión deben estar en permanente revisión y ser sujeto de investigación científica constante. En función de los resultados de las revisiones e investigaciones permanentes, podrían ser modificados mediante la publicación de documentos técnicos.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees that WADA’s determination of “decision limits” should benefit from the same presumption as other Prohibited List decisions. Currently in Article 3.2.1, a decision limit is presumed correct but it can be attacked. The presumption of correctness can be rebutted. CCES prefers that a decision limit set by WADA not be subject to attack by an athlete and thus supports the inclusion of similar protection as found in Article 4.3.3.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF**4.Anti-Doping Authority the Netherlands****Article 4**

We support the suggestion to let 'decision limits' benefit from the same presumption as other Prohibited List decisions.

CITA

SUBMITTED

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

CITA considers that once established decision limits should benefit from the same presumption as other Prohibited List decisions and should not be subject to challenge by an athlete or other Person based on an argument of scientific validity.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable à l'idée selon laquelle la détermination des limites de décisions par l'AMA devrait bénéficier de la même présomption que les autres décisions concernant la liste des interdictions.

Institute of National Anti-Doping Organisations

SUBMITTED

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

A general observation is that the Code continues to require significant penalties on athletes who have clearly not set out to cheat. Many of these are reasonably characterised as "unfair". The easiest remedy for many of these is to raise the decision limits for some substances - notably stimulants but also others such that the amount detected is likely to have had more than a negligible impact on performance. This is less a matter for the Code than other technical documents but the unfairness is generally attributed to "the Code". The Code itself should then allow for reports below the "decision limits" to be received and dealt with e.g. by letters of warning. Of course this matter requires broader discussion as to how we might better ensure "fairness" within the Anti-Doping Regime e.g. in relation to proof of method of ingestion to follow.

GM Arthur Sports Representation

SUBMITTED

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

Article 4.3.3 provides –

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, and the classification of a substance as prohibited at all times or In-Competition only, 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.

In CAS 2011/A/2566 *Andrus Veerpalu v. International Ski Federation*, CAS identified (at §204) a problem with a particular decision limit, noting that 'the Panel cannot exclude to its comfortable satisfaction that the decision limits are over-inclusive and could lead to an excessive amount of false positive results'. CAS identified three factors that caused it concern as regards the particular decision limit, being '(1) The inappropriate exclusion of certain sample data from the dataset; (2) the small sample sizes; and (3) the data provided on the distribution models used'.

Making decision limits immune from challenge would be to exclude from scrutiny the elements identified in the *Veerpalu* decision as being of concern. Rather, there would be an irrefutable presumption that these elements are satisfactory. This creates a potential fairness issue and a risk that the right to a fair hearing may be compromised.

The formulation in Article 3.2.1 is satisfactory and fair. Stakeholders will require assurance that any change is necessary and proportionate.

Article 5 - Whereabouts Information from Lower Level Athletes (23)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

It should be clarified that based on their assessed needs to conduct Out-of-Competition Testing, ADOs have the discretion to require lower levels of whereabouts information in respect to certain categories of Athletes, than those required in a Registered Testing Pool and subject to Art. 2.4, in the manner specified in the ISTI. However, this should not be related to the Athletes' level, especially if using a such vague definition as "lower" level. It would generate many confusions, depending on the definition of International-Level Athletes by IFs and National-Level Athletes by NADOs, to suggest that all IL and NL Athletes shall be automatically included in a Registered Testing Pool.

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that this would be a welcome clarification. The "pyramid approach" enshrined in the ISTI (Art. 4.8.2 and 4.8.3) should be translated in Article 5.6 WADC. In our view, the definition of Athlete is sufficiently broad to ensure that "lower-level athletes" (not national nor international) are bound by the WADC or equivalent. However, article 5.6 should be amended by also setting out the requirements for whereabouts information for the "tier below the RTP" in line with the WADA ISL.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

definition of Athlete seems clear enough but suggest amend
"require limited or no whereabouts information"
to
require limited whereabouts information;

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

The rationale for this proposal is not clear. What is the issue the proposal addresses? Expanding the range of athletes required to provide whereabouts should be approached with caution and only done based on clear evidence of need. Note that "lower-level" athletes are already obliged to provide whereabouts in Games-time circumstances.

Ministry of Culture

SUBMITTED

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 encourage WADA to:

■

Take into consideration that some countries have an extensive anti-doping programme designed for and taking into consideration the specificities of low-level and recreational sports, which – from a perspective of proportionality – is only possible if the Code allows for less extensive programme for those non-elite athletes: In Denmark for example, people engaged in recreational sports within the national governing bodies or activities in fitness clubs or centres (commercial or under the auspices of the national sports organisations) are covered by an anti-doping programme specially designed for recreational sports. The programme does, at large, mirror the principles of the WADC in terms of testing and results management. However, in terms of, inter alia, sanctioning levels, TUE's and requirements of publication, the specificities of the recreational sports and fitness activities are reflected in the rules and it would be disproportionate to treat people engaged in these recreational activities the entire same ways as elite athletes in competitive sports. The current Code takes this into consideration and it is of utmost national importance for us to ensure, that this will also be the case for any future Codes.

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 has some concerns regarding the Article 5. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding

certain aspects of the Code in more detail than others. In respect of the Article 5 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

RUSADA

SUBMITTED

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

To expand Article 5.7.2 to make it compulsory for athletes who have been or will be sanctioned by imposition of a period of ineligibility to immediately notify their National Anti-Doping Organization and relevant sports federations in writing about their retirement from sport. In addition, this rule should be extended to Article 5.7.1, in the part concerning athletes who are not included in a registered testing pool. This addition is necessary to establish the period of time for which the period of ineligibility should be extended (in the event that the athlete decides to retire from and subsequently return to sport), and also to prevent athletes who are not included in a testing pool and who are serving a period of ineligibility to refuse to undergo out-of-competition testing claiming that he or she has already retired from sport.

AEPSAD

SUBMITTED

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

5.4. Test Distribution Planning.

It is our opinion that a large amount of work and economic resources are being wasted in the planning and performance of ineffectual tests due to a risk analysis that is not evidence-based.

Section 5.4.1 of the code should clearly set out which Technical Document determines, by means of a risk assessment based on clear medical or scientific evidence, pharmacological effects or experiment, that certain Prohibited Substances and/or Prohibited Methods are more likely to be abused in sports and particular sporting disciplines.

5.6. Athlete Whereabouts Information

We believe it is essential to review the Criteria for the Planning and Determination of the **Monitoring Pools** between the International Federations and the NADOs, setting out protocols establishing in detail the criteria for inclusion and exclusion, together with the criteria, status and responsibilities inherent to membership of a monitoring pool for both the organizations and also for the athletes themselves, etc.

In this sense, a minimum number of athletes to be included in the IF Monitoring Pools must be established as a function of the number of practitioners.

With regard to the provision of information by athletes, we consider the comment made by the WADA to be redundant with respect to the possibility of requesting information about the whereabouts of "lower-level" athletes since, as can be seen in the definition of athletes, there is no distinction whatsoever between the various federated athletes.

SUBMITTED

Anti Doping Denmark

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

Definition of athlete:

The current definition of Athlete may not be satisfactory for ADOs whose anti-doping work includes testing of recreational athletes.

The current definition reads (excerpt): "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; or not require advance TUEs 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."

It is important to bear in mind that such testing is conducted purely 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. Therefore, just as a limited menu of prohibited substances is acceptable, a limited sanctions regime should also be acceptable. Furthermore, for these athletes a prescription of a prohibited substance by an authorized MD/GP should be enough evidence of medical documentation without the athlete and the ADO having to go through all the TUE procedures.

Accordingly, this part of the definition could 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."

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

A ce stade, nous estimons que les OADs doivent pouvoir, de manière proportionnée, exiger un certains nombres de renseignements sur la localisation de sportifs d'un certain niveau national, mais qui ne font néanmoins pas partie de leur RTP soumis aux exigences de l'article 2.4 du Code. Sans ces données, la réalisation de contrôles notamment hors compétition peut s'avérer difficile, voire parfois quasiment impossible. L'enjeu repose sur la proportionnalité des données demandées, ainsi que sur les conséquences éventuelles en cas de manquement.

Irish Sports Council

SUBMITTED

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

Ø Article 5.6 and the definition of Athlete should be clarified to provide that Anti-Doping Organisations may require whereabouts information from lower level Athletes.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

It should be clarified that only athletes in a registered testing pool are required to file whereabouts information. It would be up to the NADO to define some sort of requirements for lower level athletes (e.g. for educational reasons).

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- 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."

UK Anti-Doping

SUBMITTED

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

To clarify the point that ADOs may require whereabouts information from non-RTP athletes, UKAD considers that the wording of Article 5.6 could be linked to the ISTI where this is covered.

NADA Austria

SUBMITTED

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

The code currently offers the opportunity to define such requirements for lower level athletes. Not necessary to implement an additional provision.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA fully supports the proposal. Furthermore, the definition of the Athlete should be elaborated and recreational-level athletes should be specified.

Also, the exception of the public disclosure Art 14.3.2 for the recreational-level athletes is only mentioned in the section of „definitions“. It could be noted also in the named Article, if reasonable.

Canadian Centre for Ethics in Sport

SUBMITTED

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

No change is required from CCES' perspective as the Code already permits this.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Parece pertinente que antes de establecer qué organizaciones pueden requerir la información de localización/paradero, se deben tener en cuenta algunos elementos básicos en relación con estas mismas organizaciones y la propia normativa al respecto.

§ De acuerdo con el Anexo I del EICI, el deportista que proporciona trimestralmente sus datos diarios sobre localización/paradero y que designa un lugar y un intervalo de 60 minutos, cada día, en el cual estará disponible para ser controlado, pertenece a un *Grupo Registrado de Control -GRC-*.

§ El GRC se define como un grupo conformado por los deportistas del más alto nivel competitivo.

§ Las federaciones internacionales identificarán y gestionarán GRC conformados por deportistas de la más alta prioridad a nivel internacional y las organizaciones nacionales antidopaje, lo harán a nivel nacional.

§ Uno de los principios fundamentales de los GRC es que cada deportista miembro debe ser controlado *Fuera de Competencia* al menos tres (3) veces dentro de un año. Este principio impone otro, de carácter práctico, el que, a nuestro entender, es de la mayor importancia: el tamaño del GRC y la cantidad de grupos a cargo de una misma Organización Nacional Antidopaje (ONAD) debe ser coherente con la capacidad de control y de gestión técnica de dicha ONAD.

En las normas nada impide el solicitar a uno o a varios deportista(s) de “menor nivel” competitivo cumplir con la obligación de informar su localización/paradero. La constitución de GRC’s conformados por deportistas de menor nivel o la incorporación de deportistas de más bajo perfil competitivo en GRC ya constituidos por otros deportistas de mayor nivel, nos parece inadecuado. También nos parece inadecuado que el hecho, a veces caso fortuito, de efectuar 3 controles a un deportista determinado de menor nivel competitivo, obligue a incorporarlo al GRC. No se debe olvidar que los GRC se generan a partir de un análisis de riesgo por deportes y por deportistas, siendo la parte más alta de la “lista” resultante de dicho análisis. En realidad, cada ONAD debe verificar sus recursos y su capacidad de gestionar más de un GRC o un GRC de gran tamaño.

En cuanto a qué organizaciones deben requerir la información de localización/paradero a un deportista de menor nivel competitivo, pareciera que es en el nivel nacional donde estos deportistas pueden ser identificados con mayor facilidad, por lo que debería ser la ONAD el organismo que solicite dicha información.

Sin embargo, quisiéramos finalmente plantear qué significa “*un atleta de menor nivel*” en el ámbito deportivo mundial. El jugador de baloncesto del más alto nivel nacional en Chile, miembro de nuestro GRC, sería probablemente de nivel nacional mediano hacia abajo en España y, pese a ser seleccionado nacional en Chile, es muy probable que la Federación Internacional no lo considere de nivel internacional.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

The current athlete definition allows to apply WADA rules to athletes that are not international or national level athletes. If clarification is needed, it will only be to clarify the current situation, not to put forward any changes.

NADO Flanders has in fact used this possibility to extend whereabouts requirements to athletes that did not yet make the criteria to be identified as an international or national level athlete, but that had a sudden improvement in results or in cases where there were strong indications that the athlete was involved in doping practises.

If any, a clarification in the athlete definition can be made. However, when applying the rule, there must be a clear motivation to do so and the principle of proportionality must be applied.

Furthermore, it should be made clear that this is a measure for investigation and lower level athletes cannot be deemed part of the registered testing pool of an ADO.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

Institute of National Anti-Doping Organisations

SUBMITTED

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

It should be clarified that whereabouts information (in some form) may be required from athletes not in an RTP but for example a second tier group. This does not necessarily relate to "lower level" athletes but simply lower risk athletes. Generally speaking requiring whereabouts from "lower level" athletes, i.e those who are not "elite", should not be the norm and should require the ADO to justify specific and demanding criteria in order to do so. How whereabouts is managed for team sports remains an issue under discussion in the community but a meeting on April 11 is too late for this round.

GM Arthur Sports Representation

SUBMITTED

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

The processing of whereabouts information is subject to national data protection laws, which in turn means that in countries where the General Data Protection Regulation is in force, that the processing must be (amongst other things) 'necessary'.

In all instances where whereabouts information is required from an Athlete who is part of Registered Testing Pool, the Anti-Doping Organization is required by the GDPR (Article 5(1)) to show that the forced (Athletes are compelled to provide whereabouts information – it is not provided by consent) production of whereabouts information is 'adequate, relevant and necessary'.

The level at which an Athlete competes will be relevant to this determination but not of itself determinative. Simply because an Athlete competes at a high level does not mean that a demand for whereabouts information is 'adequate, relevant and necessary'; conversely simply because an Athlete competes at a lower level does not preclude a demand for whereabouts information.

The clarification suggested might, therefore, be along the lines of identifying that compatibility with data processing regulations involves a proper evidence-based assessment of risk before an Anti-Doping Organization compels the production of whereabouts information.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- From an unfunded sport perspective, with no professional staff, increasing the number of Registered Testing Pool athletes would not be welcomed as it would be an additional burden. In addition, adult lower level athletes are likely to be in paid work and therefore more likely to be subject to changes in whereabouts in order to meet their work commitments.
- In a very small society, with a relatively small number of only amateur athletes, we have to remain practical about whereabouts. Anything onerous for lower level athletes might be a disincentive to participation, and might weaken our presence at international events.
- With lower level athletes there would need to be some broadening of standards to allow for out of competition testing, as this may bring into account those who work around sport and have other external factors, which they themselves are not fully in control of. Similarly, I suspect that altering the level of “athlete” and bringing into play testing with purely competition days would likely increase the likelihood of recreational drug misuse being the predominant adverse finding
- Some Governing Bodies for Sport do not support the collection of whereabouts information from ‘lower level’ athletes.
- There needs to be a clear direction as to whose responsibility it is to lead the testing and monitoring of lower level athletes - the NADO or the NGBs?
- More clear stated in the Code that ADOs may require whereabouts information from lower level athletes and that other testing pools can be created
- There needs to be a clear definition of what is considered ‘Lower level athletes’ and how WADA could support NADOs in testing lower level athletes out of competition, as this could be a big drain on resources for less funded NADOs

Article 6 - Retesting and Ownership of Samples (16)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of such consideration.
However the matter first deserves some clear Definitions in the Code (“Retesting”? “Future Analysis”? “Further analysis”?).
At the basis, it should remain clear that TA is the owner of a sample. Results Management responsibilities should be defined in Art. 7 (see also comment on Art.7)

World Rugby

SUBMITTED

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

World Rugby would welcome a review of this topic in order to clarify whether it would be possible to legislate in the Code for switching ownership of stored samples. This would be important for situations where an ADO may want to transfer ownership of a sample in which it no longer retains interest to another ADO. Some consideration should perhaps also be given to situations where an ADO other than the sample owner wants to retest a stored sample. If the sample owner rejected the request, could WADA provide some sort of arbitration decision, similar to that provided in cases of test jurisdiction?

Union Cycliste Internationale

SUBMITTED

Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-

Doping Services (Switzerland)
Sport - IF – Summer Olympic

Adding article 10 of the ISTI in the WADC would clarify the matter.

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 would also be helpful.

The UCI has included art. 10.1 and 10.2 in UCI ADR in article 6.6. as follows:

Ownership of *Samples*

6.6.1 *Samples* collected from a *Rider* under these Anti-Doping Rules are owned by the *UCI*.

6.6.2 The *UCI* may transfer ownership of the *Samples* to another *Anti-Doping Organization*, or receive ownership of *Samples* from other *Anti-Doping Organizations*

International Paralympic Committee
Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

SUBMITTED

Agree that any additional clarity is welcome but has no specific proposals.

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 has some concerns regarding the Article 6. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 6 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ONAD - Colombia
Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

SUBMITTED

Group of South American Lawyers from NADOs:

"We recommend the elimination of the sample B.

We consider that, if a new analysis is necessary, it should be on the sample A.

The decision related to the elimination of the sample B should be based on the following studies:

1. Number of cases of exemption when the result of analysis of the sample B was different from that of the sample A;
2. Number of cases in which the athlete requests the opening of the sample B;

3. Reduction of costs for the ONAD in the acquisition of the doping control material and transportation of the samples to the DCOs and Laboratories;
4. Reduction of costs for the accredited laboratories for storage of the samples;
5. Reduction of the time of the athlete in the doping control station using a single bottle".

AEPSAD

SUBMITTED

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

We agree with the establishment of the re-analysis procedure for samples. It is important to define clearly which organization is in charge of storing the samples.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

The ADO with original result management obligation should always be the organization for commanding retesting and result management of the retested sample.

NADA Austria

SUBMITTED

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

Currently it is clearly defined, who has the ownership of the sample: the ADO which has authorized the test (testing authority). A clear regulation for the problem above could be, that the TA has the authority to direct retesting.

If, for example, a Internationale Federation would ask NADA Austria to retest a sample where the Internationale Federation is not the TA, then NADA Austria may or may not allow such a retest. Similarly, the TA should decide who should be the RMA.

UK Anti-Doping

SUBMITTED

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

The issues that we have experienced in respect of retesting and ownership of samples relate to ADOs that are acting as SCAs making decisions to retest/store samples for samples which UKAD 'owns' (i.e. UKAD was TA/RMA). In UKAD's view, an ADO acting as a SCA should not be able to retest/store a sample without prior consent from the TA/RMA. The clause may need clarification but ultimately there needs to be a clear process to manage this.

If WADA is directing retesting will they inform the ADO? UKAD favours an agreed process, and it would seem reasonable that the national ADO would 'own' and direct retesting.

This clause does not state whether an athlete may request further analysis prior to requesting a B sample once the A sample has been analysed. It might be helpful to clarify how this clause works in practice.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES has not had an issue with retesting and/or ownership of samples. However, it would be helpful to clarify:

- (i) who has the right to direct the retesting; and
- (ii) who has the results management responsibility for a retested sample.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Nuevos análisis y propiedad de las muestras almacenadas (inciso 6.5). Aunque los nuevos análisis efectuados a muestras almacenadas han significado un notable avance en la lucha antidopaje, han planteado al mismo tiempo el problema de la propiedad de las muestras y sobre la organización que tiene el derecho directo de hacer el nuevo análisis y la organización que será responsable de la gestión de resultados correspondiente.

Opinión/Sugerencia:

Normativamente, la propiedad de las muestras y el derecho de solicitar nuevos análisis, cuando se trata de análisis adicionales efectuados en cualquier momento (antes de comunicar su Resultado Analítico de una muestra A y B al deportista), recaen en la Autoridad de Gestión de Resultados original. Esto no puede ser sujeto de discusión. Si otra organización antidopaje quisiera realizar análisis adicionales en el período mencionado anteriormente, debe pedir, ya sea la autorización de la ONAD que tiene la Autoridad de Gestión de Resultados, o la cesión de la Autoridad de Gestión de Resultados por parte de esa ONAD.

La propiedad de las muestras no puede ser “perdida” por parte de la Autoridad de Gestión de Resultados en caso de almacenamiento a largo plazo. Aunque la Organización Nacional Antidopaje de Chile no ha almacenado hasta ahora muestras a largo plazo, por lo cual no tiene experiencia en el procedimiento seguido, si lo hiciera no debería perder ni la propiedad ni la autoridad. Si otra ONAD quisiera hacer almacenar y, posteriormente, analizar una muestra, debería proceder como en la situación anterior: solicitar la autorización y/o la cesión de autoridad.

CITA

SUBMITTED

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

Retesting and ownership of the samples. The anti-doping organization that is considered to be the organization that initiated and directed Sample collection of a certain Sample, should be the organization responsible for retesting result management and should also have the right to direct retesting along with WADA.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable à un élargissement du droit offert aux organisations antidopage de demander des analyses additionnelles dès lors que des échantillons ont été conservés par un

signataire. Cette faculté ne devrait pas être réservée à l'OAD qui a initié le processus de collecte des échantillons ou à l'AMA.

GM Arthur Sports Representation

SUBMITTED

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

There is scope for introducing some clarification as to what organisation 'owns' Samples and the practical significance of such 'ownership'.

It is often the case that different Anti-Doping Organisations will collect Samples from the same Athlete: for example, an Athlete from Country A may train and compete in Country B. Country A NADO and Country B NADO will collect Samples, as will the relevant International Federation. So, it may be the case that a collection of Samples exists taken from a particular Athlete: some of which have been collected by Country A NADO, some by Country B NADO, and some by the International Federation. If the Samples are collected whilst the Athlete is in one location (or within the same country) the Samples are all likely to be stored in the same Laboratory.

Assuming that the Athlete is being investigated (or part of a broader investigation), it may be Country B NADO wishes to re-analyse the Samples taken from the Athlete as part of an investigation. Country B NADO can re-analyse 'its' Samples, that is, the Samples it collected using its testing jurisdiction. But it obviously does not assist that investigation if either Country A NADO and/or the International Federation do not agree to 'their' Samples being analysed. This is particularly so if, for example, Country A NADO has no good reason for disagreeing. This puts Country B NADO in a difficult position, as well as the Laboratory where the Samples are stored.

Article 6.5 provides that Samples can only be re-analysed at the direction of the Anti-Doping Organisation that initiated the Sample collection, or WADA. In relation to the latter, it may, therefore, be helpful if the International Standard for Testing and Investigations includes some guidance as to when WADA might intervene in an investigation. In the example above, Samples initiated and collected by Country A NADO could be analysed to support an investigation, even if Country A NADO disagrees. Country A NADO would need to provide good reasons why the analysis should not take place, and Country B NADO provide good reasons why it should. WADA (and perhaps the International Federation) can then intervene and decide what should happen (on a final, no-appeal basis). This might be more practical than making changes to 'ownership' rules that will not remove the possibility of disagreement.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Increasing the length of time that samples are stored and therefore liable for retesting is welcomed as it acts as a further deterrent and an opportunity for detection technology to improve.
- WADA should enable as much flexibility and transparency as possible to IFs or governing bodies that store samples for retesting without the difficulty or restriction of the current code. For example, if an International Federation wanted to retest samples, can they not send those samples to any WADA accredited lab without any obstacles? Some governing bodies do not

store samples for retesting (IPC). Would WADA consider making the storage of samples compulsory for international federations to adhere to the code?

- There should be a resource to help with sample retention and retesting, to help ADOs identify what issues should be considered and why. It would be helpful if there was information available to assist small ADOs in deciding on sample retention.
- There is support for re-testing of samples as a good deterrent. Clarification should be provided as to who is responsible for initiating the process of re-testing samples, including when and how this will be the case, and the Results Management process associated with this.

Article 7 - Authority to Conduct Results Management (21)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

This also relates to comment on Art.6.. Art.7 should encompass all RM circumstances. Below are some areas where clarification / change is needed (in addition to Art.6 area):

- circumstances under Art.5.3.2 – especially, why should such tests be considered Out-of-Competition?
- Result Management of a Missed Test should be the responsibility of the TA who initiated the test, not the ADO who holds whereabouts custodianship

World Rugby

SUBMITTED

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

From our own experience of a (cordial) difference of opinion with another ADO, we would question whether there is sufficient clarity offered in the Code to set out when an IF's event period jurisdiction in 5.3.1 overrides national jurisdiction provided in 5.2.1. Perhaps this could be achieved via a cross reference in 5.2.1 to make clear that the right to test an athlete on national soil is notwithstanding 5.3.1.

Union Cycliste Internationale

SUBMITTED

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

It is not clear what WADA is requesting under this heading as, in any event, WADA has the power to decide on a dispute over who is the RMA.

One comment to Art. 7.1: 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. 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. This is inaccurate given that responsibilities can be delegated, but not liability.

FIBA (International Basketball Federation)

SUBMITTED

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

Experience has shown that International Federations are often better placed to undertake results management, especially when a case involves athletes that are no longer residents of the country in which their AAF was detected. This places an administrative burden on the NADO of the country in question in the attempt to contact the player, players are subsequently not given the right to be heard, and the resulting sanctions are often disproportionate and not within the spirit of the Code. In light of the above, FIBA proposes the following amendment to article 7.1.1 (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.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

We recommend that the MEO, in agreement with the IF, should have the option to determine the consequences of an ADRV as well as the consequences relating to the specific event (when the IPC is not the IF for the sport). In Rio we had one such case where to determine the applicable consequences in relation to the Games we needed to delve considerably into the merits and a decision could have been made in relation to the applicable period of ineligibility. This would be the best way to save resources across ADOs. Perhaps the current approach could only be adopted if the athlete/person in question expressly requests it (i.e. to enable more time to gather evidence for the substantial hearing).

Australian Government

SUBMITTED

Dean Ebejer, Drug Analyst (Australia)
Sport - Other

The current wording is adequate and provides flexibility for the national anti-doping organisation to conduct results management where it discovers the violation.

SUBMITTED

Ministry of sport of Russia

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

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.

Involvement of governments

It is proposed to supplement the article with the provision that the government, in certain cases, has the right to identify priority aspects of work to prevent violations of anti-doping rules with regard to investigation of possible anti-doping rules violations and implementation of educational programs. For example, on the eve of major international competitions, the priority aspect is to prepare athletes for this event.

In accordance with UNESCO International Convention against Doping in Sport, states parties ensure the implementation of this Convention through coordination of actions within the country. To fulfill their obligations under this Convention, states parties may use anti-doping organizations, as well as sports institutions and bodies.

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 has some concerns regarding the Article 7. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 7 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Group of South American Lawyers from NADOs:

"To establish an explanatory note as to the scope of the "Hearing" in the Article 7.9, in order to specify that other means are allowed for the athletes to be heard (virtual media or written media). to facilitate the statement of the athlete.

Although this provision is already found in the Guide of Results Management, it is recommended incorporating it in the Article 7.9."

AEPSAD

SUBMITTED

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

7.1. Responsibility for Conducting Results Management

The possibility for International Federations (IF) to delegate the management of results to National Authorities or Federations should be eliminated. The responsibility and effort required by the management of results must be proportional to the resources and athletes included in each IF. It makes no sense to minimize or exaggerate the commitments the IF must undertake as this is detrimental to the operational success and effectiveness of the fight against doping and is harmful to the National Authorities.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

Selon nous, les principes posés par l'article 7.1 du Code en matière de responsabilité en matière de gestion des résultats, doivent demeurer.

La gestion des résultats et des audiences relèvent, en principe, de la responsabilité de l'OAD qui a initié et réalisé (ou demandé à faire réaliser) un prélèvement d'échantillon (ou si aucun prélèvement n'a eu lieu, de l'OAD qui a notifié un sportif ou une personne de l'allégation d'une violation des règles antidopage) et sont régies par ses règles de procédure.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- Regulation of Jurisdiction
- Scope of the „hearing“ during the results management process
- Abbreviated process e.g. for specified substances
- Scope of the measures at the hearing for non-specified substances (and other possible anti-doping violations)

Comment: a list of measures to be taken during the results management process should be released (see WADA-Guidelines „Results Management“)

- Fundamental structure of the administrative review – only formal review or appeal.

Article 8

- Clear principles for a „hearing“
- Principles for Hearing Panels while considering the Code of Conduct-Rules in general (also see measures for „Independent Hearing Panels“ of the Counsel of Europe, attachment)

SUBMITTED

NADA Austria

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

The principle that result management and hearing shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection is clear and unambiguously. Based on the role of WADA to decide in the case of a dispute between Anti-Doping Organizations there is no need for additional ruling.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA disagrees there is a „continuing debate“. EADA has had examples, where the Results Management authority has been „transferred“ to another organisation fluently, based on strong arguments. WADA could elaborate the type of debate in this matter.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

La existencia de eventuales conflictos o discusiones sobre el ejercicio de la Autoridad de Gestión de Resultados, en diferentes situaciones.

Opinión/Sugerencia:

Las definiciones actuales respecto de qué organización debe llevar adelante la Gestión de Resultados parecen correctas y bien arraigadas en la comunidad antidopaje. Asimismo, las disposiciones relativas a las transferencias de Autoridad de Gestión de Resultados impuestas por el Código Mundial Antidopaje parecen claras y siguen rutas lógicas.

En tanto ONAD, y de acuerdo con nuestra experiencia, sólo podemos mencionar un caso genérico en el que se podría originar un eventual diferendo de Autoridad de Gestión de Resultados:

§ Aquellos casos en que una Federación Deportiva Internacional “otorga”, a través de su reglamento antidopaje, dicha autoridad a la Federación Nacional afiliada, tratándose incluso de eventos y deportistas de nivel nacional, en países en que su legislación y/o su reglamentación, entrega esta autoridad a la ONAD. Nos parece que el hecho de “exportar” la Autoridad de Gestión de Resultados desde el nivel internacional, al nivel nacional debería estar expresamente prohibido.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES has not had any issues with the right to conduct results management. However, greater clarity is warranted to determine who should be responsible for results management in a “third strike” situation.

In addition, in Article 7.1.1 the results management function can be delegated to a third party as permitted in the international federation rules. The CCES is concerned that it is common for an international federation to initiate or authorize a third party to conduct testing on Canadian athletes and, when an Adverse Analytical Finding results, to then delegate the results management authority to the applicable National Sport Federation in Canada. This is typically permitted in international federation rules. It is not usual for the National Sport Federation in Canada to have in place the resources (human and financial) and the general capacity to conduct a fair results management process pursuant to the Code. The CCES is not prepared to routinely conduct the results management process for tests initiated by the international federation against Canadian athletes as the CCES has not budgeted for this expense. However, National Sport Federations in Canada (and we suspect elsewhere) are not fully prepared to fairly perform this delegated results management role. The CCES believes that the international federation must conduct the results management in every case when a test that an international federation initiates results in an Adverse Analytical Finding. CCES would like this made express in the Code as this would ensure that the results management process is fair and consistent for all athletes.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that Article 7 would benefit from clarification. It has encountered situations where it has been unclear who has the right to conduct results management in certain circumstances.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Article 7

We support the suggestion to clarify which ADO has Results Management Authority in different circumstances.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

GM Arthur Sports Representation

SUBMITTED

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

It is not realistic to create an Article that provides certainty in respect of every conceivable Results Management dispute that might arise between Anti-Doping Organisations.

A dispute resolution scheme exists in Article 7.1, which provides that WADA can decide which Anti-Doping Organisation has Results Management, with an appeal right to CAS.

This seems satisfactory, save perhaps for the removal of the appeal right. An appeal, even one limited to a Sole Arbitrator (as required by Article 7.1), has a significant monetary, time and resource cost. It could, perhaps, be dispensed with: Anti-Doping Organisations can trust WADA's judgement.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- A distinct and clear process as to how International Federations carry out Result Management is needed. The current situation is far too varied across sports. If an athlete is currently under investigation for an ADRV there needs to be a process to follow to ensure that the clean athletes are protected (ie that the suspected athlete does not compete) until the closing of the case into the suspected athlete.
- More information should be provided to determine how an organisation can obtain Results Management responsibilities and more stringent rules about how these responsibilities are carried out, and may be removed, should be considered. Organisations that do not have the appropriate infrastructure to conduct Results Management can cause severe delays to the completion of anti-doping cases. This can be detrimental for the athlete as there is a prolonged period of uncertainty about whether they can compete. It can also delay decisions about future funding of athletes.

Article 10 - Contaminated Products (22)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

The Definition of Contaminated Product may be reviewed to address the environmental contamination, and therefore be not limited to a product label or reasonable Internet search.

Fédération Equestre Internationale

SUBMITTED

Aine Power, Deputy Legal Director (Switzerland)
Sport - IF – Summer Olympic

Chain of Custody – Contaminated Products

Article 10.5.1 states “*In cases where the Athlete or other Person can **establish** No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product.....*”, then there is scope for the Ineligibility period to be reduced.

However, it is unclear what the appropriate process is for the Athlete/Person to “*establish*” that the source of the Prohibited Substance was a Contaminated Product. In particular, there are not any rules/standards/protocols in relation to what the process should be for having a product (for example, a supplement) that is alleged to be contaminated tested. In many cases, the Athlete/Person will arrange to have the product in question tested without the ADO being made aware as to how, where, when, by whom the testing is carried out. Testing carried out independently by the Athlete/Person raises issues in relation to chain of custody etc. and the possibility of an Athlete/Person manipulating a sample of the alleged Contaminated Product cannot be excluded. Often the ADO only learns of the results of the product’s testing when the Athlete/Person submits the results as part of his/her formal submission during the proceedings before the Hearing Panel. At that point, it may be too late for the ADO to have any input into the testing process; the ADO may instead need to conduct its own testing of the product in order to take a position on whether or not to accept the results submitted by the Athlete/Person. There is obviously a cost implication to this.

The FEI suggests that a process/protocol be put in place whereby if an Athlete/Person intends to rely on the defence of 10.5.1 by asserting that the source of the Prohibited Substance is a Contaminated Product and if they intend to have the Contaminated Product tested (in order to “*establish*” this), the ADO should be informed prior to the Athlete/Person proceeding with the testing. One aspect of such a protocol could be for the ADO and the Athlete/Person to enter into an agreement in relation to the testing process to be followed. Such agreement could set out where, when and by whom the testing will be carried out. For example, such process could require the manufacturer of the allegedly Contaminated Product in question sending a sample from the corresponding batch to a WADA approved laboratory for testing (such laboratory to be agreed between the Athlete/Person and the ADO). In addition, our suggestion would be to include a provision (either in the Code itself or in the explanatory comments) that the Hearing Panel could be entitled to consider the results of the testing of the allegedly Contaminated Product that did not follow the protocol as having less evidentiary value than results of testing that was carried out in accordance with the protocol.

Having such a protocol in place could facilitate Hearing Panels (and subsequently CAS Panels) in satisfying themselves as to whether or not the Athlete/Person has “*established*” that the Prohibited Substance came from a Contaminated Product and could reduce legal argument on the validity of the results of the testing of the products in question.

Union Cycliste Internationale

SUBMITTED

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

This issue does not seem appropriate to be settled in the WADC. It seems difficult to pinpoint what would be sufficient, but for “positive” results following the analysis of the supplement – and this would be a very high hurdle for an athlete to meet (particularly where the supplements no longer exist, or at least not in the form in which they existed at the time).

As a matter of procedural fairness the UCI does not favour a limitation of the principle that a Panel is free to assess the evidence.

SUBMITTED

FIE

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

10.5.1.2 does not make sense - if no significant fault is established surely there should be no sanctions?

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

WADA should provide practical guidance to athletes and to panels. In particular, WADA needs to provide guidance in relation to the requirements/best practice when athletes or ADOs decide to test a product to determine (or otherwise) that it is contaminated.

Law

SUBMITTED

Michael-T. Nguyen, Sports Lawyer (Canada)
Sport - Other

My name is Michael Nguyen and I am a Canadian lawyer who represents athletes on a Pro Bono basis in their appeals for anti-doping rule violations.

Introduction

When athletes first consult me for ADRV assessed against them, they are most of the time at a loss for explanations as to how this occurred. As we explore the different ways the substance may have entered their body, the possibility of contaminated products almost always comes up. The WADA Code provides a specific suspension reduction at section 10.5.1.2 when athletes can prove that they did not want to cheat and are a victim of contaminated products.

Issue

It's a reality that most athletes I represent on a Pro Bono basis do not have the resources to hire a team of legal and scientific/medical specialists to defend them. The consequence is that we must directly ask the ADO for assistance in defending the athlete and his / her right to a full defense. The process of applying the suspension reduction for Contaminated products needs to be clarified. Here are some points that can be better addressed:

- How does an athlete prove to an arbitration panel that he or she has unwillingly ingested a contaminated product?- Where can the athlete have his / her products tested?- What is the procedure to have the "opened or used" contaminated product tested?- What is the procedure for an athlete who wishes to purchase the same "unopened" product and have it delivered to the laboratory for testing?- Will the results of the test be contested by the ADO if it's the athlete who arranges the purchase of the product and delivers it to the lab?- Which labs can be used to have the product tested? Only WADA accredited labs? - Are WADA accredited labs obligated to test a product for an athlete who is facing an ADRV or can the lab refuse to do so?- How much can the WADA lab charge for a test?- Should the product's manufacturer automatically be notified if an athlete is invoking the Contaminated product argument?

Situation in Canada

In Canada, the CCES (the Canadian ADO) has in the past, agreed to arrange the testing of my athlete's products at his own costs at a WADA accredited laboratory. We have tried contacting universities and their Biochemistry departments in the Montreal area, but they remain uncooperative and we are unsure the results of their tests would be accepted by WADA or the ADO's.

However, the process is not clear as to how the products have to be bought and who and how we must manipulate them until they are delivered to the laboratory.

Suggestion

If WADA can determine how an athlete can have his own products tested after an ADRV has been

assessed against him, then this would allow for the following consequences:

1) Athletes may wish to accept the ADRV and the suspension before a lengthy and costly arbitration process if the testing results asked by the athletes showed that an "unopened" product was negative to the prohibited substance and that they could not prove the requirements of the suspension reduction for contaminated products.

2) Should the results of an "unopened" product come back positive to the same Prohibited substance as in the athlete's urine sample, then the ADO may wish to avoid going to arbitration and would reduce or eliminate the suspension period.

The Contaminated Products explanation is the explanation from athletes that comes up the most. We've also seen in the past athletes accepting the suspension, but then claiming in the media that they are an innocent victim of shady supplement manufacturers.

Having clearer indications as to how this could be applied in WADA's footnotes for example, would help athletes and ADO's make better informed decisions if they should go to through the public and costly arbitration process or accept their suspension.

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 has some concerns regarding Contaminated Products. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Contaminated Products the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

SADA

SUBMITTED

Lubomir Gulán, Education Manager (Slovakia)
NADO - NADO

A supplement guide for athletes is needed. (required evidence step-by-step)

Irish Sports Council

SUBMITTED

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

Ø Sport Ireland is of the view that Article 10 is difficult to operate in practice. The term 'cheat' in the definition of intentional is not defined and nor is the use of the term helpful, as intentional conduct includes reckless conduct.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

Generally speaking the benefit of the doubt should be with the athlete in such cases. For an athlete it is sometimes not possible to show that the AAF stems from a contamination. We know cases of contaminated medication below the in the production allowed total "carry over" contamination, contamination from drinking water, from meat, supplements.....

Especialmente con “specified substances” por debajo del Límite Requerido Mínimo de Rendimiento, el laboratorio no debería reportar el resultado como un AAF sino más bien como una información a la autoridad de prueba para futuras investigaciones.

NADA Austria

SUBMITTED

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

No hay una solución única para este problema, porque los tramposos podrían usar esto como un agujero. Pero tal vez los expertos científicos puedan desarrollar un umbral como límite de decisión (comparado con otras sustancias). Puede ser que no podamos sancionar a algunos atletas que trampearon porque están por debajo del límite de decisión, pero aclaramos la situación para infracciones no intencionales de las reglas antidopaje o criterios que deben cumplirse para calificar un ADRV como resultado de contaminación de alimentos.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA agrees that if possible, the principles of sanctioning should be cleared. The process of standardisation in Europe could be followed to make the necessary changes (however, the standardisation process would take another 2-3 years).

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Situación relacionada con los productos contaminados y alimentos contaminados. Conciernen al inciso 10.5.1.2 del Código. Se refiere a la reducción de la sanción de Resultados Analíticos Adversos -RAA- debido al uso de productos contaminados, lo cual ha sido un foco de controversia en la comunidad deportiva y antidopaje. El centro del asunto es que no se ha establecido de forma fehaciente (por los Tribunales o la propia Corte de Arbitraje Deportivo), la explicación de la evidencia que un atleta debe presentar para establecer la causa de la contaminación.

Opinión/Sugerencia:

Problema complejo que, en nuestra opinión, debe ser dividido, puesto que los casos de productos contaminados y alimentos contaminados no presentan las mismas características.

Productos contaminados: Asumimos que se hace referencia principalmente a los suplementos llamados nutricionales, alimenticios y/o deportivos. Es un hecho conocido que la Agencia Mundial Antidopaje y la gran mayoría de las organizaciones antidopaje en el mundo no se pronuncian ante eventuales consultas sobre este tipo de productos, justamente por el alto potencial de contaminación por sustancias prohibidas que éstos poseen. También es conocido que la AMA es escéptica sobre los eventuales “beneficios” que producirían estos suplementos en el organismo y la consecuente “ventaja competitiva”. El asunto de la “efectividad” de los suplementos no debe ser materia de discusión antidopaje. Por el contrario, advertir la posibilidad de que estén contaminados es una obligación.

De acuerdo con lo dispuesto por el Artículo 2.1.1 del Código, “*Es un deber personal de cada deportista asegurarse de que ninguna Sustancia Prohibida entre en su organismo...*”.

Este solo precepto normativo antidopaje basta para sancionar cualquier RAA, independientemente del hecho de que éste se haya producido por ingesta involuntaria de productos contaminados.

No obstante, resta por verificar una serie de aspectos contenidos en las normas antidopaje, tales como la intencionalidad, la culpa, la negligencia, etc. Es en estos aspectos que se debe buscar, con el sostén de la presentación de pruebas sólidas, la sanción proporcional a la falta.

¿Qué pruebas considerar? Actualmente, resulta muy dificultoso y/o caro para los deportistas presentar una prueba inobjetable ante los paneles disciplinarios de que su RAA se debió al uso de un producto contaminado. A menudo se trata de hacer analizar el producto sospechoso, en busca de la sustancia prohibida causante del RAA. Sin embargo, este análisis puede bien generar más interrogantes, que aportar las soluciones esperadas. Ni siquiera el *batch testing* (pruebas por lote) puede aportar certezas al respecto.

Tal vez lo primero sea comprobar si se cumplieron las recomendaciones básicas de la AMA respecto del suplemento ingerido. Aunque el respeto de estos consejos no asegura que el producto no contenga sustancias prohibidas, contribuye sin duda a reducir el riesgo de tener un RAA por contaminación. Su aplicación rigurosa podría ser considerada como una demostración ante el Tribunal de la voluntad del deportista de asegurarse de que ninguna sustancia prohibida ingrese en su cuerpo.

No se debe disminuir automáticamente la eventual sanción al deportista y debe decidir el Tribunal sobre la duración de la sanción. La responsabilidad del deportista está comprometida y sigue siendo objetiva. Aunque algunas opiniones indican que deberían existir criterios de base comunes entre las diferentes instancias de juzgamiento, para reducir las sanciones por este motivo, las circunstancias en las cuales el suplemento contaminado llegó al organismo del deportista pueden ser completamente diferentes. Por ejemplo, un deportista con RAA que adquirió un suplemento contaminado en el comercio legalmente establecido, previa consulta con los profesionales que corresponda, no puede tener el mismo grado de culpa que un deportista con RAA causado por un producto contaminado adquirido en el mercado informal, sin previa consulta a un médico y/o nutricionista especializada(o).

Las circunstancias particulares hacen una gran diferencia y no se debe revisar a la baja la duración de las sanciones genéricamente por esta causa. A cada caso, corresponde una sanción proporcional a la infracción y a sus características.

Canadian Centre for Ethics in Sport

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

SUBMITTED

The first point CCES wishes to make relates directly to comments found immediately below dealing with environmental risks and cases of food contamination. CCES believes that the Article on Contaminated Products must specifically exclude contamination in food (i.e. meat) and in fact exclude all other sorts of “environmental” risk contamination. Trying to include too much in this Article (as currently drafted) is what has caused the issues with interpretation. CCES believes an Article dealing with Contaminated Products must deal exclusively with manufactured products such as medicine, supplements, etc. Such manufactured products have labels, lot numbers, and batch numbers. Typically they are used over a period of time and the remaining contents held by an athlete can be evaluated if an Adverse Analytical Finding arises. Within that more limited scope of application the Article as drafted works perfectly well. An athlete has to prove a manufactured product that he or she consumes is contaminated and in this regard a focus on what is on the label and what could be discovered in a reasonable internet search makes perfect sense.

To use Article 10.5.1.2, the CCES believes that the athlete must prove on a balance of probability (i) that he or she ingested the manufactured product and (ii) that the manufactured product was, in fact, contaminated. Precisely how it became contaminated (i.e. in transit, in manufacturing, or intentionally by the maker) is not essential – so long as the athlete was not aware. In addition, to obtain a reduced sanction below two (2) years the athlete must of course demonstrate how the

banned substance entered the body (because the athlete must be “at no significant fault or negligence” to be eligible for such a sanction reduction). The requirement to prove how a substance entered the body will clearly overlap with the proof required to show the Adverse Analytical Finding involved a Contaminated Product. As set out elsewhere in these comments, whenever an athlete has the onus to prove how a substance entered the athlete’s body the CCES believes that a single route of ingestion and the associated circumstances in which the administration occurred must be conclusively and persuasively established. In other words, the CCES believes the “Contador approach” whereby a variety of potential routes of ingestion are tendered (some of which are more likely than others) is not sufficient.

If we limit the Contaminated Products cases to manufactured products (and exclude food contamination from environmental risks) in the vast majority of cases the athlete can discharge the evidentiary onus described above – if it is a valid claim that is being pursued. The difficulty that has faced CAS and other Tribunals is how to properly evaluate a claim of contamination when athletes try to “force” a case of food contamination (say, in meat) through this Article as now drafted. When this is attempted the current definition of Contaminated Product simply does not work and the required elements of proof are difficult if not impossible to discharge. Due to this, CCES believes that a new Code Article is warranted dealing exclusively with environmental risks. This will have VERY limited scope. If this is accepted as a solution to the identified interpretation challenges and if Contaminated Products are limited to “manufactured” medicines and supplements, etc., the only drafting requirement is to exclude from the Article on Contaminated Products those cases that will be dealt with separately.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

How the Code addresses the possibility to reduce the applicable sanction when an Adverse Analytical Finding has resulted from a contaminated product is something that ought to be examined more closely. However, given the already frequent occurrence of this contention by Athletes in ADRV proceedings, care must be taken not to create a situation that encourages alleged contamination to be raised as a partial defence or exculpatory factor in situations where it is not appropriate.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete’s Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Article 10

We support the suggestion to clarify the criteria that must be met in order to reduce a sanction.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

CITA

SUBMITTED

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

CITA is of the opinion the matter of contaminated Products and Food Contamination needs to be better defined in the Article itself or in the comments section of the Article to allow more consistent rulings in these matters. 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

Japan Anti-Doping Agency

SUBMITTED

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

Clarify the Language used for "A Reasonable Internet Search"

The Article, "Contaminated Products", requires "a reasonable Internet search(*2)". Some Athletes fail to recognize the inclusion of Prohibited Substances in the supplements because they only researched in his or her native language, which did not show any prohibited substance. However, if the Athlete had researched in another language, such as, English or another language, the Prohibited Substances might have been found.

For preventing these types of errors, and for education purposes, it is preferable to add a commentary on the provisions of Contaminated Product, such as, "An Internet search only in the Athlete's native language may not be regarded as a reasonable Internet search".

Some Athletes have suggested that the language used for "a reasonable Internet search" should be specified, for example, English. However, if the language is specified, it might be a disadvantage to the Athletes whose native language is not the specified language.

(*2) See WADC Annex 1 definition

Freelance journalist

SUBMITTED

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

This Article needs to be reviewed thoroughly. The present provisions for the 'contaminated products' do open up possibilities of known contaminated products as evidence to cover up for

direct intake of steroids. There is no mechanism by which it could be established that the athlete ingested the banned substance through contaminated product or through the drug itself in small doses over a period of time. Clenbuterol contamination of meat and meat products perhaps could be tackled by having a threshold for the 'small amount' in such cases.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Generally speaking the benefit of the doubt should be with the athlete in such cases.

GM Arthur Sports Representation

SUBMITTED

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

In relation to the 'Contaminated Products' provisions.

a) On its face, the provision is clear: an Athlete has to show that a finding is attributable to a Contaminated Product. The term Contaminated Product is defined. However, some hearing panels appear to believe that the Athlete must provide evidence as to how a product became contaminated: clarification could be provided as to whether this is required by the Code (if it is, production is likely to be onerous, if not impossible). The standard of proof and evidence required from an Athlete could be clarified by Commentary.

b) Some guidance would be welcome in situations where an Athlete claims – plausibly – that a finding is attributable to a Contaminated Product, but – equally plausibly – is not in a position to produce evidence to that effect.

For example, 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?

Article 10 - Meat Contamination (16)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Same as above (Contaminated Products)

SUBMITTED

Union Cycliste Internationale

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

The UCI agrees that there is scope in the Code to better address food/environmental contamination. With that said, no fault and no significant fault can already be applied.

Perhaps one option could be to include contaminated food and environmental contamination in the examples for art. 10.4. This would, however, necessitate consideration of: (i) what food is included (the UCI understands there has been contamination with not only meat, but also dairy, eggs, water and even corn); and (ii) how to distinguish between food and supplements.

Another option could be to include all contamination (i.e. including supplements) as examples for “no fault”, provided that an athlete proves that he/she complied with the duty of utmost caution in selecting/using the relevant supplements.

Lastly, qualifying as Atypical Finding the presence of substances likely linked to contamination, such as clenbuterol and octopamine, under a specific threshold, could be an appropriate approach to the issue.

On another note, if not already underway, conducting studies on the effects of continuous meat consumption in indigenous athletes in China and Mexico could be useful.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

Where food from some sources is known to be contaminated (rather than supplements) athletes having this as a possibility should have the benefit of the doubt but be followed up using full whereabouts data and target testing.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree.

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 has some concerns regarding Meat Contamination. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Meat Contamination the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

AEPSAD

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament

(Spain)
NADO - NADO

ARTICLE 10. SANCTIONS ON INDIVIDUALS

Another essential aspect of the new Code should be the system for individualization of sanctions. In effect, the difficult fit between a system of objective liability due to the presence of certain substances in a sample with constant references exclusively to blameworthiness gives rise to an excessively arbitrary margin in the determination of the sanction to be imposed. As in any other disciplinary code, the Code must have a complete and wide-ranging catalogue of aggravating and attenuating circumstances so as to be able to comply with the maxim that the right sentence is the necessary sentence.

The circumstances that should modulate sanctions must contemplate the amateur or professional nature of the athlete, as it does not seem very fair to impose the same penalty on someone who earns a living from sport as on someone who only practises sport occasionally or as a hobby. The current system is excessively rigorous with athletes who turn to sport for recreational purposes or to maintain or improve their health, as they receive sanctions identical to those who have turned the practice of sport into their *modus vivendi*, with the undesirable consequence, due to the severity of the sanctions, of driving people away from sport definitively, when perhaps only sport could have helped these people to mend their ways and correct their errors.

In this sense we feel it is necessary to include a distinct procedure to differentiate between professional and amateur athletes.

We feel that the current problem has been generated to a large extent by the reduction in the level of detection as, for example, in the case of clenbuterol, its elimination and effects are very fast unlike anabolic steroids. We feel it is appropriate to review the application of the detection thresholds so that these are the same in all athletes and all situations regardless of their countries of origin or residence.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

As a general remark, see our comment above.

In addition, one might consider that in a case with possible contamination with non-specified substances in low concentrations (like anabolic steroids) that it had to be the result management authority to show a reasonable doping scenario to get the athlete sanctioned.

NADA Austria

SUBMITTED

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

There is no one-size-fits-all solution to this problem, because cheats could use this as a loophole. But maybe the scientific experts can develop a threshold as decision limit (as compared to other substances). It may be that we are not able to sanction some athletes who cheated because they are below the decision limit, but we clarify the situation for inadvertent anti-doping rule violations or criteria that have to be met to qualify an ADRV as a result of food contamination.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Respecto a los alimentos contaminados, se da una situación similar a la anterior, pero referida exclusivamente al caso del consumo de carne contaminada con Clenbuterol, como ha ocurrido en China y México. También se podrían incluir en esta sección los casos de ingesta de derivados de la coca en los países sudamericanos altiplánicos (Perú y Bolivia, principalmente). Además de la consabida responsabilidad de los deportistas en tal situación y la problemática de la reducción de sanciones, la discusión se centra también en la imposibilidad de los laboratorios en discernir si los RAA se deben a la presencia del Clenbuterol proveniente de la ingesta de carne contaminada o del uso de Clenbuterol con fines de dopaje deportivo.

Respecto de la responsabilidad del deportista, en los casos en que macroeventos (Juegos Regionales, Subregionales, Campeonatos Mundial, continentales, etc.) se desarrollen en países donde hay altas probabilidades de que existan alimentos contaminados o que alimentos (tradicionales) contengan sustancias prohibidas, estimamos que se puede prevenir que el consumo “accidental” por esta vía se puede producir. Es responsabilidad absoluta del organizador velar porque los alimentos que puedan contener sustancias prohibidas no estén al alcance de los deportistas en ninguna forma, en los locales oficiales del evento (especialmente en hoteles y comedores). Esta obligación debe constar como condición *sine qua non* en el Cuaderno de Cargos entregado al organizador. Si se producen casos comprobados de RAA por consumo de alimentos contaminados (que, *a priori*, deberían ser numerosos) en los locales oficiales, los deportistas deben quedar exonerados de culpa y el organizador debería ser sancionado.

En los casos en que estos RAA por alimentos contaminados se producen fuera del contexto de un evento, en competencias individuales o de carácter amistoso, la responsabilidad individual del deportista queda comprometida, al igual que en los casos “clásicos” relacionados con el Artículo 10.5.1.2, visto en el título anterior.

En cuanto a la posibilidad de que los laboratorios puedan discernir en qué forma llegó el Clenbuterol al organismo de un deportista, se requiere indagar científicamente si existen elementos que puedan establecer diferencias de origen (o de vía metabólica, según la forma de ingesta) para el Clenbuterol encontrado en las muestras. Por el momento, la investigación caso por caso sobre las circunstancias y el entorno ambiental en que se produjo la ingesta deberá responder la pregunta.

Canadian Centre for Ethics in Sport

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

SUBMITTED

The CCES agrees this is a significant problem and will get worse with time. A new Article on Environmental Contamination is proposed. What must be avoided is the current system continuing whereby some cases involving a Clenbuterol Adverse Analytical Finding just vanish and some proceed to a hearing. This is not transparent and is inherently unfair to athletes who may be able to prove they were at “no fault” but who did not have the ability to avoid an anti-doping rule violation entirely.

Making a Clenbuterol Adverse Analytical Finding or a Zeranol Adverse Analytical Finding simply “go away” isn’t strictly permitted under the Code when there is a reported Adverse Analytical Finding and so is a very problematic practice. WADA must create a rational and knowable process to evaluate an athlete’s valid claims that the Adverse Analytical Finding was caused by an unknown and unavoidable environmental risk.

CCES proposes the following solution:

- First, WADA should start to create and maintain an Environmental Risk List (ER List). Included on the ER List should be the substances which WADA is satisfied are potentially present in athletes due to an environmental risk. The ER List should include, at a minimum, Clenbuterol and Zeranol. There should be some clarity as to why each is included on the ER List. Over time perhaps other substances can be added as warranted.
- The CCES believes that the few substances that will ever be on the ER List should have a carefully considered a reporting threshold. The goal is neither to permit or encourage micro-dosing of substances on the ER List nor to exclude the detection of these metabolites in a low concentration many weeks after intentional doping using the substances. Rather, it is to avoid some laboratories with extremely low detection limits (such as Montreal and Cologne) being in a position to detect exceedingly tiny amounts of the substances on the ER List when the majority of other WADA-accredited labs cannot do so. Such a situation is just not fair to some athletes who inevitably will face a greater risk. CCES believes a suitable “floor” (“X”) can be selected so that all laboratories are dealing with the same detection limits for substances on the ER List.
- There can be discussion about a “ceiling” (“Y”) whereby an Adverse Analytical Finding with concentrations over “Y” will not be considered for a reduction based on an environmental risk.
- When an Adverse Analytical Finding for a substance on the ER List is reported, a standard initial review is commenced. The laboratories should indicate on the Certificate that the Adverse Analytical Finding may be the result of environmental contamination if the concentration of a substance on the ER List is between “X” and “Y.”
- If an athlete wishes to prove that the Adverse Analytical Finding was indeed the result of an environmental risk he or she must gather the required evidence to discharge this onus. This is now done in many Clenbuterol and Zeranol cases. The goal is to formalize this process. The requirements can be defined by WADA for each substance based on current valid science. For example, for a Clenbuterol Adverse Analytical Finding there must be travel to certain countries; consumption of meat; no explanation consistent with doping; a urinary concentration consistent with the athlete’s explanation; etc. If the athlete marshals a convincing package of credible evidence that supports the conclusion that the Adverse Analytical Finding was the result of an environmental risk and if the NADO, the international federation and WADA all agree – the Adverse Analytical Finding can only then be closed with no further steps required and no anti-doping rule violation determined.
- If the NADO or international federation produces a package of evidence which demonstrates that the Adverse Analytical Finding is not the result of environmental contamination (as evaluated against the standard set by WADA), the Adverse Analytical Finding must be pursued in the normal course. The case will NOT go through the process described in the Article on Contaminated Products. Instead, it will be pursued in the normal course depending whether the detected substance is a specified substance or a non-specified substance. The athlete will be able to seek all normal sanction reductions, including a finding at a Tribunal hearing that the athlete is at “no fault” for the Adverse Analytical Finding. In the event the athlete is at “no fault” there will be no sanction but an anti-doping rule violation will be registered.
- Alternatively, consideration can be given to reversing the onus so that it is up to the NADO or international federation in those rare cases involving environmental risk contamination to demonstrate that the Adverse Analytical Finding is in fact the result of doping misconduct.
- Add a new Article 10.5.1.3 called Environmental Risk or Environmental Contamination. To CCES it seems sensible if these factors are evaluated when deciding whether the Adverse

Analytical Finding was caused by an environmental risk – perhaps built into or listed in a definition for Environmental Contamination.

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Article 10

We support the suggestion to clarify the issue of environmental contamination.

Agence française de lutte contre le dopage (AFLD)

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

SUBMITTED

Pas de commentaires à ce stade du processus de révision.

CITA

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

SUBMITTED

In regards to Clenbuterol and other environmental contamination can be addressed either by imposing a decision limit where such a low level Adverse Analytical finding shall be considered a form of environmental contamination, that could along with other factors (see the above mentioned categories) lead to Reduction of the Period of Ineligibility 10.5.2.1., or take a hardline stance and a zero tolerance policy for such well known cases as food contamination as is Clenbuterol

Institute of National Anti-Doping Organisations

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

SUBMITTED

Benefit of real doubt must be with the athlete.

GM Arthur Sports Representation

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

SUBMITTED

It is for the Athlete to provide evidence that a finding is consistent with the presence of environmental contamination, and for Anti-Doping Organisations and Laboratories to examine whether that evidence is consistent with the analytical data available to them. For example, an Athlete who tests positive for clenbuterol may provide evidence that that Athlete has spent some time in China. That establishes a plausible environmental contamination explanation. However, the Laboratory demonstrates that environmental contamination is likely to result in a finding (a low level of clenbuterol in the urine sample) that differs significantly from the actual finding (a high level of clenbuterol in the urine sample), rendering the environmental contamination implausible. A hearing panel will resolve the dispute.

Unfortunately, it is very difficult to determine whether an Athlete who has been resident in a country with what might be termed a 'clenbuterol problem' has been using that fact as a smokescreen for doping using clenbuterol. Research into the excretion rates of clenbuterol experienced by persons who have consumed meat contaminated with clenbuterol would be welcome.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Given that some athletes have attended/will attend training camps and competition in Mexico and/or China, we would very much encourage the issue of clenbuterol contamination being better addressed
- In conjunction with CAS, seek to provide clarity on what evidence must be provided for cases that involve the contamination of meat. Provide a clear time line for when this evidence must be provided by the athletes to prevent delays. Improve awareness through education to athletes that when consuming meat in Mexico / China there is a risk of contamination with Clenbuterol.
- Contamination – greater clarity is called for within the code as to what proof athletes need to provide when contamination has taken place.

Article 10 - Source of a Prohibited Substance (20)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

It is not surprising that CAS Panels have not taken a uniform approach on these issues. The Code itself states that there is no requirement for absolute uniformity in results management and hearing procedures (Comment to Introduction). The driving principle shall remain the "Strict Liability", and the "greater flexibility" approach introduced in 2015 should be reviewed in the light of those CAS decisions where the most serious inconsistencies have been noted. Some possible approaches would be then to consider classifications of degrees of fault as suggested below, or reducing the range of sanctions where the need arises (for example where it goes from a reprimand to 2 years of ineligibility).

World Rugby

SUBMITTED

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

For consistency, clarity (given divergent jurisprudence) and to ensure that both parties are on an equal footing (e.g. the ADO when it is seeking to prove intention which is almost impossible if the athlete does not have to disclose the source) allowing the hearing body the proper opportunity to consider the athlete's mental state, our view is that it should always be a prerequisite for the athlete to have to establish the source of a prohibited substance.

World Rugby considers that some amendments are needed to the definition of "intentional". We have proposed the following wording which removes the word 'cheat', and incorporates the term "reckless"

"10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish the source of the substance and that the anti-doping rule violation was not intentional or reckless.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional or reckless and/or the Player fails to establish the source of the substance.

10.2.3 As used in Articles 10.2 and 10.3, (i) the term "intentional" requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation and (ii) the term "reckless" requires that the Athlete or other Person engaged in conduct which he or she knew involved a significant risk of constituting or resulting in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" or "reckless" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" or "reckless" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance. "

Note: Consequential amendments e.g. Article 10.3, Examples to Article 10, Article 18.1.

Union Cycliste Internationale

SUBMITTED

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

To the UCI, the question is more whether for intent specifically the athlete must prove source. The UCI would refer to – and endorse – the CAS cases in which the Panel held that in very limited circumstances you can rule out intent, even if you can't apply NSFN or NFN because the source of the substance is not established. The UCI agrees that the presumption of intent should not be upheld in those cases, and the so-called "collateral damage" that is accepted for NFN and NSFN should be limited and should not also apply to intent.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

The Code should instruct panels in detail on how to deal with this issue. Strict liability is undermined if an athlete can successfully argue ignorance as to the source of the prohibited substance.

Law

SUBMITTED

Michael-T. Nguyen, Sports Lawyer (Canada)
Sport - Other

My name is Michael Nguyen and I am a Canadian lawyer who represents athletes on a Pro Bono basis in their appeals for anti-doping rule violations.

Introduction

I recently represented an athlete who had been assessed an ADRV. We had elected to admit the violation (Presence of a Prohibited substance), but still brought arguments to have the 4 year suspension reduced.

Since the athlete's explanations did not fulfill the requirements to have neither the No Fault or Negligence nor the No Significant Fault or Negligence sanction reduction mechanisms applied (we could not prove with certainty the source of the prohibited substance), we opted to argue for a 2 year reduction through section 10.2.1.1 of WADA Code. It was our position that with the athlete's explanations and all of the circumstances surrounding how he believed the ingestion of the prohibited substance occurred, he could prove to the arbitrator that the ADRV was unintentional. However, through my review of case law in Canada (the SDRCC) and in the UK (Sports Resolutions UK) of how section 10.2.1.1 has been interpreted by arbitrators, it became apparent that there existed contradictory jurisprudential trends.

Decisions where arbitrators **required** the demonstration of the ingestion of the prohibited substance to determine an athlete's intention to cheat or not cheat in relation to the ADRV:
Canada: CCES vs. Youssef (SDRCC) CCES vs. Farrier (SDRCC) CCES vs. Drouin (SDRCC)
UK: UKAD vs Songhurst (UK Sport Resolutions) UKAD vs Graham (UK Sport Resolutions) UKAD vs Hastings (UK Sport Resolutions)

Decisions where arbitrators analyzed an athlete's intention to cheat or not cheat by applying a **global** evaluation of the circumstances of the ADRV:

Canada: CCES vs. Grosman (SDRCC)

UK: UKAD vs. Buttifant (UK Sport Resolutions) UKAD vs. Buttifant - Appeal (UK Sport Resolutions)

Discussion

The application of this article has not been consistent: in the UK, the trilogy of decisions (Songhurst, Graham and Hastings) which have been adopted by certain Canadian decisions (Youssef, Farrier) have explicitly required that the athlete prove the ingestion of the prohibited the suspense in order to obtain the reduction.

However, another series of decisions (Buttifant in the UK and Grosman in Canada) have explained that the intentional element of the ADRV, can be analyzed through the different elements of each case, and that "no bright line" has been drawn that requires *sine qua non* the demonstration of the ingestion of the substance. This would in fact give better flexibility for an arbitrator who since he sees and hears an athlete testify, can better assess the athlete's credibility and determine the appropriate sanction without being limited to a black and white criteria such as the demonstration of the ingestion of the substance.

Another argument that favors the global analysis of the athlete's intention is that if WADA has not specifically mentioned this requirement in the Code or its footnotes, as it has done for other reduction possibilities (Absence of fault or Absence of Significant fault), then there no such requirement exists.

Furthermore, Professor Ulrich Haas has also stated in a legal article that that no such obligation exists when he writes:

"The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete's level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted. To illustrate this difference, we refer to the Contador award. In this award, the CAS panel accepted on a balance of probability that the Prohibited Substance in the Athlete's system originated from contaminated supplements, rather than the Athlete's theory of meat contamination. However, since the cyclist neither established which particular supplement was contaminated nor the circumstances surrounding the contamination, the panel found that the fault-related reductions could not apply for lack of sufficient precision regarding the origin of the substance, and the sanction remained a 2-year period of Ineligibility.¹⁰³ When it comes to a finding that a violation was not intentional, by contrast, if the panel accepts that ¹⁰³ UCI v. Contador, para 493. Int Sports Law J (2015) 15:3–48 27 123 the Athlete did not intend to cheat and finds that the most probable pathway of ingestion was inadvertent, applying a 4-year period of Ineligibility for failure to establish the origin of the substance stricto sensu would inevitably raise proportionality concerns."

Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code Antonio Rigozzi • Ulrich Haas • Emily Wisnosky • Marjolaine Viret

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2631425

Yet, Anti-Doping Organizations and their lawyers still advance the position that the Code requires the demonstration of the ingestion of the prohibited substance and Anti-Doping Tribunals have most of the time limited themselves to that position. In Canada, almost all doping decisions have taken the "safer" option of adding the requirement as seen in the recent Canadian decision of CCES vs. Drouin.

Consequence of uncertainty

It is difficult for lawyers practicing in this field to plan our strategy to defend our athletes' best interests as there seems to be inconsistencies in the application of the Code. In my case, the arbitrator's opinion was the proof of ingestion was required to determine an athlete's intention to cheat or not cheat. If this had been a clear rule by WADA, then my client and I may have considered another option than to go through a lengthy and trying arbitration process. Legal fees to represent ADO's are not negligible and can be saved if the Code clarifies this aspect as it has done for the No Fault Negligence section in its footnotes.

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 has some concerns regarding Source of a Prohibited Substance. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Source of a Prohibited Substance the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

SUBMITTED

ONAD Communauté française

Julien Magotteaux, juriste (Belgique)

NADO - NADO

Sur ce point, peut-être serait-il intéressant de permettre une charge de la preuve différenciée, en fonction du niveau du sportif (amateur ou élite).

Doit-on faire peser la même charge de preuve sur un sportif amateur que sur un sportif d'élite ? Doit-on avoir les mêmes exigences de comportement de la part d'un sportif d'élite ou d'un amateur et, de là, peut-on ou doit-on les soumettre au même régime exigeant en termes de charge de la preuve ? Le risque est finalement d'aboutir, par impossibilité d'apporter cette preuve, à un régime plus sévère pour les amateurs que pour les élites, ce qui ne semble pas cohérent ni conforme à l'esprit du Code.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)

NADO - NADO

For specified substances there should be a reporting limit (e.g. equal the MRPL of a laboratory) to address this issue.

For non-specified substances below a yet to be defined concentration limit the result management authority should show a reasonable doping scenario and not the athlete to prove his or her innocence.

NADA Austria

SUBMITTED

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

On one side it is not easy for a decision panel to distinguish between “no explanation” and a “self-serving declaration” of the athlete. In practice, the panel has to evaluate the credibility of the statement of the athlete. On the other side the Anti-Doping Organization has to prove an Anti-Doping Rules Violation in a non-analytical case. To conclude, the overall approach delivers a good balance between the athlete's rights and the opportunity for Anti-Doping Organizations to reveal Rule-Violations.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)

NADO - NADO

El caso de los productos contaminados ya se discutió anteriormente y se presentó una opinión al respecto. En cuanto al caso de una sustancia prohibida sólo “*en competencia*”, consumida “*fuera de competencia*”, y que es detectada en un control “*en competencia*”, el Código establece atenuantes ligadas al hecho de demostrar que la sustancia fue ingerida en circunstancias y contextos ajenos al deporte, sin intención de obtener ventajas competitivas. Es la verosimilitud de los argumentos que el deportista presente en este sentido lo que el Tribunal debe ponderar, para reducir o no la eventual sanción a la infracción cometida. No es taxativo el hecho de que se deba demostrar la vía por la cual la sustancia llegó al cuerpo, asunto arduo y costoso de demostrar.

Complementariamente a lo anterior, se debe recordar que la intencionalidad se define “...*para identificar a los deportistas que engañan. El término, por lo tanto, implica que el deportista u otra*

persona incurran en una conducta aun sabiendo que existía un riesgo significativo de que constituyera o resultara en una infracción de las normas antidopaje e hicieron manifiestamente caso omiso de ese riesgo.”

El Tribunal de Expertos en Dopaje de Chile, en el tipo de caso analizado aquí, más que determinar cómo ha entrado la sustancia en el organismo del deportista, ha privilegiado el análisis de las circunstancias que rodearon dicha ingesta.

Este hecho tiene como consecuencia que es difícil establecer patrones o enfoques particulares, ya que, por la diversidad de los casos, nos parece mejor iniciar el análisis desde un punto de vista amplio, en el cual estén incluidas todas las situaciones de este tipo. Las características del propio caso terminarán finalmente por particularizar los elementos que serán tenidos en cuenta a la hora de la sentencia.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The CCES believes clarification is essential.

First, make it absolutely clear by adding a provision in 10.2.3 that in a Presence violation it is the Athlete's burden/onus to prove how the substance entered his/her body. Without an understanding of what has occurred and how the substance entered the body it is most difficult (if not impossible) to evaluate the athlete's subjective knowledge regarding the athlete's conduct. This assessment of the athlete's subjective knowledge is a clear requirement to evaluate intention properly and accurately – just as it is absolutely needed to evaluate an athlete's fault. There should not be a separate approach in “difficult cases” or in cases involving “negative facts”. 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.

Second, make it absolutely clear that the Athlete cannot discharge this burden/onus solely by proving that a particular source or route of ingestion for a prohibited substance is more likely than other sources. The fact that Source “A” is more likely than Sources “B”, “C” and “D” may be a *relevant* consideration when it comes to assessing whether Source “A” has been proven, but it is not a *determinative means of proving* Source “A” on a balance of probabilities. The CCES believes that a single route of ingestion and the associated circumstances in which the administration occurred must be conclusively and persuasively established.

Third, confirm that the NADO is under no obligation to investigate issues relating to the mode of ingestion. This addresses problematic suggestion that NADOs are under a “duty to cooperate”, and must meet this duty if they are to challenge facts put forward by the other side. Some investigation by NADOs might be wise as a matter of policy, but it shouldn't amount to a legal burden that needs to be met in order to challenge the other side's case.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF**4.Anti-Doping Authority the Netherlands****Article 10**

We support the suggestion to clarify how to establish how a Prohibited Substance entered the body.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

NADO Flanders' Hearing Panels have taken an approach where the statement of the athlete has to be consistent with the burden of proof on the athlete. If the athlete can not by any means reproduce the supplement or circumstances in which the prohibited substance entered his body, the hearing panel decides whether the statement by the athlete is in fact credible and meets the balance of probability.

A uniform approach is needed, but it should be left to the hearing panels to decide whether the statement of the athlete in the given circumstances is credible and meets the burden of proof. This could be done within the current Code without changes.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD partage le problème soulevé lorsqu'un sportif ne peut établir la manière dont une substance est entrée dans son organisme. Il est nécessaire d'adopter une approche uniforme sur ces questions.

Japan Anti-Doping Agency

SUBMITTED

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

The Interpretation of the Proof of "How the Prohibited Substance enters into his or her body" should be clarified

A research paper by a study group of Japanese researchers, lawyers and practitioners, regarding the decisions made by Japanese and foreign anti-doping disciplinary panels (including CAS arbitral awards), confirms that there are contradicting jurisprudences on whether a proof of "How the Prohibited Substance enters into his or her body" is a mandatory requirement for establishing the violation as not intentional. Some jurisprudence has concluded it is a mandatory requirement, and some have concluded it is important but not mandatory.

The ambiguous interpretation of the proof is a disadvantage for the Athletes in disciplinary procedure, as the intent is defined as one of the components of sanctions in Article 10.2.1 of the 2015 WADC.

Hence, the interpretation of the proof of "How the Prohibited Substance enters into his or her body" should be clarified in the commentary of the relevant articles in the new WADC.

Institute of National Anti-Doping Organisations

SUBMITTED

Graeme Steel, Chief Executive (Germany)

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

The strict application of this requirement can and does lead to penalties which are unduly harsh. It is important to weigh the need to catch and punish those cheating against the need to be fair to athletes who genuinely do not know, and perhaps could not know, what the origin was. It may be that it is necessary to distinguish further between substances that have limited and short term impact on performance (e.g. stimulants) and those which have a systemic effect where traces can be indicative of previous high level use. If the amount of stimulant found and reported is at such a low level that it could not have had anything other than a negligible impact on performance (by definition it is collected immediately following competition) then the method of ingestion is, for practical purposes, moot. As set out previously more of these cases should be dealt with by way of higher thresholds and/or differential responses depending on the level. This is clearly an area where unfairness can and should be further reduced.

Freelance journalist

SUBMITTED

Karayi Mohan, Freelance journalist (India)

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

The source of a prohibited substance or how it entered the athlete's body should be proved in all cases before any reduction in sanction is allowed. This should include the minors as well. Unless there is an age group classification that may fix it at say under-15 or under-14. A minor (under-18) who has otherwise apparently gained through doping will be allowed to gain further if he/she is allowed to plead that he/she is a minor and need not prove how the substance entered the body.

McGill University

SUBMITTED

Bertrand Stoffel, Postdoctoral Fellow (Canada)

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

Some arbitrators argue that article 10.2.1.1 does not require proof of source of the prohibited substance (see in particular SDRCC 16-0246 (Janie Soublière), at 120; for a diverging opinion see SDRCC DT 16-0242 (Yves Fortier), at 77).

It would be a welcome clarification to add the requirement of proof of the source of a prohibited substance to article 10.2.1.1 to align it with, e.g. 10.5.1.2.

GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)

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

The establishing of evidential hurdles and presumptions is not incompatible with the right to a fair hearing: generally speaking, the requirement on an Athlete to establish how a Prohibited Substance entered his system as part of the Athlete's evidence concerning Fault is proportionate and realistic.

The issue is not, therefore, with the requirement. It is that it applies in every case where an Athlete wishes to rely on the No Significant Fault provisions. The obvious effect of this is that unless it can

be assumed that the provision is proportionate and realistic in every case, there will be cases where it is not.

There is at least one area where this requirement can create the potential for unfairness: re-testing of Samples.

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. 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.

Alternatively, the requirement on an Athlete to establish means of ingestion of a banned substance could be one of a number of factors contained within the definition of No Significant Fault, as opposed to being a pre-condition for its application. An Athlete's case on No Significant Fault will carry more weight if the Athlete can establish means of ingestion of a banned substance, but there is no particular reason why an Athlete cannot make a case on No Significant Fault without establishing this. It is just harder to make the case.

Ultimately, the issue can be placed in the hands of a hearing panel. This is a fair and proportionate way of managing the issue that respects the Athlete's rights to a full hearing, and not one that might artificially be constrained by evidential hurdles.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)

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

- Can clarity be provided on what evidence is needed for an athlete to establish the source of a prohibited substance that leads to an AAF?
- To improve the ease of understanding the rule and reduce use of double negatives: "The anti-doping rule violation involves a non-specified substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional." This may require splitting Article 4.2.2 into Specified Substances and Non-Specified Substances

Article 10 - No Significant Fault (30)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection to such classifications in the Code as long as they reflect widely admitted or consensual views in hearing and CAS Panels findings.

World Rugby

SUBMITTED

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

World Rugby feel that the Code and or Standards needs to address the increasing number of cases (or at least increased risk of more cases if athletes are successful with establishing the precedent) where players cite ADHD or other psychological impairment as a means to avail themselves of 10.4 or 10.5. Perhaps the Code or International Standards could be amended to address this matter by allowing athletes some mechanism by which to declare an existing psychological condition, instead of revealing this at the hearing stage where a decision can often require a panel to decide against the evidence of the athlete's expert.

It may also be helpful to clarify in the Code that each Athlete or other Person is obliged to ensure they are educated and to ensure that they understand their obligations including seeking resources and/or assistance where necessary. This would not seem unreasonable given the plethora of resources available, and general ease of access.

Union Cycliste Internationale

SUBMITTED

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

Even assuming that all stakeholders agree with the scale set out in (for example) Cilic and Lea, different Panels will apply it in different ways (as already seen). Thus, if NSFN is to be codified, the UCI would not suggest using the precise factors that have been set out in Cilic (et al) to move an athlete up or down the categories, but rather only include the well-accepted general scale.

Moreover, if this is done, it may not be appropriate to include the scale in the WADC itself- perhaps this would be more suitable in a comment.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree that more guidance is needed to avoid inconsistent principles and decisions in similar-fact cases because different arbitral bodies currently have too much discretion.

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 has some concerns regarding No Significant Fault. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of No Significant Fault the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Group of South American Lawyers from NADOs:

"It is suggested to organize technically (in order of precedence) the way to read the Code. For example, the fact of misconduct, fault, negligence, admission, being developed in separate chapters. The purpose of this recommendation is to allow a better understanding of the Code provisions.

(Comment: the admission is developed in the Articles 10.6.2, 10.6.3 and 10.11.2 – it is considered necessary to organize this juridical figure in only one chapter in order to make them more understandable.)"

RUSADA

SUBMITTED

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

To amend Article 10.5 “No Significant Fault or Negligence” to include:

a scale of different periods of ineligibility ranging from a warning to 2 years, depending on the degree of fault similar to the one established in CAS 2013/A/3335 *International Tennis Federation v. Martin Cilic* and to set forth the criteria that has to be met to ascertain the degree of fault. The introduction of such scale, specifying criteria for its application, will preclude the imposition of fundamentally different periods of ineligibility (e.g., 3 months vs. 20 months) for similar anti-doping rule violations by different ADOs, which is aligned with the main objective of the World Anti-Doping Code, namely justice and equality for all athletes.

To add as a prerequisite for application of Article 10.2.2 (“Not intentional violation”) in case of violation of Article 2.1 of the WADC, an explanation of the circumstances by which the prohibited substance entered the athlete's body, similarly to Articles 10.4 and 10.5 of the WADC.

AEPSAD

SUBMITTED

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

10.2. Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method.

We propose to eliminate in 10.2.3 all references to “in competition” and “out of competition” as already justified in section 4.2 above.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence.

It is necessary to treat the issue of contaminated products with a detailed process, standardized at a global level, using communication channels and public notices so as to enable NADOs and also athletes to avoid situations in which the lack of blame is evident but these are resolved in different ways by the various NADOs and also by the Sports Arbitration Tribunal, without WADA leaving or fronting a common position on behalf of justice. For this reason, we propose to establish clear rules on this matter in the Code with which compliance will be compulsory.

Situations such as those recently arisen in China, Guatemala or Mexico with respect to clenbuterol have led us to athletes with identical levels of prohibited substances in their bodies being given different penalties or sometimes not even being investigated, depending on their country of origin or the country they have travelled to. This situation collides head on with the liability criterion established in article 2.1.1 of the WADC (*"Therefore, it is not necessary to demonstrate intention, blameworthiness, negligence or conscious use by an Athlete in order to determine whether there has been a violation of the anti-doping rules..."*)

In this way, either the rule in article 2.1.1 is changed and the objective liability criterion becomes more flexible, or else the threshold for the substances have to be identical across the globe and for all athletes, regardless of where they reside, train or travel to. Any other solution leads to an imbalance in the ground rules.

In this sense, we are of the opinion that, if athletes appeal, it is not enough for them to want to collaborate, as it would make no sense to declare themselves guilty and then appeal. Certain tables must be established on the basis of an objective assessment for the reduction in the sanction in accordance with the athlete's contribution (substantial assistance). For an athlete to be willing to collaborate does not mean that the contribution constitutes substantial assistance, as, in many cases, this does not depend on their will. However, at least an approximate quantification should be established for the scope of substantial assistance.

Anti Doping Denmark

SUBMITTED

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

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."

CITA

SUBMITTED

zorán Manojlović, head of anti-doping department of CITA (Croatia)
NADO - NADO

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.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

De manière générale, le système des sanctions, prévu par les articles 10.2.1, 10.2.2, 10.2.3 et 10.5 est plutôt logique, méthodique et cohérent, avec 3 possibles étapes.

Nous renvoyons simplement à la question que nous nous posons à propos de la source de la substance interdite, en lien avec la charge de la preuve et au type de comportement que l'on peut raisonnablement attendre de la part d'un sportif.

Organización Nacional Antidopaje del Uruguay (ONAU)

SUBMITTED

Federico Perroni, Miembro Consejo Directivo (Uruguay)
NADO - NADO

El artículo 10 del CMA ("*Sanciones Individuales*") resulta ser uno de los más importantes y aplicados del Código. Allí se determinan las diversas sanciones a aplicar a deportistas u otras personas debiendo el Tribunal actuante considerar y sopesar su decisión considerando los diversos factores que se presentan caso a caso. Dicho artículo distingue al menos:

- El tipo de infracción cometida (analítica o no analítica)
- El tipo de sustancia detectada en la muestra (específica, no específica o producto contaminado),
- La intencionalidad del deportista.
- Su ausencia de culpa o negligencia, pudiendo ser esta "total" o "significativa"
- Presencia en el caso de motivos distintos a la culpabilidad, como ser la Confesión y la ayuda sustancial.
- La circunstancia de ocurrir infracciones múltiples.
- A su vez, dispone tres momentos distintos para que opere la confesión, con consecuencias distintas según sea el caso (cf. artículos CMA 10.6.2, 10.6.3 y 10.11.2).

Se entiende que el artículo 10 requiere una reformulación total que clarifique su texto y lo haga de fácil comprensión para los tribunales de expertos, deportistas, operadores jurídicos e interesados en general.

Se sugiere la enumeración de las sanciones utilizando como modelo los Códigos Penales de países con derecho de raíz latina, en que frente a cada infracción se establece un monto mínimo y máximo de sanción aplicable, sobre el que pueden operar luego circunstancias agravantes o atenuantes claramente especificadas.

Irish Sports Council

SUBMITTED

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

Ø Intent and Fault are two separate but related legal concepts. Intent is subjective whereas Fault is objective. Sport Ireland encourages WADA to consider whether the use of a paradigm with a single criterion (presumably that of Fault) might be a more appropriate method to determine sanctions.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

The term "no significant fault" should be replaced by "degree of fault (or negligence)". The definitions and applications of "intent" and "substantial assistance" are difficult and should be simplified.

Finnish Center for Integrity in Sports (FINCIS)

SUBMITTED

Petteri Lindblom, Legal Director (Finland)
NADO - NADO

We think CAS Panels' well-founded decisions should be implemented in the Code. It is clear that they cannot be very detailed but anyway more detailed than the case is now.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- Revise / customize definition "Intentional"

Comment: A phrase such as "the term intentional" is intended to „identify those athletes who cheat“ is neither legally nor practically usable and applicable.

- Clarification of the relationship between Art. 10.5.2 and the commentary on Art. 10.5.2 WADC on offenses for which "Intent" is part of the anti-doping rule violation.
- Sentences for athletes' support personnel must be increased/strengthened to protect the clean athletes

Comment: The standard sanction for a violation of an athlete support personnel could e.g. be increased by 2 years in relation to an athlete's sanction if it turns out that the athlete support personnel acted intentionally.

- Revision of the sentence for three strikes (within 12 months)

Comment: The current sentence of 2 (4) years is disproportionate and leads to higher demands to the elements of the violation.

Example: "Three strikes are not to be compared with the evidence of doping substances in the body of the athlete", quotation of an arbitrator in the concrete application.

- Editorial revision and adaptation of Art. 10.6.3 WADC

Comment: Please clarify the definition of "prompt". What is the policy behind?

- Revision of the definition of "no significant fault / no fault"

Comment: The various applications and interpretations must be clear (see "Fundamentals" - Tasks and Alignment of the WADC). The Code must show either final examples of how to apply the specific violation and its concrete sanctions, or it must highlighten a sanction corridor for individual groups.

Clarification of the relationship between Art.10.5.2 and the commentary on Art.10.5.2 WADC on offenses for which "Intent" is part of the anti-doping rule violation.

- Art. 10.6.1 - Enlargement and sharpening of the definition of "substantive assistance"

Comment: The application of substantial assistance and its requirements must be easier to understand. A potential whistle-blower who "hopes" for a reduction of his sanction when he "dishes the dirt" must already be able to foresee from the regulations "which possibilities exist at all" and under what circumstances they can be applied.

In this regard, the WADC should also clearly state what "does not work" and at what point the sports law rules are naturally limited by its controllability.

- Definition „Protection of Whistle-Blowers“
- 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.

- Transparent and consistent requirements for a "reintegration program" during and after a period of ineligibility.
- Revision of the sentence - introduction of additional sanction possibilities

For example, sanctions "on probation" / reduction or reduction of a sanction "with good leadership" (analogue to Art. 10.12.2 return to training)

Comment: The principle of suspension of a period of ineligibility already exists in the case of "substantial assistance". Thus, under Article 10.6.1 WADC, e.g. part of four-year period of ineligibility may be suspended after imposition if the affected athlete provides substantial assistance.

- Graduated sentence - for "non-test pool athletes", minors - additional sanctioning framework with "educational function" (e.g., mandatory participation at education measures or workshops for target groups)

UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)

NADO - NADO

Classification of types of cases eligible for no significant fault may be of assistance as long as it is clear that any classification is not exhaustive. The Code (current Article 10.2.3) should confirm that athletes need to show how the substance(s) got into their systems to prove an ADRV was not 'intentional'. As far as it is possible the Code should provide guidance on how athletes must establish this.

One approach to managing issues around minors may be to set different maximum periods of ineligibility, as UKAD is not in favour of changing the burden of proof. Clarity around what happens when an athlete commits an ADRV during a period of ineligibility may be helpful in Article 10.7.

Whilst the effect of this wording is pretty clear as it is i.e. the second sentence clarifies what is meant by the words "intentional" and "cheat", athlete representatives will nonetheless seek to argue that an athlete is not a "cheat" (and therefore did not act "intentionally") on the basis of matters that fall outside those detailed in the second sentence i.e. things that go beyond whether or not an athlete knew they were committing an ADRV or knew and disregarded such a risk e.g. that they did not expect that their performance would improve or they did not think they were cheating. Dealing with such arguments wastes time before Tribunals, and therefore it would be good to discourage them being raised in the first place if we reasonably can.

Illustrative solution:

The issue could (or might) be addressed by wording along the lines of (for the purposes of illustration, and without rewriting the entire article)...

"As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, for the purposes of Articles 10.2 and 10.3, that means the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk ..."

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.

In UKAD's view 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.

NADA Austria

SUBMITTED

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

A clarification and classifications of “No Significant Fault” in the Code is desirable to support the Panels in their decision-making.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA supports reviewing and clearing the principles of No Significant Fault.

If applicable, attention should be paid to the issue of education – in case the athlete had no education, is it favourable (as in the case of CAS A2/2011 Foggo v National Rugby League) or is it adverse (case at IAAF or at BWF).

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Se plantea que exista mayor clarificación en la aplicación de una Negligencia no Significativa. Se indica que la Corte de Arbitraje Deportivo -CAS- ha hecho intentos por clasificar la *Negligencia No Significativa* en categorías, que se aplicarán a diferentes tipos de casos. La cuestión es saber si este tipo de clasificación debe ser incluida en las modificaciones del Código o si la *Negligencia No Significativa* debe ser tratada como un principio más general, como en el Código.

Opinión/Sugerencia:

Sin conocer la categorización establecida por la CAS, se podría presuponer que la adopción de una categorización en el Código facilitaría la deliberación por parte de los miembros de los paneles disciplinarios y redundaría con seguridad en un procedimiento juzgatorio más corto, cuyos elementos de juicio tendrían probablemente mayor claridad.

No obstante, estimamos que toda categorización conlleva un matiz de restricción que no cubre forzosamente la particularidad de todos los casos que se presenten ni los matices que puedan existir, por ejemplo, al límite de dos categorías. Por decirlo en términos matemáticos, nos parece difícil que variables continuas (casos con sus particularidades), sean tratadas en un contexto concebido para tratar variables discretas (categorías de clasificación).

En nuestra opinión, las características de cada caso en que se involucre el principio de Negligencia No Significativa pueden trascender una categoría o estar en la frontera de dos de ellas. Nos parece de mayor pertinencia tratarlos en un contexto en que la *Negligencia No Significativa* se aplica como un principio general, permitiendo un análisis que se va haciendo progresivamente específico a cada caso analizado, en función de los elementos que éste comporte.

En conclusión, nos parece que el concepto de *Negligencia No Significativa* debe permanecer como está hoy día considerado en el CMA.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The CCES believes that it should remain as drafted as a general principle. Once an athlete demonstrates “how the substance entered his body” and satisfies a Tribunal he or she is not “at significant fault” (considering the *Fault* definition), then he or she is eligible for a sanction reduction based on a “degree of fault” analysis. This is well understood and very workable. CCES does not see the need to revise the Code in this regard.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that the principle of No Significant Fault requires clarification. The variety of approaches to the question from different CAS panels and in different jurisdictions creates operational issues and undermines the suasion of the Code.

NADO Flanders

SUBMITTED

Jurgen Secemmer, Legal Adviser (België)
NADO - NADO

Codification of the general principles of the CAS jurisprudence may have the advantage of creating a more level playing field and provide with a clearer framework for all parties involved. The Cilic-framework set out by CAS is a good example of how hearing panels can have a framework to rely on when judging a case.

However, if the WADA-code will incorporate a more detailed set of rules and criteria, there is a risk that there will be less room for hearing panels to consider the factual background of the athlete and the case. Whereas in the current WADC no classification is used (with the exception of contaminated supplements) which can lead to very divergent decision in similar cases, a more elaborate framework can have an opposite adverse effect where hearing panels will be limited in their decision power where they feel

If the framework applies to all athletes, there is a risk that the WADC leaves very narrow margins for hearing panels to address issues as: little to none antidoping education, lack of professional assistance to the athlete, ... A lower level athlete will, for example, only consult a general physician and not a specialist or a sports physician. A general physician himself will have only limited knowledge of antidoping and will treat the athlete from a general health perspective. A lower level athlete cannot be asked to implement the same level of care as a professional top level athlete. This could have the adverse effect that lower level athletes, who are different from top level athletes, will be sanctioned in the same manner. Where equality and uniformity in sanctioning is sought, it can lead to imposing the same consequences in cases which are in fact different when seeing them from the athlete perspective.

It should be, as a principle, included in the rules, when they are made part of the CODE, that the level of care expected from a lower level athlete is lower than the conduct expected from a top level athlete. This must allow hearing panels to further differentiate.

Japan Anti-Doping Agency

SUBMITTED

Akira Kataoka, Senior Manager, Results Management & Intelligence

(Japan)
NADO - NADO

Increase Predictability on the Period of Ineligibility If "No Significant Fault or Negligence" Is Applied

In the Article 10.5.1 of the 2015 WADC, the sanction, at minimum, shall be a reprimand and no period of Ineligibility and at a maximum, 2 (two) years of Ineligibility.

This allows the panel to have flexibility in its discretion to decide the period of Ineligibility, depending on the Athlete's degree of Fault. On the other hand, it is criticized that it is difficult for the Athletes to predict the length of the sanctions due to this broad discretion.

Hence, in the new WADC(*1), it should be clarified what factors influence on the application of Article 10.5.1 and the length of the sanction. The more cases under the new WADC are accumulated, the more predictable the sanctions will be.

* Under the 2009 WADC, the panel of CAS 2013/A/3327 Marin Cilic v. International Tennis Federation, CAS 2013/A/3335 International Tennis Federation v. Marin Cilic (the "Cilic Case") suggests to set three categories (considerable/modest/light) based on the level of Fault of the Athlete, and to determine which category should be applied to the Athlete based on individual circumstances. Recent CAS jurisprudences under the 2015 WADC refer such categorization in the Cilic Case in determining the period of Ineligibility. This categorization may make more predictable to some extent but if these categories were set in the WADC, panels' discretion would be narrower.

(*1) Commentary in the article 10.4 of the 2015 WADC give examples of cases where article 10.4 is not applied.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'appréciation du degré de faute est un mécanisme qui mérite d'être clarifié dans la prochaine version du Code. Les dispositions actuelles sont source d'incertitudes et entravent l'harmonisation des sanctions.

Si l'absence de faute significative devait demeurer un principe général, alors l'AMA doit laisser une marge d'appréciation aux OAD quant à la réduction de sanction appliquée à chaque cas d'espèce en fonction de l'appréciation par l'OAD du degré de faute.

La fixation de critères d'appréciation du degré de faute via une codification dans le CMA présenterait l'avantage d'un guide de référence commun à toutes les OAD, peut être plus efficace pour poursuivre l'objectif d'harmonisation.

Freelance journalist

SUBMITTED

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

'No significant fault' is being misused at present. There surely is an argument in favour of codifying the CAS panels classifications if this could be done in a simple manner without the solution being too complicated for people to understand. A medical prescription is good enough in most cases to get a "no significant fault or negligence" verdict at present, at least in India. There can be some additional explanation to limit the scope of this 'prescription privilege.'

Institute of National Anti-Doping Organisations

SUBMITTED

Graeme Steel, Chief Executive (Germany)

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

The continued relevance of the "no significant fault" provision, given the evolution of the Code, is unclear. If lack of intent is established why is it necessary to determine if there was no significant fault - it seems an unnecessary step. If the range of penalty is 2 years to 0 based on no intent why is the actual period not determined simply by "degree of fault (or negligence)". Very high is still two years, almost none - a week or two? Again the step to determine "no significant fault" seems to complicate rather than aid the process?

McGill University

SUBMITTED

Bertrand Stoffel, Postdoctoral Fellow (Canada)

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

It could be worth considering merging Article 10.4 and 10.5 into one single Article stating only the general principle and leaving its application to case law. This would likely require simplifying the definitions in the Code to include only "fault" and "negligence".
Such general article could be:

10.4.1. If an athlete or other Person establishes in an individual case that he or she bears no fault or negligence, or that his or her fault is not significant, the otherwise applicable period of Ineligibility shall be reduced or eliminated accordingly.

10.4.2. In its decision, the panel shall, among other things, consider the degree of fault or negligence, whether the anti-doping rule violation involves a Specified Substance or not, and whether the prohibited substance came from a contaminated product.

GM Arthur Sports Representation

SUBMITTED

Graham Arthur, Independent Expert (UK)

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

One of the most cogent and helpful explanations as to how the 'No Significant Fault' criterion should be applied is that provided by CAS in CAS 2013/A/3327 (*Cilic*). The formulation devised by CAS to apportion fault is being light/normal/significant is both clear and accessible: it does not require a specialist practitioner to apply what are clear and straightforward principles. But – hearing panels can view the application of the *Cilic* criteria in different ways. One hearing panel may view one set of facts as supporting a 'light' fault conclusion, whereas another may see it as 'normal'. It is not satisfactory for similar fact situations to result in wildly differing outcomes.

There is one important area in which the application of the 'No Significant Fault' criteria requires urgent review, which is in connection with cases that involve a positive test for (a) a substance banned In-Competition only that is (b) present in a Sample taken In-Competition but (c) results from use Out-of-Competition. The facts of the leading *Cilic* case are a good example. Mr Cilic unwittingly used a product containing a stimulant that was banned In-Competition only. He used it Out-of-Competition – it was perfectly 'lawful' (in the doping sense) for him to use it. When it came to competing, the benefit of the stimulant was long gone. But there was a small amount of the metabolite in Mr Cilic's system, which he tested positive for.

Metabolites are banned because they are 'markers' for the 'parent' substance - they have no intrinsic benefit themselves. Mr Cilic received a ban, which was much reduced from the two-year ban he could have received, but many Athletes are not as fortunate. This is not fair: they are, in effect, being punished for having the evidence of a 'lawful' activity still in their systems when they come to compete.

This scenario often results in harsh, even unfair outcomes. Substances are banned at all times if their use Out-of-Competition has the potential to enhance performance in future competitions (Code, Article 4.2.1). This means that substances that are banned only In-Competition cannot enhance performance in future competitions if they are used Out-of-Competition.

Despite this, the presence of such a substance (which in most cases is, in fact, an inactive metabolite) in a Sample is punished with significant bans. This is unfair. It effectively removes the distinction between substances banned at all times and those banned In-Competition only.

Effective anti-doping practice requires zero tolerance when it comes to the presence of banned substances. It should always lead to a disqualification. But Athletes in the 'Cilic situation' should not be receiving the same sort of bans that they would receive as if they had had the 'real' substance in their system.

The solution to this is to add the 'Cilic situation' to the concept of No Significant Fault. This is not to say that any Athlete who is in the 'Cilic situation' should be automatically deemed to be at No Significant Fault: but rather, that if they are, they can rely on that as a factor.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Further clarification of the application of No Significant Fault is necessary due to diverging interpretations by the bodies conducting the Results Management process and the Court of Arbitration for Sport (CAS). This is important to create greater consistency and harmonisation of the Code's application. In summary, this article does provide greater scope to the adjudicating panel in determining an athlete's degree of fault which is useful, however, providing greater clarity in how the article can be applied in different circumstances will ensure there is greater consistency and less varying degrees of sanctions awarded in similar cases.

Article 10 - Minors (21)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

There should not be a specific approach to Minors in this area, as it would create too much discrepancy in the treatment among athletes at the highest levels of competition.

Minors's specificities are taken into account in assessing the degree of fault.

In relation to this, for the sake of clarity the existing exception for Minors in the definition of No Fault or Negligence or No Significant Fault or Negligence shall be explicitly mentioned in Art. 2.1.

Union Cycliste Internationale

SUBMITTED

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

Point 2 seems to already be addressed in the WADC in the definitions of NFN and NSFN. As to point 1, assuming the status quo is maintained for NFN and NSFN, the UCI would assume that it should equally apply to intention.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

This second suggestion would be consistent with the definitions of No Fault and No Significant Fault

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

This might be acceptable when all other effected Athletes are themselves Minors. Otherwise, from the point of view of other effected Athletes, it is difficult to see the rationale for not holding Minors to the requirements for all who against whom anti-doping rule violations are asserted.

Ministry of Youth and Sport

SUBMITTED

Viktoria Slavkova, Chair of Working Party Sport, Deputy member of FB on
behalf of EU (Bulgaria)
Public Authorities - Government

SUBMITTED BY WADA
LAST EDITED BY ADMIN

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 has some concerns regarding Minors. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Minors the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

SADA

SUBMITTED

Lubomir Gulán, Education Manager (Slovakia)
NADO - NADO

The opinion of pediatric psychiatrists is that prohibition of sport activity is contra-productive in drug recovery process...

Ineligibility lasting several months or years can irreversibly affect their psycho-social development.

AEPSAD

SUBMITTED

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

We propose the inclusion of a new article in the Code as it seems to us to be essential to develop a specific, separate treatment for the fight against doping when minors are involved. In every legislation in the world, minors are by definition not subject to responsibility and the legal systems consider them not yet to have the capacity to act freely and according to their own will. They are therefore not liable and no penalties can be imposed on them. The Code does not therefore seem to be very much in line with the Declaration of Human Rights nor the Declaration of Children's Rights promoted by the UN when it only treats the minority of the party responsible as an attenuating circumstance.

All regulations must take into account the dignified and humane treatment of minors and regard for the special circumstances arising in their cases as, more often than not, the consumption of substances or the use of doping methods is decided and administered by other persons with criminal liability. In addition, as in the previous case, we can also avoid in this way minors being driven away from the practice of sports during the rest of their lives, both through the duration of the sanctions and also through the social stigma and pressure to which those punished for doping are often subjected. This differential treatment for minors must, insofar as possible, avoid sanctions that imply expelling the minors from the practice of sports by identifying corrective or educational measures in order to try to recover these minors for clean, healthy sport so as to enable them to live a full life.

A group of experts should analyse and draw up rules, perhaps an appendix to the Code itself, in which they discuss the following matters with respect to minors:

- Minors and different doping scenarios
- Minors and Planning of Testing (when, where, how)
- Handling of Results and Minors (sanctions, entourage)
- Doping in Minors and Ordinary Justice Systems.
- Replacement measures instead of disqualification sanctions having regard for the best interests of the minor.

ONAD Communauté française

Julien Magotteaux, juriste (Belgique)
NADO - NADO

SUBMITTED

Nous comprenons les remarques émises, tout en supposant que dans de tels cas, c'est au représentant légal du mineur ou au conseil du représentant légal de supporter ce fardeau ?

Sinon, faudrait-il prévoir un système de charge de la preuve plus souple pour les mineurs ? Le but est évidemment d'avoir un système qui soit le plus cohérent mais aussi le plus juste et efficace possible.

Par ailleurs, en amont, ne faudrait-il pas, dans un souci de plus grande sécurité juridique, prévoir que pour les contrôles sur des mineurs, la notification se fait en présence de son représentant légal ou d'un autre majeur dûment autorisé et que le contrôle en lui-même a également lieu, en principe, en présence de ce même majeur (représentant légal ou personne autorisée) mais que, néanmoins, l'absence éventuelle d'un majeur, lors du contrôle en lui-même sur un mineur, ne rendrait pas pour autant la procédure caduque ? Soit le prévoir dans une disposition ou à tout le moins dans un commentaire ? L'idée est de tenir compte de l'incapacité juridique du mineur tout en n'empêchant pas non plus la validité d'un contrôle sur un mineur pour cette raison. Il conviendrait de trouver un juste équilibre à cet égard.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

There should, generally speaking, be greater leniency for minors and people with impaired mental health.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

A separate sanction for minors is required (not only facilitation of the burden of proof!).

NADA Austria

SUBMITTED

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

The provision Art. 20.5.9 gives a good guidance to handle Anti-Doping cases with minors included. The fact that the involved athlete support personnel committed an Anti-Doping Rule Violation should take into account by determining the extent of the ban against the minor.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA agrees that minors should not bear the burden of proof to reduce the sanction. However, there should be process in place, where all measures will be taken to find out, how the athlete got the access to the Prohibited Substances (also supplements).

Furthermore, wider discretion within the sanctions should be considered.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Se trata de áreas en las cuales los menores de edad deben soportar la carga de la prueba, para reducir la sanción.

A raíz de este hecho, se ha expresado en la comunidad antidopaje que los menores de edad no tengan que soportar la carga de la prueba, para establecer que el uso de una *Sustancia No Específica* no fue intencional, evitando así una sanción de 4 años (Artículo 10.2.1.). Análogamente, esto se refiere también a que los menores de edad no deban soportar la carga de establecer la "fuente" de una sustancia prohibida encontrada en su orina, para optar a una reducción de sanción.

Opinión/Sugerencia:

Como una forma de contextualizar el problema, nos parece necesario plantear que, en general, la acusación de dopaje por ingesta de una sustancia prohibida, formulada contra un menor, revela un defecto grave que los sistemas antidopaje y deportivo no han sabido contener.

Más que plantear medidas o modificaciones al Código orientadas directamente a los menores de edad, se deberían establecer mecanismos de responsabilidad de quienes participan en la formación y seguimiento deportivo y competitivo de estos menores. Es responsabilidad de las federaciones y los recursos humanos encargados de los niños y jóvenes deportistas, concebir, implementar y aplicar rigurosamente medidas preventivas antidopaje, bajo pena de compartir la responsabilidad en caso de violación de las normas del Código.

La experiencia de esta Comisión Nacional ha demostrado que de nada sirve sancionar por más o menos tiempo a un menor, si el contexto en que éste se desenvuelve no se hace cargo de todos los aspectos de su formación deportiva. Es más, se ha constatado que, después de ser acusados, los menores son casi siempre “abandonados” a su suerte por quienes debieron velar por prevenir su dopaje, salvo por sus familias.

Por otra parte, no se debe olvidar que aún hay países en los cuales la Constitución Política declara inimputables a los menores hasta una cierta edad.

En conclusión, se deberían modificar las disposiciones presentadas del Código relativas a menores de edad, eximiéndolos de soportar directa y únicamente la carga de la prueba o de establecer *a priori* ciertos hechos, para poder optar a rebajar sus sanciones. Se deben buscar mecanismos de co-responsabilizar a otros miembros u organizaciones de la comunidad deportiva, relacionadas directamente con el menor de edad acusado.

Canadian Centre for Ethics in Sport

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

SUBMITTED

The CCES is satisfied that no revisions are needed regarding how the Code treats a minor.

The CCES believes that all athletes including minors should have the onus to prove a lack of intention so as to reduce a sanction from four (4) years to two (2). That is to say a minor will be quite able to tender evidence regarding their own subjective state of knowledge regarding their own conduct and whether it would result in an anti-doping rule violation and whether there was a significant risk that was known but ignored.

The CCES is comfortable that minors need not prove how a substance entered their body to obtain a reduction below two (2) years. This requirement obviously requires evidence external to the athlete and some minors may not be in a position to easily satisfy this onus. Even if they cannot discharge this onus, a Tribunal must still evaluate their Fault (is it significant?) and if it is not significant, determine a sanction based on the minor's degree of fault.

CITA

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

SUBMITTED

Areas Where Minors Bear the Burden of Proof to Reduce a Sanction. Because of the fact there is more and more minors that are competing as International-level athletes we see no reason to include the proposed changes. CITA is of the opinion that in the cases of minors the responsibility of an Athlete Support Personnel should be emphasized (see other suggestions section).

SUBMITTED

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Article 10

We support the present practice: minors should NOT have the same burden of proof that adults have.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'appréciation de la responsabilité des mineurs et les réductions de sanction qui peuvent leur être accordées posent effectivement problème, en particulier pour les plus jeunes d'entre eux. Il sera observé que le Code ne fixe pas d'âge minimum à partir duquel un sportif peut être soumis à un contrôle.

Un éclaircissement particulier semble nécessaire au vu de la question posée relative à l'établissement de la source d'une substance interdite compte tenu des définitions de l'absence de faute ou de négligence et de l'absence de faute ou de négligence significative, qui prévoient toutes deux : "Sauf dans le cas d'un mineur, pour toute violation de l'article 2.1, le sportif doit également établir de quelle manière la substance interdite a pénétré dans son organisme."

Freelance journalist

SUBMITTED

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

The rule regarding Minors (Article 10) has been utilized to give a one-year sanction for steroid use simply on the argument: 1) Being a minor the athlete need not establish how the prohibited substance entered his body; 2) If that be the case he has already established that he did not use the substance intentionally (he doesn't know how it entered and he need not prove anything except say that he doesn't know) and hence the offence should come under the 2-year-ban classification; 3) Once that two-year category is established, let us look at Article 10.5.2 (No significant fault or negligence: We (panel) "have already held that athlete is bears no significant fault or negligence; he need not establish how the prohibited substance entered his body since he is a minor. We give him the benefit of 10.5.2 and award him a one-year sanction" Simply by saying "I don't know how the prohibited substance entered my body", can a minor athlete get a one-year sanction for a steroid offence? Shouldn't there be some additional rule in determining whether a

steroid use can automatically be categorised into the two-year sanction bracket simply on the argument that the athlete is a minor?

Institute of National Anti-Doping Organisations

SUBMITTED

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

There should, generally speaking, be greater leniency for minors in areas such as this and any erring should be in that direction. Nevertheless the level of competition and "experience" of the athlete arguably should be taken into account to prevent a "minor", who is in every way, other than chronological, a mature and experienced athlete, being given excessive relief for intentional doping.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Minors should continue to bear the burden of proof, where appropriate, in order to ensure the strength of the strict liability principle, which should apply across all ages.
- Some sports, such as gymnastics, are dominated by athletes who are minors; if they are not responsible for the burden of proof, who would be?
- We would be interested if any suggested action about minors and other athletes at risk (eg those with an impairment) bearing the burden of proof.
- A suggestion that the principle of who bears the burden of proof should be based on an athlete's mental capacity to understand consequences of their actions, rather than their age.

Article 10 - Timely Admission and Prompt Admissions (26)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

"Admission" must be understood as the admission of an ADRV, not only an AAF. It should also be made clear that it involves waiving the B sample analysis in the framework of Art.7.3.

World Rugby

SUBMITTED

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

World Rugby feel these clauses are perhaps being misused in two ways: (i) hearing panels are offering reductions to athletes whom they feel sympathy for but who have no means to avail themselves of 10.4 or 10.5, and (ii) As indicated by WADA athletes are accepting a finding but then arguing over sanction, and still claiming that this somehow constitutes a prompt or timely admission.

This clause should be adapted to remove the capacity for sanction to be backdated to the point of sample collection unless the athlete fully admits the offence immediately after sample collection (but prior to result notification) including accepting the ordinarily applicable sanction, or unless there are unreasonable delays attributable to the prosecuting body. This is supported by WADA's Comment to 10.11.1 - athletes should 'not be allowed to benefit from investigation delays caused by their own efforts to conceal doping'.

Alternatively, we suggest that these two provisions are combined to reduce potential confusion/duplication and that certain amendments are made to address the potential misuse of these clauses in some cases.

Union Cycliste Internationale

SUBMITTED

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

These two articles should be clarified.

In this sense, the UCI believes it should be sufficient for an athlete to admit the existence of an AAF for prompt admission for two key reasons: (i) this acts as an incentive not to dispute the testing results and also to finalise a case in a more efficient way; (ii) often an athlete who admits the AAF has no idea how the substance entered his or her body but does not dispute that it did. Such athletes should not be treated more harshly than athletes who have admitted an intentional ADRV.

In terms of prompt admission, an athlete can only receive a suspension of his or her period of ineligibility if WADA agrees (contrary to backdating a sanction to the date of sample collection for timely admission). In this respect, 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.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

The wording in 10.6.3 is - promptly admitting the asserted anti-doping rule violation (not just the existence of an AAF). The athlete should still be allowed to contest a sanction in the interests of fairness.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

To be worthy of a reduction of sanction, the admission must also include credible information and evidence about the source of the prohibited substance and, if applicable, the other persons involved in the ADRV (such as coaches, suppliers, etc.). Suggested amendments based on the fact that a timely or prompt admission does not have to relate to substantial assistance to be considered.

Australian Government

SUBMITTED

Dean Ebejer, Drug Analyst (Australia)
Sport - Other

The Code has multiple articles that deal with admissions. For example, article 10.6.2, 10.6.3, and 10.11.2 all deal with an admission in specific circumstances. The Code would benefit if these admissions sections are merged into one with the same reduction of no more than 50% of the relevant sanction. The clause should include a provision whereby an athlete does not qualify for a reduced sanction after making an admission but still opts for a hearing process.

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 has some concerns regarding Timely Admission and Prompt Admissions. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Timely Admission and Prompt Admissions the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Group of South American Lawyers from NADOs:

"The admission is developed in the Articles 10.6.2, 10.6.3 and 10.11.2 – it is considered necessary to organize this juridical figure in only one chapter in order to make them more understandable".

Anti Doping Denmark

SUBMITTED

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

Presently, article 10.6.3 allows for a reduced period of Ineligibility in the case of Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1. WADA's approval is mandatory, and the reduction is "depending on the seriousness of the violation and the Athlete or other Person's degree of Fault".

While appreciating that decisions about the use of article 10.6.3 should be on a case-by-case basis, taking into consideration the specific elements of the case, we propose the writing of a new comment to article 10.6.3 that explains in further detail what elements may be considered to determine "the seriousness of the violation and the degree of Fault".

In our opinion the involved Prohibited Substance should not in itself determine whether a reduction can take place. For instance, an athlete's prompt admission of using steroids should make a certain reduction possible, particularly if such admission leads the ADO to further insight into the use of steroids among athletes that might be useful in the ADO's future test planning.

Proposal: A new comment to article 10.6.3 with further explanation of the determination of depending on "the seriousness of the violation" and "the Athlete or other Person's degree of Fault".

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

Cet article du Code, dans sa version française, n'est pas d'une clarté limpide, notamment par rapport à la condition d'avoir déjà purgé la moitié d'une période de suspension.

En raison de ce manque de clarté, en français, par rapport à ses conditions d'application, cet article est forcément difficilement voire pratiquement inapplicable.

Irish Sports Council

SUBMITTED

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

Ø The difference between Timely Admission (Article 10.11.2) and Prompt Admission (10.6.3) needs to be specified, presumably by defining Prompt Admission or issuing some guidance on the issue. Sport Ireland has had cases in which Athletes admit the violation but do not accept the violation was intentional and the wording of Article 10.6.3 is not helpful in this regard as it refers to an Athlete being potentially subject to a four year sanction.

Ø In Ø In addition, Sport Ireland questions whether doping panels and tribunals should also be allowed to reduce a sanction based on Prompt Admission, for example panels could reduce a sanction up to a certain percentage before WADA is consulted. Admissions must be encouraged while at the same time not being overly lenient. Sport Ireland's view is that the appropriate balance is not being struck at the moment.

UK Anti-Doping

SUBMITTED

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

UKAD considers that more guidance about the application of Article 10.6.3 would be helpful, in particular to make plain when “prompt” ceases to be so – is it too late for an athlete to seek to benefit from Article 10.6.3 once a case has been referred to a hearing? Can Article 10.11.2 be applied later in the proceedings than 10.6.3 or is there no distinction between the two articles in this respect? Does an athlete requesting B Sample analysis preclude the application of Article 10.6.3?

It would be helpful for the Code to specify that athletes cannot rely on Article 10.6.3 to go below two years, as set out in examples at the back of the Code:1. The starting point would be Article 10.2. [...]2. In a second step, the panel would analyse whether the Fault related reductions (Articles 10.4 and 10.5) apply. [...]3. In a third step, the panel would assess the possibility for suspension or reduction under Article 10.6 (reductions not related to Fault). In this case, only Article 10.6.1 (Substantial Assistance) applies. (Article 10.6.3, Prompt Admission, is not applicable because the period of Ineligibility is already below the two-year minimum set forth in Article 10.6.3.)

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- Relation of Art.10.7.1 WADC (Multiple Violations) to Art.10.6.3 (prompt admission): further clarification needed

Example:

An athlete violates an anti-doping rule (Art. 2.1) for the first time, but tries to tamper in the following results management process by providing falsified medical documents. The athlete promptly admits the falsification in the following (not the anti-doping rule violation concerning the prohibited

substance!) – to what extent does the prompt admission (Art.10.6.3) influence a possible reduction with regard to a multiple violation (8 years down to 2 years?)

Finnish Center for Integrity in Sports (FINCIS)

SUBMITTED

Petteri Lindblom, Legal Director (Finland)
NADO - NADO

We think that the admission should be absolute and that should be written in the article clearly. Otherwise this article is useless because it is clear that every athlete will admit the existence of AAF when they know that it will be found. At the same time should be considered to clarify the art 10.6.3 (Prompt admission). In the current code there are too many actors who should approve the reduction beforehand. We think that is why this article has not been used so often. Other actors, for example WADA, should give a right to appeal afterwards.

NADA Austria

SUBMITTED

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

A clarification in these provisions would be desirable. In particular there should be a clarification at what point and to what extent a timely or prompt admission could lead to a reduction of the sanction. It is necessary to define clear criteria for this situation.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Situación relativa a los artículos sobre la Confesión Inmediata (10.6.3 y 10.11.2). Si bien el hecho de tener en cuenta la Confesión Inmediata para optar a alguna reducción de sanción es casi unánime, persiste el debate en relación con lo que debe incluir el acto de la confesión. Por ejemplo: ¿se debe considerar suficiente el hecho de que el deportista confiese la existencia de un RAA, pero, que, sin embargo, rechace las consecuencias (sanciones) que se le impondrían?

Opinión/Sugerencia:

El acto de la confesión de una infracción debe forzosamente incluir la aceptación de las consecuencias previstas para dicha infracción, si se trata de tenerlo en cuenta para efectos sancionatorios. La Confesión Inmediata tiene por objeto optar a eventuales reducciones de sanción, lo cual, desde nuestro punto de vista, implica la aceptación previa de la existencia de ésta. No hacerlo resulta en una paradoja: *confieso para reducir una sanción, pero, rechazo a priori esta sanción.*

Canadian Centre for Ethics in Sport

SUBMITTED

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

In Canada a Timely Admission is an admission of the fact of the anti-doping rule violation – and nothing more. In every case, the athlete retains the right to a hearing, to determine the proper sanction length although they may subsequently opt to waive this right. This seems to work and is a common outcome after an initial review.

CCES suggests changing the name for “Prompt Admission” as it is often confused with “Timely Admission.” CCES proposes changing “Prompt Admission” to “Full Admission,” as the final sanction reduction is determined (if WADA and the NADO agree) and a hearing is avoided.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that this issue needs to be addressed, including clarifying the intentions of these two provisions and when one or the other should apply. This includes clarity on whether a sanction can, or should, be backdated to include a period in which the Athlete was competing.

Furthermore, DFSNZ has encountered multiple situations where an athlete has admitted a violation but has taken a position on sanction such that full hearings have been necessary. The hoped-for advantage of lessening expense and expenditure of resources by ADOs as a result of an athlete making an admission have often been unfulfilled.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Article 10

We agree that the text of Article 10.6.3. should be clarified.

CITA

SUBMITTED

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

Timely admission and prompt Admission should clearly require full cooperation from an Athlete without contesting of sanction being imposed.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

Japan Anti-Doping Agency

SUBMITTED

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

Clarify the Definition of "Admission" in Article 10.6 and 10.11.2

In both Article 10.6.3 and 10.11.2 of the 2015 WADC, the word "Admission" is used. In the articles, the definition of "Admission" is not stated.

According to a research paper by a study group of Japanese researchers, lawyers and practitioners, Article 10.6.3 of the 2015 WADC cannot be applied if the Athlete contends intention or No (Significant) Fault and Negligence. On the other hand, Article 10.11.2 of the WADC can be applied even if the Athlete contends intention or No (Significant) Fault and Negligence. Hence, in the new WADC, the definition of "Admission" both in Article 10.6.3 and 10.11.2 should be clarified.

Freelance journalist

SUBMITTED

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

"I agree that a prohibited substance has been found in my sample" should not be treated as "Prompt admission". By endorsing the validity of a positive test done by an accredited laboratory, the athlete is not admitting anything really. "Prompt admission" should mean admission of an anti-doping rule violation and an intention to accept any possible sanction. By promptly admitting first and then providing evidence/excuse for the positive test the athlete is actually contesting the claim that he had doped or that he was responsible for such a situation. This cannot be considered as prompt admission. As per convenience, anti-doping authorities use this clause to reduce sanction for an athlete or to lessen the burden for him in arguing his case before a hearing panel. The discretionary power inherent in this clause of 'prompt admission' smacks of favouritism. It should be a simply "admit and take a sanction without arguments or else put up your arguments before a hearing panel and then go by its decision, whatever it may eventually be." Many athletes do not know such a provision exists. A prompt admission necessarily will have to be at the time of provisional hearing or else if no such hearing had been held at the first hearing before a panel. In such cases, there should be no further arguments (then what could be the difference between a prompt admission and a routine hearing process?). The authority may give its verdict and if an athlete accepts it there need not be any further proceedings. If not, the proceedings can go on as normal.

Institute of National Anti-Doping Organisations

SUBMITTED

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

The effect of prompt/timely admission must be to substantially simplify and ease the path of case management. If that is achieved it should get some reward if it is not then there should be no reward. For example for an athlete who immediately accepts that a prohibited substance was in

his/her sample and consequently accepts that a rule violation has occurred but subsequently presents lengthy and spurious arguments as to how it got there - there should be no relief.

GM Arthur Sports Representation

SUBMITTED

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

Article 10.11.2: This is primarily relevant in cases where no provisional suspension has been imposed or entered into. There should not be any debate over liability and sanction. Liability is a precursor to sanction, and so for analytical cases, liability ceases to be an issue once the Athlete acknowledges that the analytical process was conducted properly. An 'admission' simply means that liability is no longer an issue.

A simple fix might be to provide that a period of Ineligibility can start from the date of an admission, prompt or otherwise. This would encourage admissions in all cases and at any stage of a case. Athletes should not be 'punished' for admitting liability but utilising their rights to argue that their sanction should be reduced based on their Fault.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Timely and or Prompt Admission should include both accepting the existence of an ADRV and a sanction imposed. Admission of an ADRV by an athlete implies intent to cheat, and knowledge of use of a prohibited substance, therefore reductions to a sanction should only be on account of exceptional circumstances.

Article 10 - Multiple Violations (18)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees with this general principle.

The scenario where the Athlete commits a subsequent ADRV during his provisional suspension (for example in UCI v. Mr. Jure Kocjan, 28 June 2017, UCI ADT) should be included as well.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

On the first point, it is not clear that Article 10.7.4.1 as it stands requires modification. On the second point, it is not clear that Article 10.7.4.2 as it stands requires modification. Would need more detail about the issues being debated to make constructive comments.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

The aberration in article 10.7.4.1 that allows multiple ADRV's that occurred at different times to be treated as one offence, even if notified of them at the same time, needs to be corrected.

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 has some concerns regarding Multiple Violations. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Multiple Violations the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

AEPSAD

SUBMITTED

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

We do not consider it fair for athletes to be held responsible for a second violation of anti-doping rules if the existence of the first violation has not been notified to them, as this would be a breach of their right to defend themselves.

Similarly, we propose to implement a specific rule regarding the biological passport, whereby athletes will only be made aware of the values in their biological passport after an anomalous result is recorded in order in this way to prevent the unlimited use of doping substances over an indefinite period of time.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- 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.

NADA Austria

SUBMITTED

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

Unknown Anti-Doping Rule Violations are not considered in the current Code. It would be desirable to have an additional provision to handle this situation.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA asks to elaborate, what is meant by „Broadening the ability to consider prior unknown Anti-Doping Rule Violations might also be a good idea.“

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Se plantean varios cambios menores al Artículo 10.7 *Infracciones Múltiples*, relacionados con la situación en la cual el deportista comete una nueva infracción a las normas antidopaje, cuando ya está cumpliendo un período de inelegibilidad. Se plantea como buena idea la ampliación de la posibilidad de tener en cuenta infracciones desconocidas anteriores a las normas antidopaje.

Opinión/Sugerencia:

Que un deportista cometa una infracción mientras está cumpliendo el período de inelegibilidad correspondiente a la sanción de una infracción anterior, se trataría en realidad de un caso particular, agravado, del caso general descrito en el Artículo 10.7.4.1.

La gravedad de tal situación amerita un tratamiento particular, especialmente en lo que se refiere a eventuales sanciones, por lo que parece de toda pertinencia considerar disposiciones especiales al respecto.

En cuanto a la posibilidad de considerar las infracciones previas desconocidas, la aplicación de este principio es la esencia misma del Artículo 10.7, por lo que la incorporación de la necesaria regulación al respecto nos parece absolutamente procedente.

Canadian Centre for Ethics in Sport

SUBMITTED

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

While the CCES has not faced this situation, we note that it seems odd in 10.7.4.2 that the ADO can unilaterally evaluate this earlier discovered conduct and the ADO can then unilaterally impose a greater sanction on top of the sanction flowing from the first anti-doping rule violation which has been imposed by a Tribunal. In effect, the ADO is performing the role of the Tribunal in connection to the facts that are being earlier discovered. What happens if there are contested issues around these earlier discovered facts or with the additional sanction the ADO selects when combining the two fact situations? CCES assumes this gets corrected only if the unhappy athlete commences an appeal.

CCES notes that currently a sanction which is imposed for an anti-doping rule violation which was committed while an athlete is already serving a period of ineligibility, it is applied concurrently. CCES believes that such sanctions should (or could) be served consecutively in the Panel's discretion.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that Article 10.7 would benefit from clarification. DFSNZ has encountered an issue whereby an Athlete has committed a breach of New Zealand's Sports Anti-Doping Rules while serving a period of ineligibility imposed by another country's non-signatory anti-doping organisation. In that case, the Athlete submitted that the original breach (imposed by the non-signatory) was not a valid ADRV, and therefore the multiple violation provisions were not triggered in respect of sanction. This is plainly at odds with the intent of the Code. Any perceived lacuna in the Code in this respect should be addressed.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,
- 2.NOC*NSF,
- 3.Athlete's Committee NOC*NSF
- 4.Anti-Doping Authority the Netherlands

Article 10

We agree that Article 10.7 should be clarified. One of the issues that should be clarified is that an ADRV that has been established by a non-Signatory DOES count as First Violation.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD partage la proposition d'évolution.

Freelance journalist

SUBMITTED

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

If the multiple violation is detected following re-testing then there could be a separate clause to deal with such cases. It should not be the case of the weightlifter now from the Beijing and London Olympic samples, where an argument seems to have been made that the Beijing positive was not known at the time when he committed the second offence in London, so let's treat this as one. Four years apart, two positive cases, both coming out of re-tests, where is the chance for the authority to inform the athlete of the positive test since the positive has only come now after re-test? Surely this situation needs to be rectified, specifically targeting such re-tests and excluding that clause about "informing" when it comes to a second positive test. The point to note is had the substance been caught in 2008 he would probably have undergone a two-year suspension and, if he is caught again in 2012, he would have undergone a sanction for multiple violations, possibly an eight-year sanction. The present rules for multiple violations also need further clarity. As an example, what could be the sanction for an athlete who is reprimanded for his first offence (specified substance) and then commits a second offence for steroid? Can this be eight years? If not, will it be four years, the same as it is for a first offence for steroid? If this is eight years, won't it be too harsh since the first violation was dealt with through a mere reprimand? Then, what could be the sanction for a first offence for steroids and a second offence also for steroids?

Institute of National Anti-Doping Organisations

SUBMITTED

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

The primary issue here is that penalties are served concurrently rather than consecutively and this can lead to circumstances where a second penalty has little or no effect. Penalties should be served consecutively except where fairness warrants some period of concurrence.

GM Arthur Sports Representation

SUBMITTED

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

An Article 2.4 ADRV should not be treated as a 'first violation'. Article 2.4 violations do not involve 'doping'.

SUBMITTED

UK Anti-Doping

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Support for the amendment of this Article to ensure the clarification of situations where an athlete commits an ADRV whilst serving a period of ineligibility, and where it becomes clear that previously unknown additional ADRVs have been committed.

Article 10 - Delays Not Attributable to the Athlete (18)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Such circumstances as described above shall in no case be considered as “Not Attributable to the Athlete”

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that the concept of “delays not attributable to the athlete” could be clarified, in addition to what amounts to a “substantial delay”. For example, would delays include good faith, but protracted, discussions about the terms of an acceptance of sanction (e.g. if an athlete has difficulties accepting the imposition of a fine)?

Delays associated with re-testing/APF scenarios could also conceivably be addressed (in a comment) as this issue has arisen in a number of UCI cases.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

"investigation delays caused by their own efforts to conceal doping" would be attributable to the athlete surely?

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

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Agreed that hearing and appellate bodies must be strict and not recognise procedural delay caused by the athlete or other person who has committed the ADRV.

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Note: this is already clearly outlined in the comment to Article 10.11.1 (i.e. where the athlete has taken affirmative action to avoid detection, the flexibility provided in the article should not be used). Perhaps the word “should” could be amended to the word “must”.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

Once an ADRV has been asserted a Provisional Suspension should be in effect. In that case, the sanction when issued will start back when the provisional suspension was entered into.

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 has some concerns regarding Delays Not Attributable to the Athlete. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of Delays Not Attributable to the Athlete the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

Organización Nacional Antidopaje del Uruguay (ONAU)

SUBMITTED

Federico Perroni, Miembro Consejo Directivo (Uruguay)
NADO - NADO

AEPSAD

SUBMITTED

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

We are of the opinion that the calculation of the deadline for athletes should not be suspended due to a delay by the CAS in connection with the resolution of the procedure, therefore we consider that the solution would lie in establishing maximum deadlines within the CAS itself for the resolution of its decisions.

NADA Austria

SUBMITTED

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

The benefit according to Art. 10.11.1 should be just applicable in the case of delays during the proceedings, but not in the case of investigation delays.

Comisión Nacional de Control de Dopaje
Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

SUBMITTED

El Artículo 10.11.1 dispone que el período de inelegibilidad puede comenzar antes de la Audiencia de Decisión, cuando han transcurrido períodos largos de retraso no atribuibles al deportista. El problema se plantea cuando el CAS ha permitido este beneficio a los atletas, aun cuando son sus propios esfuerzos por ocultar su dopaje lo que ha conducido al retraso.

Opinión/Sugerencia:

A nuestro entender, el problema no es la existencia de este beneficio, sino el criterio del Panel o Tribunal que lo aplica. El Tribunal de Expertos en Dopaje de Chile, a pesar de sus esfuerzos, ha incurrido en retrasos por su causa. Han existido también deportistas que, en su afán de ocultar o disimular su dopaje, han prolongado injustificadamente el proceso de decisión. No obstante, el criterio de determinación de fecha de inicio ha sido, hasta el momento, pertinentemente administrado por los miembros del Panel correspondiente.

No parece necesario reformar el Artículo, sino que los Paneles respectivos establezcan algunos criterios, en función del desarrollo de su propia experiencia.

Canadian Centre for Ethics in Sport
Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

This has not been an issue in Canada. Tribunal hearings, in general, take place in a timely fashion. If there is a substantial delay commencing a hearing, in the vast majority of cases a Provisional Suspension is in effect. In those cases, the sanction, when issued, will start on the date the provisional suspension was entered into.

This does raise the issue that when investigations are conducted as part of the preparation of a results management case, there is a need to establish reasonable timelines for such investigations to ensure the athlete is not subject to unreasonable delays with their hearing.

Dopingautoriteit
Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Article 10

We think that an additional comment should be added to the Code in order to clarify the issue of the start of the period of Ineligibility.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD partage cette inquiétude et souhaite que soient pris en compte les efforts de dissimulation du sportif.

UK Anti-Doping

SUBMITTED

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

UKAD agrees that this rule needs to be exercised with caution. It may perhaps be appropriate to direct that tribunals need to be satisfied on the balance of probability that delays were not caused by the athlete.

Freelance journalist

SUBMITTED

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

1. Delays should be calculated only from the end of the results management process; 2. If the athlete has been competing through those delays, no concession may be allowed;

Institute of National Anti-Doping Organisations

SUBMITTED

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

That concern is shared and the Code should clarify that where the delay is due to the preparation and delivery of arguments which are not accepted by the Tribunal then any rebate should not incorporate that period.

GM Arthur Sports Representation

SUBMITTED

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

Article 10.1.1 is only relevant to 'delays not attributable to the Athlete'.

Hearing panels should be able to take account of the fact that a hearing process has been prolonged by an Athlete's refusal to cooperate with an investigation, or admit facts that have needed to be proved by the relevant Anti-Doping Organization, when deciding when a ban should start. These are delays that are attributable to the Athlete. This must be balanced against the Athlete's right to have the case proved: no Athlete has an obligation to prove the absence of an anti-doping rule violation.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Athletes should not be allowed to 'back date' bans where they have caused the delay.
- Supports for the inclusion and application of 10.11.1 to protect athletes in the event of substantial delays for which the athlete is not responsible. However, there should be provision to remedy situations where CAS Panels have allowed athletes to benefit from investigation delays caused by their own efforts to conceal doping

Article 13 - WADA Notification (15)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

This point is not very clear:

Does it rather mean provisions under Art. 7.10 and 8.4, in relation to Art. 14.2.1 ?

Or is it a need to explicitly mention WADA in Art.13.5, referring to all appeal decisions, not only those to CAS?

Union Cycliste Internationale

SUBMITTED

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

The UCI has no particular comment on this, save to query if/why CAS does not automatically inform WADA when an anti-doping appeal has been filed.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

agreed

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree

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 has some concerns regarding the Article 13. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 13 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

no need of changes, articles are clear.

NADA Austria

SUBMITTED

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

No change is necessary.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

De acuerdo con lo planteado por la AMA, se deben fortalecer las disposiciones relativas a las notificaciones de las decisiones y de presentación de apelaciones ante la Corte de Arbitraje Deportivo, para permitirle ejercer su derecho de apelación de forma oportuna. En muchas ocasiones se refiero al hecho de que las partes involucradas en un litigio no advierten a la Agencia Mundial Antidopaje sobre la presentación de recursos ante el CAS, lo cual la deja a su vez inhabilitada para poder hacerse parte en dicho diferendo.

Opinión/Sugerencia:

Es de toda lógica que las partes susceptibles de intervenir en las instancias de apelación, en particular ante el CAS, sean prevenidas de la presentación de recursos por una de esas partes. Si el ejercicio de este derecho requiere de un fortalecimiento de la normativa, en el sentido de obligar a las organizaciones que presentan recursos ante las instancias de apelación, a emitir las notificaciones correspondientes a las otras ONAD que tengan dicho derecho, entonces éste se debe materializar a través de disposiciones particulares.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that the notification provisions would benefit from clarification.

CITA

SUBMITTED

zorán Manojlović, head of anti-doping department of CITA (Croatia)
NADO - NADO

CITA supports the proposed change of the notification provisions in Article 13.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

UK Anti-Doping

SUBMITTED

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

UKAD agrees that notification provisions should ensure WADA is notified when a party appeals to CAS.

Institute of National Anti-Doping Organisations

SUBMITTED

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

If that is not explicit it should be.

GM Arthur Sports Representation

SUBMITTED

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

There are some instances in which a party is required to notify WADA when an appeal to CAS is made (for example, Code, Article 3.2).

It would be a simple matter to require Anti-Doping Organisations to notify WADA of any appeals made to CAS. WADA has an important and useful role to play in any CAS appeal, especially if that appeal concerns issues that have been raised previously before CAS. WADA should have the opportunity to ensure that CAS Panels take notice of all previous decisions on a particular issue to ensure, as far as possible, an even and consistent application of the Code.

Article 13 - Language (14)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

This point is not clear. There is currently no use of the term "may in this Article.

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that the terminology should be consistent.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

agreed

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

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Perhaps. When sitting as an appellate body, a CAS panel coming to different factual findings than the first instance hearing body must explain why it is coming to different findings. Particularly where there is a fundamental change in the evidence or position of one of the parties (as in IPC vs Omar). When an athlete presents new or entirely different evidence to CAS that leads to overruling the decision of the first instance hearing body, the athlete should be obliged to pay the costs of the first instance hearing, including the costs of the ADO.

Note: Article 13.1.2 does not actually use the word “may” but rather that “CAS need not”.

Ministry of sport of Russia

SUBMITTED

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

To avoid ambiguous interpretation of some provisions of the Code, it is proposed to add a clause stating that 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.

Sport New Zealand

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

Article 13

We agree that the wording of Article 13.1.2 needs to be amended. Currently, this article is unclear about whether CAS is required to, or simply may, defer to the findings being appealed. This article should be amended to make it clear that CAS *may* defer to the findings being appealed.

A rule that prevented CAS from deferring to the findings 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.)

The Council of Europe has some concerns regarding the Article 13. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 13 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

NADA Austria

SUBMITTED

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

NADA Austria shares the opinion that the text of Art. 13.1.2 need to be repeated.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The Code uses “need not” in 13.1.2 which is almost the same as “may” – so if it is desired to be firm that CAS “shall not defer” then “shall not defer,” which appears in the title should also be repeated in the text.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

En el Artículo 13.1.2 la expresión ““CAS shall not defer to the finding being appealed” (“La CAD no estará obligada por los resultados que están siendo objeto de apelación”) puede requerir ser repetida en el texto, usando actualmente el término “may”.

Opinión/Sugerencia:

Se presenta la situación en inglés, puesto que ésta tiene relación con las sutilezas de dicho idioma. No obstante, asumimos que la forma imperativa de la frase, tal como está citada en el párrafo anterior, expresada por el auxiliar “shall”, debe ser reemplazada por una forma condicional, expresada actualmente por el auxiliar “may”. En español, una analogía “semi-literal” podría ser la expresión “no estará”, que devendría en “podría no estar” (aunque en realidad, en español es conveniente reformular la frase entera).

Si el problema es el descrito anteriormente, parece pertinente no otorgar la condición imperativa al hecho de que la Corte Arbitral no esté obligada por el fallo apelado.

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Article 13

We support the suggestion to repeat the phrase “CAS shall not [...] appealed”.

Agence française de lutte contre le dopage (AFLD)

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

SUBMITTED

Nous ne comprenons pas le sens de la question à discuter.

Institute of National Anti-Doping Organisations

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

SUBMITTED

"Need not" per the article text seems more appropriate than the "shall not" in the title. A panel may well wish to defer to elements of a prior decision but not necessarily its entirety. They should have the discretion to do so.

SUBMITTED

GM Arthur Sports Representation

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

Article 13.1.2: the title to this sub-article suggests that CAS must not defer to the findings being appealed, whereas the text says it 'need not'. For obvious reasons the text is preferable and the title can be aligned with that.

Article 14 - Inconsistency (25)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

There is no inconsistency here: even if the “identity” of an Athlete could be interpreted as a “specific fact”, it can hardly be considered as a “comment”. Otherwise, it should be specified in Art. 14.3.5: “.... Except as provided in Art. 14.3.1 and in response to....”

World Rugby

SUBMITTED

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

Often a story may be in the public domain and it's obvious that it's true, but we can't comment because the criteria has not been met as is stated here. Also - does a union or club count as an 'athlete representative'? It's not clear.
Agree the disclosure clauses of 14.3.1 and 14.3.5 are inconsistent and should be addressed.
There needs to be much more scope/discretion for an ADO to comment on a case that is clearly in the public domain, provided that specific facts are not provided.

Union Cycliste Internationale

SUBMITTED

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

The UCI is not sure that the “specific facts” of a pending case do not already incorporate the identity of the Athlete (particularly in view of Article 14.3.1). However, perhaps WADA could amend 14.3.5 to state “as opposed to *the identity of the athlete and* a general description of process and science”.

The UCI also considers that the status of a provisional suspension falls within the concept of “a general description of process”, however believes that it should be clarified that provisional suspensions can be made public (this is particularly important for the purposes of enforcement of the provisional suspension).

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

14.3.1. actually states
The identity of any athlete or other Person who is asserted by an anti-doping organization to have committed an anti-doping rule violation,
not -who has committed an adv

ie the ADRV has not been proven

so 14.3.5 should be followed

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Is there inconsistency? Article 14.3.1 deals with completed cases. Article 14.3.5 deals with cases still in process. The different treatment of an Athlete's identity seems reasonable.

Law

SUBMITTED

Michael-T. Nguyen, Sports Lawyer (Canada)
Sport - Other

My name is Michael Nguyen and I am a Canadian lawyer who represents athletes on a Pro Bono basis in their appeals for anti-doping rule violations.

Issue

Recently, I was faced with a situation where the disclosure of the athlete's ADRV to different parties by the ADO might have led to the athlete's rights to a fair hearing being put at risk. When the CCES notifies the athlete of the ADRV, it also notifies the athlete's National Sport Organization (in the case being the Canadian Cycling Federation) that the athlete has had an ADRV asserted against him.

In our situation, for reasons beyond the athlete's control, the Provincial Cycling Association was also made aware of his ADRV. This resulted in the athlete being ambushed by journalists from national newspapers who questioned him and asked for his explanations for the ADRV.

Still devastated by the ADRV, the athlete could have easily been coaxed by a well-informed journalist into revealing information which would have been prejudicial against him once we had started the appeal hearing.

In another case, I represented a minor athlete against whom an Adverse Analytical Finding had been declared. We were able to obtain a TUE to explain the AAF. Had the information of the minor's athlete's AAF been leaked to the Press, this could have had life-changing consequences on her career even if the doping charge would have been lifted subsequently.

Solution proposed Although it is necessary for ADO's to notify NSO's that their athlete must be suspended for an ADRV, measures must be adopted to stop the public dissemination of the information that an ADRV has been brought against an athlete before a hearing has taken place (if that's what the athlete chooses).

This is even more important in cases where the athlete is a) a minor or b) is not represented by counsel. In an era where the Press wields enormous powers and with the #Metoo movement a perfect example of justice being administered by the public without due process, the Anti-doping process should be thoughtful of how it treats this sensitive information.

Sport New Zealand

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

Article 14

We query whether the identifying details of those who are alleged to have committed an ADRV should remain confidential while the case is proceeding. This is inconsistent with the general legal principle, including the principle that applies in serious criminal cases, that the identity of the accused will only be suppressed in certain circumstances. We accept that suppression of

identifying details may be necessary in some cases, but this should be the exception so that transparency and open justice can be maintained.

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 has the following comment:

Article 14.3.1 says that the 'identity' of a person charged with committing a violation can be publically disclosed, but only after notice has been given to that person. It is very limited: name only, and only once the person has been notified.

Article 14.3.5 says that no Anti-Doping Organisation (or WADA) can comment on the facts of a case unless the person charged has said something they need to respond to. That is different to disclosing the identity.

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 'necessary' and compatible with one of the lawful grounds for processing. It is highly doubtful whether publication (as opposed to disclosure to other Anti-Doping Organisations, for example) will be compatible with data protection regulations in every case.

Organización Nacional Antidopaje del Uruguay (ONAU)

SUBMITTED

Federico Perroni, Miembro Consejo Directivo (Uruguay)
NADO - NADO

AEPSAD

SUBMITTED

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

We do not believe that there is any inconsistency between article14.3.1 and article14.3.5 as, if an athlete publishes the information contained in a case file or any other information regarding the case, this is not the responsibility of the Organization, but rather of the athlete in question.

We consider it necessary to take into account the European Data Protection Regulations.

Irish Sports Council

SUBMITTED

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

Ø Article 14.3.1 says that an Anti-Doping Organisation may publicly disclose the identity of an Athlete who has committed an Anti-Doping Rule Violation and Article 14.3.5 says that no Anti-

Doping Organisation may comment on the specific facts of a pending case except in response to statements by the Athlete. This apparent inconsistency should be clarified.

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.

NADA Austria

SUBMITTED

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

This is no inconsistency. Anti-Doping Rule Violations have to be publicly disclosed (minimum information that is required). Further comments are not to be made, except if the person concerned tries to give wrong facts. A clarification of "in what extent", "to whom" and "on what legal basis" would be desirable. Finally, the provision shall be in line with the European Data Protection law.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA strongly suggests to review the principles of the public disclosure, taking into account the athlete's level and age, size of a country and a sports community etc. NADOs should have the stronger position in publishing of "historical" cases.

Also, the exception of the public disclosure Art 14.3.2 for the recreational-level athletes is only mentioned in the section of „definitions“. It could be noted also in the named Article, if reasonable.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Existe una aparente contradicción entre los Artículos 14.3.1, que dispone que una ONAD puede revelar públicamente la identidad de un atleta que ha sido acusado de haber cometido una infracción a las normas antidopaje, y el Artículo 14.3.5, que dispone, por su parte, que ninguna ONAD, laboratorios acreditado o personal de estas entidades, puede comentar hechos específicos sobre un caso pendiente, salvo generalidades o en respuesta a declaraciones del deportista o sus representantes.

Opinión/Sugerencia:

En nuestra opinión, esta aparente contradicción no existe, puesto que un Artículo se refiere a la identidad del deportista (14.3.1) y el otro a los datos específicos del expediente (14.3.5). Tal vez se requiera mayor precisión y/o claridad en la redacción de ambos artículos. Por ejemplo, habría que explicitar lo que se entiende por datos.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that the inconsistency identified between Articles 14.3.1 and 14.3.5 needs to be addressed.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The CCES does not see any inconsistency. The content of 14.3.5 merely operates as an exception to the more general rule in 14.3.1. One section deals with an athlete's identity and the other deals with the substantive facts in the case.

CCES may disclose the identity of an athlete once a violation is asserted. This is rather narrow and deals only with an athlete's identity.

However, if a case is "pending" – that is to say the CCES has not yet asserted a violation – and an athlete goes public about the facts of his case, the CCES or the laboratory may respond. This is an eminently sensible provision to permit a degree of "push back" regarding the facts of the case in reply to an athlete going public first.

The CCES sees no need to change the Code.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Article 14

We strongly support the suggestion that the rules concerning disclosure need clarification.

CITA

SUBMITTED

zorán Manojlović, head of anti-doping department of CITA (Croatia)
NADO - NADO

Although there is some inconsistency between Article 14.3.1 and 14.3.5, the Article 14.3.1 should be kept intact. However it is important for NADO not to be dragged in an attempt of an Athlete to make a public case out of the Result management process. In this regard we propose for the proceedings to be deemed confidential. The parties, the arbitrators and NADO should not disclose to any third party any facts or other information relating to Result management proceedings without mutual consent of the parties.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'article 14.3.1 doit préciser le moment à compter duquel l'identité d'un sportif contre qui une VRAD est alléguée peut être divulguée publiquement. De quelle notification s'agit-il ? (notification de la VRAD alléguée ? décision finale ?)
L'article 14.3.2 doit faire la lumière sur sa dernière phrase qui semble être une répétition de celle qui la précède.

UK Anti-Doping

SUBMITTED

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

There does appear to be a conflict between Articles 14.3.1 and 14.3.5. It would be helpful to provide clarity as to whether the fact that an ADRV has been asserted (ie a charge issued) may be published before the ADRV is proved.

Institute of National Anti-Doping Organisations

SUBMITTED

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

The point here is that the identity has already been publicly disclosed by the person or representative. The idea is that the ADO may not be the first to disclose the identity but may respond to such disclosure if it is by the person or representative. That seems at least implicit in the wording but if it can be simply clarified then do so.

Freelance journalist

SUBMITTED

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

There seems to be no inconsistency in these two articles, 14.3.1 and 14.3.5. One deals with public disclosure of the identity of an athlete who has committed an ADRV, the other with comments on specific cases. People authorized to disclose the identity of the athlete may do so but everyone connected with the processes may refrain from commenting on a case (as different from disclosing the identity of the athlete by a competent/authorised person in an organisation) unless in response to statements by the athlete. We have seen cases in India being debated on television even as cases are going on by members of the disciplinary/appeal panels (not associated with that particular case). Is this not objectionable, apart from it being unethical? There should be a clause

that prohibits such comments/debates in the media by members of the anti-doping organisations/labs/hearing panels etc.

GM Arthur Sports Representation

SUBMITTED

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

Article 14.3.1 says that the 'identity' of a person charged with committing a violation can be publically disclosed, but only after notice has been given to that person. It is very limited: name only, and only once the person has been notified.

Article 14.3.5 says that no Anti-Doping Organisation (or WADA) can comment on the facts of a case unless the person charged has said something they need to respond to. That is different to disclosing the identity.

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 'necessary' and compatible with one of the lawful grounds for processing. It is highly doubtful whether publication (as opposed to disclosure to other Anti-Doping Organisations, for example) will be compatible with data protection regulations in every case.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Athletes named publicly pursuant to Article 14.3.1 should be given a reasonable period to prepare themselves for this and to consider any appeal against being named.
- Clarify 14.3.5 to allow Anti-Doping Organisations to comment that an athlete is currently under investigation for an ADRV.

Article 14 - Data Protection (14)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of such consideration

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

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WADA needs to provide practical guidance on the EC GDPR to both European-based ADOs and to non-European ADOs with athletes living, training and competing on Europe.

A working group urgently needs to be established to determine if the Code and International Standards are applicable with the GDPR. Suggest involvement of ADOs that currently employ/contract data protection advisers/specialists/officials/experts.

Canadian Olympic Committee

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

SUBMITTED

We agree this needs to be addressed in the code

Ministry of Youth and Sport

Viktoria Slavkova, Chair of Working Party Sport, Deputy member of FB on behalf of EU (Bulgaria)
Public Authorities - Government

SUBMITTED

SUBMITTED BY WADA
LAST EDITED BY ADMIN

DATA PROTECTION

The EU and its Member States recall the concerns they previously raised¹ in relation to the 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 organisations. The EU and its Member States draw WADA's attention to the recommendations included in those previous submissions and invite WADA to consider the recommendations which have not yet been addressed.

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).

A more precise definition of the different purposes for concrete processing operations specified in the Code is needed.

In order to comply with EU law, EU NADOs must ascertain, when transferring personal data to third countries, that such transfers are compliant with the requirements of Chapter V of the General Data Protection Regulation. Notably, they must ascertain that any onward transfer from such third countries to another non-EU country shall comply with these requirements. In this regard, WP29 stressed that such transfers "will have to meet the requirement of an adequate level of protection in the destination country. If this level cannot be considered adequate, transfers can only take place on the basis of certain exceptions mentioned in article 26 of the Data Protection Directive, provided that they are not regular or massive." In order to ensure smooth transfers of personal data from EU Member States, WADA may consider addressing those issues in its revised Code or aiding NADOs in the development of additional safeguards.

¹ See the 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 which was part of the input previously provided by the EU and its Members States.

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 considers that it is absolutely certain that some Anti-Doping Organisations will need to change their practices.

Anti-Doping Organisations 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.

The Code can either reflect the standards contained in the GDPR, or be silent on them. But either way, the Code will be subservient to national law responsibilities. This creates obvious difficulties for the drafting team and it will be important for all stakeholders to assist WADA as much as possible in this difficult area.

Anti Doping Denmark

SUBMITTED

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

Article 14.3.2

The question of public reporting of decisions and other aspects of doping cases will always be delicate due to the conflict of interest between the persons' right to privacy and the ADOs' interest in publicity due to deterrence factors etc.

However, for certain ADOs (particularly NADOs) it has not been possible to fully abide by article 14.3.2 due to national data protection legislation which has prohibited the public disclosure of, for instance, names of doping offenders.

With the GDPR in force in the European Union by May 25th, 2018, which puts further emphasis on individuals' right to privacy, there is a need for WADA to rephrase article 14 to allow ADOs bound by the GDPR and national legislation to be Code compliant as well.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

C'est un point délicat.

Le nouveau RGPD entrera en effet en vigueur au mois de mai prochain, avec des droits renforcés, pour les citoyens européens.

Tout l'enjeu est de trouver un juste équilibre entre une lutte efficace contre le dopage et la protection des données (parfois sensibles) à caractère personnel. Ceci vaut, par exemple, pour la publication des décisions (ou des éléments obligatoires de celles-ci).

Dans ce souci de proportionnalité et d'équilibre, une proposition serait que seuls les éléments obligatoires des décisions concernant les sportifs d'élite soient publiés. En revanche, il n'y aurait pas de diffusion à tout public de ces mêmes éléments pour les sportifs dit amateurs, pour lesquels une telle diffusion pourrait être jugée disproportionnée (car pouvant dépasser le seul impact sportif). Pour ceux-ci un système d'accès sécurisé à ces données uniquement nécessaires serait mis en place et réservé aux seules personnes qui en ont l'usage, à de seules fins de lutte contre le dopage.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

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.

NADA Austria

SUBMITTED

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

In light of the new General Data Protection Regulation, the forwarding of personal data in third countries requires the equal data protection standard. It is up to WADA to implement a Standard which reflects the data protection principals of the European Union to ensure a data exchange between NADOs, IFs and WADA. WADA does have the legal competence to implement the principles of European Data Protection Law in third countries (outside the European Union) via the Code.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

SUBMITTED

on behalf of WADA Athlete Committee

Ben Sandford, Athlete Committee (Switzerland)
WADA - Others

SUBMITTED BY WADA
LAST EDITED BY ADMIN

Article 14 – Right to data protection

To the collection, transfer, storage, publication and confidentiality of their anti-doping related data in accordance with the relevant and applicable International Standard, as well as applicable data privacy laws.

GM Arthur Sports Representation

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

SUBMITTED

Anti-Doping Organisations 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. It is absolutely certain that some Anti-Doping Organisations will need to change their practices.

The Code can either reflect the standards contained in the GDPR, or be silent on them. But either way, the Code will be subservient to national law responsibilities. This creates obvious difficulties for the drafting team and it will be important for all stakeholders to assist WADA as much as possible in this difficult area.

Article 15 - Mutual Recognition (19)**ITTF**

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

SUBMITTED

In favor of such consideration

Union Cycliste Internationale

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

SUBMITTED

The UCI considers that the regime on mutual recognition needs significant clarification. As a starting point, the UCI does not necessarily agree that decisions can be automatically recognized by Signatories as “recognition” requires an analysis of whether the decision was consistent with the Code. This means that such recognition would constitute a decision in itself. The UCI is thus of the view that recognition decisions are independent decisions which can themselves be appealed.

With that said, the UCI is also of the view that signatories have the obligation to “automatically” recognize compliant decisions. The question that then arises is from when recognition is effective. For example, if an athlete is suspended from 1 January 2018, but the IF is not made aware of the decision (and thus has not “recognized” it nor had the opportunity to consider whether it is

compliant), what happens if the athlete has been competing at the international level in the meantime? This situation has arisen for the UCI in the past, and the consequences of article 10.12.3 (violation of the prohibition of participation during ineligibility) when decisions have not been recognized ought to be clarified.

Moreover, in terms of “compliant decisions”, the UCI does not see how the failure to appeal a non-compliant decision would constitute a waiver to challenge the decision’s compliance in the recognition process. This point should be clarified.

The UCI agrees that where provisional suspensions are compliant with the Code they ought to be recognized pending the process.

FIBA (International Basketball Federation)

SUBMITTED

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

Comments to this tie in with FIBA's proposed amendments to article 7.1.1. An International Federation should have more discretion with regard to recognition of decisions if there has been no prior opportunity to assume results management in the place of a NADO.

It is overly burdensome and costly (CAS proceedings would not be free of charge) for the only remedy to be an appeal of the national decision to CAS, when a decision can be taken in an international context, after the athlete has had his day in court and participated in a proceeding conducted in English or French.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree. Furthermore, strengthening these provisions is urgently required to prevent a recurrence of recent IF panel decisions failing to recognise IOC sanctions against Russian athletes.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

Provisional suspensions and final decisions should be applicable worldwide and be automatically recognized and respected by all Signatories.

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 has some concerns regarding the Article 15. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Article 15 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

SUBMITTED

Organización Nacional Antidopaje del Uruguay (ONAU)

Federico Perroni, Miembro Consejo Directivo (Uruguay)

NADO - NADO

SE SUGIERE MODIFICAR EL TEXTO DEL ARTÍCULO 15.1 DEL CODIGO, EL CUAL QUEDARÍA CON EL SIGUIENTE TEXTO:

15.1 Sin perjuicio del derecho de apelación que se dispone en el Artículo 13, los Controles, las decisiones de Suspensión Provisional, de las Audiencias y cualquier otra decisión final dictada por un Signatario, serán aplicables en todo el mundo y serán reconocidos y respetados por todos los demás Signatarios, en la medida en que sean conformes a lo dispuesto en el Código y correspondan al ámbito de competencias de ese Signatario.

AEPSAD

SUBMITTED

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)

NADO - NADO

In connection with the mutual recognition of provisional sanctions, although this is automatic in many cases, there are times when the situations become very problematic and so we are of the opinion that a detailed recognition procedure should be established in future in order to establish the responsibilities of each organization in order to comply with effective recognition.

SADA

SUBMITTED

Lubomir Gulan, Education Manager (Slovakia)

NADO - NADO

... and the Athlete's National Anti-Doping Organization should conduct a hearing consistent with Article 8 to determine whether the longer period of Ineligibility provided in the Code should be imposed.

This is sometimes impossible for NADO if athlete lives and competes abroad.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)

NADO - NADO

Tout à fait d'accord pour que des décisions conformes au Code soient reconnues automatiquement, sans autre acte administratif ou "judiciaire" complémentaire.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)

NADO - NADO

Scope of application for provisional suspensions

Comment: particularly relevant for interdisciplinary sports such as triathlon, cycling, athletics, modern pentathlon, boxing/kickboxing and powerlifting/weightlifting

SUBMITTED

Antidoping Switzerland

Matthias Kamber, Director (Switzerland)
NADO - NADO

agree, this should be fine tuned

NADA Austria

SUBMITTED

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

The current Code does not distinguish between a provisional suspension rendered under the Code and a de facto provisional suspension rendered by the club/team of the athlete. The effects for the athlete are the same. It would be desirable that the new Code could take this point into account and offers the Anti-Doping Commissions (courts) the opportunity to consider a de facto suspension by determining the beginning of the ban.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Se requiere ajustes en este Artículo, de aceptación unánime, en el sentido de aclarar que no es necesario que el reconocimiento automático de la decisión de una Organización Antidopaje deba ser refrendada por un reconocimiento de decisión formal, por otra ONAD.

Opinión/Sugerencia:

Sólo aclarar mediante nota escrita sobre lo innecesario de que exista un reconocimiento explícito de las decisiones.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees that recognition should be automatic with no need to issue a recognizing statement or decision.

For clarity, there could be added reference to provisional suspensions in addition to testing, hearing results and adjudications.

CCES proposes the following wording:

- 15.1 Subject to the right to appeal provided in Article 13, Testing, Provisional Suspensions, hearing results and all other final adjudications of any Signatory which are consistent with the Code and are within that Signatory's authority, shall be applicable worldwide and shall be automatically recognized and respected by all other Signatories.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

It is agreed that the treatment of mutual recognition of sanctions requires clarification. DFSNZ has encountered an issue whereby an Athlete asserted that DFSNZ's recognition of another signatory's period of ineligibility, in turn recognition of a non-signatory's sanction, did not constitute recognition of the original underlying ADRV. This becomes important in the context of multiple violations, and it ought to be made clearer that mutual recognition of sanctions includes recognition of the underlying ADRV.

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport, N

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Article 15

We support the suggestion that sanctions should be recognized without a separate recognition decision.

Agence française de lutte contre le dopage (AFLD)

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

SUBMITTED

Il est nécessaire de renforcer l'efficacité de la procédure de reconnaissance mutuelle, qui requiert des améliorations pour produire les effets escomptés.

A ce stade, l'AFLD s'interroge sur les points suivants:

- quelles décisions doivent être reconnues ?
- comment les OAD sont-elles informées des décisions à reconnaître ?
- quel doit être le contenu de l'examen de la conformité au Code de la décision à reconnaître, en particulier s'agissant des décisions rendues par les non-signataires ?
- quelle procédure suivre pour reconnaître une sanction ?

L'AFLD est par ailleurs favorable à l'introduction d'un mécanisme de reconnaissance des décisions de suspensions provisoires. Il faudra veiller aux délais de procédure afin de garantir l'efficacité d'une telle reconnaissance.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Agree that this should be automatic - except where the decision is by a non-signatory in which case a recognition decision is appropriate to demonstrate due diligence. The confidential nature of provisional suspensions is problematic but of course they need to be recognised and given effect. The cure is not immediately clear.

Article 18 - Education (18)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection

World Rugby

SUBMITTED

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

World Rugby supports the introduction of an IS for Education.

This suggestion may apply to either Education or 10.6, nevertheless we feel that currently the Anti-Doping community does not make enough use of genuine remorseful athletes and that the Code could offer incentives to encourage more to become involved in education.

One option may be to set pre-determined conditions at the start of a sanction relating to the athlete's participation in education. This would be reviewed half way or three-quarters of the way through the suspension period, and if the athlete had successfully met all conditions, they could apply for a reduction of 3-6 months (or proportional to the length of sanction) at the end of their suspension (as in good behaviour/parole).

World Rugby appreciate the potential difficulties in policing such a clause and in maintaining consistency among ADO's, but would propose that this option be explored. Perhaps a similar mechanism of WADA and the ADO/IF having to provide approval as already occurs under Article 10.6 would avoid possible abuse.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree. An important principle for the new International Standard for Information and Education, if not the 2021 Code itself, is equivalent or at least comparable treatment of athletes with an impairment. For example, ADO websites must be accessible to athletes with a visual impairment. The technology for this is well established. For further example: printed information about the doping control procedures or athletes' rights and responsibilities for Games-time use must have a multilingual braille or audio version for when athletes with a visual impairment compete.

Ministry of sport of Russia

SUBMITTED

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

It is proposed to describe in more detail the roles of various organizations in the process of implementation of the educational programs on anti-doping subjects:

- National Anti-Doping Agencies develop and implement educational programs.
- National Sports Federations coordinate the running of educational events for athletes of all levels.
- National Olympic Committees coordinate the running of educational activities prior to the events held under the auspices of the IOC.
- National Paralympic Committees coordinate the running of educational activities prior to the events held under the auspices of the IPC.

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 propose to considerably expand the current article on Education and introduce new concepts and definitions which will also be described in detail in the International Standard for Education. In addition the Code and relevant standards should detail the roles and responsibilities of Signatories as well as should foresee proportionate consequences if anti-doping education is not being implemented. In the time available since the Code Review process was announced, the Council of Europe carried out substantial consultations on education, but comprehensive comments will be provided as part of its response to the 2nd phase of the consultation.

SADA

SUBMITTED

Lubomir Gulán, Education Manager (Slovakia)
NADO - NADO

The Code 2015 says in Article 18.1: The objective shall be to prevent the intentional or unintentional *Use by Athletes of Prohibited Substances and Prohibited Methods*.

This should be either expanded to all kinds of ADRV's of all subjects or to promote positive values.

AEPSAD

SUBMITTED

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

We believe that there must be a common position on how to establish compliance with the new international education standard. It must be understood that this common position must apply to all of the signatories of the Code, the IF, Major Event Organizers, Olympic Committees and other signatory organizations.

Anti Doping Denmark

SUBMITTED

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

Education: As the Code covers many more ADRVs than "use by Athletes of Prohibited Substances and Prohibited Methods", we suggest that article 18.1 is amended as follows:

"The basic principle for information and education programs for doping-free sport is to preserve the spirit of sport, as described in the Introduction to the Code, from being undermined by doping. The primary goal of such programs is prevention. The objective shall be to prevent that Athletes intentionally or unintentionally commit an anti-doping rule violation."

RUSADA

SUBMITTED

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

1. Amendments related to Chapter 18 "Education".

We propose to move "Education" chapter immediately after "Definition of Doping" chapter, since the key goal of the international anti-doping system is to preserve the spirit of sport and prevent the use of doping. Education is aimed at increasing knowledge, availability of information, development of personal qualities, as well as giving a choice in making decisions to prevent intentional and unintentional use of doping.

2. To amend Article 18.1 "Basic Principle and Primary Goal" to reflect the following:

The leading educational role should belong to National Anti-Doping Organizations, and each International Federation must require its member National Federations to provide them with a plan of educational anti-doping activities, as well as documents confirming that athletes have attended anti-doping educational courses, at very least for athletes planning to compete in national and international competitions, as well as strongly recommend to attend such educational courses to athletes below the national level.

3. To amend Article 18.2 "Programs and Activities"

Division and prioritization of topics recommended for implementation as mandatory, desirable or in accordance with the requests of a specific target group. Adding an Article (which will entail changes to Chapter 20, "Roles and Responsibilities") regulating the responsibility of specific signatories for implementation of specific block of topics.

4. More detailed description of Article 18.4 "Coordination and Cooperation" should be provided in the 2019 International Standard for Education.

5. **Revision of Articles 20.3, 20.4, 20.5, 20.6, 20.7**, taking into account the redistribution and strengthening of the functions of organizations responsible for anti-doping education.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

An International Standard for education does not seem to bring additional benefits, since the principles of education are defined in art. 18. An IS Education might even bring a "one size fits all approach" that does not work in real world and might even hinder organizations to make their education campaigns well-adjusted to culture and circumstances.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

The significant item in this article is that with the new ISE, Prevention and Education are defined as two separate entities. Prevention is then being used as an umbrella term for the wider anti-doping system, while Education includes 5 component parts that make up a Clean Sport Education Program. This is the only part of the new Standard that deviates significantly from the Code in terms of terminology, and if adopted, will need to be considered as part of the Code revision process.

In addition we would strongly suggest keeping the Article 18 as brief as possible and making frequent references to the ISE to have greater flexibility.

Regarding Article 20 – roles and responsibilities - the word “promote” is used so much that it no longer means anything. We need a clear definition of the roles and responsibilities of any organization regarding education.

NADA Austria

SUBMITTED

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

The main purpose of the WADC is to serve as the basis for Clean Sport Culture through prevention. The aim of all prevention is clean and healthy sport (not just stopping intentional or unintentional ADRV).

A Clean Sport Culture through prevention consists of four components:

-

Education

-

Deterrence

-

Detection

-

Enforcement

These fields of anti-doping work are not independent or standalone sections, but are interconnected and amplify each other. These approach should be reflected in the introduction of the WADC and affects the structure of the whole framework.

The core document for Education is the upcoming International Standard for Education (ISE). As with all other Standards, the WADC needs to establish the basis for the ISE and emphasize the importance of Education as one core pillar of Anti-Doping.

Section 18 of the WADC should not go into too much detail about specific aspects of education (not like the current Article 18.2 “Programs and Activities”) but rather introduce the framework for the ISE and the corresponding Code Compliance mechanism (as compared to testing, TUE, etc. – which have only a number of pages in the WADC and leave the rest to the various Standards). For example:

-

Purpose of Education

-

Scope of Education

-

Education Plan

-

Education Requirements (eg. “All *Education* shall be conducted in conformity with the International Standard for Education”)

To support these framework the roles and responsibilities in Article 20 have to be amended to reflect the obligations. Basic principles are “delivering” Education (instead of the current “promote”), evaluation, cooperation and coordination between NADOs, RADOs, IFs, MEO, governments). The ISE shall deal with the matter of different levels of resources in an appropriate way, as the ISTI deals with this matter for testing and investigation.

Failures to comply with the ISE will be regulated through the Code Compliance Process.

Estonian Anti-Doping Agency

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

SUBMITTED

EADA strongly suggests to have a second look at the outline of the section. The critical importance of education and prevention needs to be established within the introduction sections of the Code. In addition, the integration of education as part of a comprehensive response to doping alongside testing, investigations etc. needs to be given emphasis throughout the document.

EADA, knowing the draft of the International Standard on Education, strongly supports the idea that the whole WADC (code) has to serve as the basis for clean sport culture, so the prevention and education have to be more emphasised as before.

WADA could consider if Art 18.4 (Coordination and Cooperation) should be updated with the procedure of the annual statistical reports about the educational activities and target groups reached (as is stated for testing in Art 14.4)

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)
Other - Other (ex. Media, University, etc.)

Education costs money to develop, implement and enforce and resources are limited. Because education does absolutely nothing in a strict liability scenario, I find it difficult to justify. For example, Norwegian cross-country skier Therese Johaug's team doctor was one of the most educated in the entire anti-doping system, to absolutely no avail. Education may have the ability to reduce inadvertent doping, which would be positive, but I am not sure there is a causal link.

Institute of National Anti-Doping Organisations

SUBMITTED

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

It is important that the Code not only recognises and facilitates the implementation of the new Standard but also that its priority is given clearer recognition. While it would be unhelpful to alter the Article numbering, the relegation of Education to a few pages at the tail end of the Code does not do it justice. The critical importance of Education (in the widest meaning of the term) needs to be established within the introduction sections of the Code. In addition the integration of education as part of a comprehensive response to doping alongside testing, investigations etc. needs to be given emphasis throughout the document. Saying the same thing from another perspective the Code should not in any way imply that the different sections are somehow standalone and operate independently from each other. We have not had time following on from recent meetings to pin down how this might look in terms of the specific drafting but the concept is important to bear in mind as the Code evolves. Of course the responsibilities section of the Code must recognise and provide for the mandatory implementation of the Standard by all ADOs. Note - for the Standards consultation - the Standard needs to provide core requirements but not be so demanding as to be unattainable.

SUBMITTED

UK Anti-Doping

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Guidance towards resources related to medication/supplements in the UK is fairly easy, however in other countries this issue may require addressing to assist athletes.
- There must be consideration of the fact that anti-doping education varies widely between nations. We would like WADA to bridge that gap. WADA could encourage IFs to take the lead from junior level to senior level in ensuring at least a minimal level of anti-doping education is being provided.
- Would WADA consider providing anti-doping education as a compulsory prerequisite before every major championship in order for athletes to compete – maybe through workshops, seminars or an online test?

Article 20 - Responsibility of Officials (20)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Agree on the principle, but not adding a specific paragraph for “Officials” in Art.20. It will overlap many of the provisions relating to the various ADOs designated in this Art.20.

First, there should be a clear Definition of an “Official” that would fit within the various categories of Signatories.

In favor of considering WADA capacity to impose duty to investigate.

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that officials should be bound by the provisions of the Code, in particular as the inability to assert an “ADRV” for complicity and/or 10.12.3 against officials is a loophole of the current WADC. For example, if a national federation delivers a licence to a banned athlete, the UCI will proceed the case against the athlete under 10.12.3. However, if officials are not bound by the WADC, it is difficult to pursue the NF’s involvement as provided at para.3 of art. 10.12.3 WADC.

Furthermore, the UCI considers that if the “tracking” of ASP is required, WADA should be very clear on precisely what is required from the ADO.

As to mandatory investigations, the UCI considers that: (i) this should be an issue of Code compliance; and (ii) there should be very clear guidelines for when WADA can “mandate” an investigation, taking into account an organisations’ testing priorities and budget.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree that better tracking is required. If WADA imposes a duty on an ADO to investigate a matter it should provide clear guidance and resources to assist such ADO.

Ministry of Culture

SUBMITTED

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 encourage WADA to:

■

Extend the group of actors covered by anti-doping rules, e.g. intermediaries, sport leaders and sport politicians: Any person in a position to influence the choices and careers of athletes, including (but not limited to) agents, who is aware of the use of doping but does not actively discourage it, or who actively promotes the use of doping, should be held responsible under the Code. Other examples of actors who should be covered by the Code are sports leaders or politicians who have either actively taken part in actions resulting in non-compliance or in other ways circumvented or undermined the Code.

Council of Europe

SUBMITTED

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

A) The Council of Europe propose to revise the Roles and Responsibilities of NADOs and set clear criteria and definition of the independence in their decisions and activities.

B) The Council of Europe propose to revise the roles and responsibilities of signatories in the field of education and reflect at least the following:

- NOC/NPC responsibility to inform athletes and Athlete Support Personnel of the anti-doping rules for the Games at which they intend to participate;

- International Federations responsibility to ensure appropriate information and education program for any athlete joining an international-registered testing pool and require National Federations to conduct clean sport education programs

- NOC/NPC responsibility to actively support clean sport education and require National Federations to conduct clean sport education programs;

- NADO responsibility to coordinate the clean sport education system for their country, working in collaboration with other signatories, National Federations, Governments and professional associations, as well as to ensure an appropriate information and education program is in place for any athlete joining a national-registered testing pool;

- responsibility of all signatories to have an anti-doping/clean sport point of contact to support effective collaboration.

In respect to the above proposals for Article 20 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ONAD - Colombia

SUBMITTED

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

Group of South American Lawyers from NADOs:

1. Aiming to fight against the structures that supports doping in sports, it is suggested to include the paragraph 20.5 in the Article 20, " Roles and Responsibilities of the Anti-Doping Organizations", the promotion of measures allowing to fight doping in sports together with other national authorities (for example police, public prosecutors, custom, and sanitary authorities, among others) .

It is proposed that the signatory States promotes in their criminal legislation the establishment of the crime of supplying doping substances, which will facilitate the police to act against such conduct.

As an example, we suggest to write the Article 362 d of the Spanish Penal Code, developed in the Chapter on Crimes against Public Health, as follows:

"ARTICLE 362

1. Those who, without therapeutic justification, prescribe, dispense, supply, administer, offer or facilitate non-competitive federated athletes, non-federated athletes engaged in recreational sports or athletes participating in competitions organized in Spain by sports entities, banned pharmacological substances or groups, as well as non-regulatory methods, intended to increase their physical capabilities or modify the results of competitions which, by their content, repetition of ingestion or competing circumstances, endanger life or health will be punished with a penalty of prison varying from six months to two years, fine of six to eighteen months, and special declassification for employment or public office, profession or qualification from two to five years.

2. The penalties provided for in the previous paragraph shall be imposed in the upper half when one of the following circumstances occurs:

- 1. The victim is a minor;*
- 2. That deception or intimidation has been used;*
- 3. That the responsible has taken advantage of labor or professional superiority.*

2. " In the Article 20 " Additional Roles and Responsibilities of Signatories', item 20.3, we suggest to incorporate new requirements from the International Federations to the National Sports Federations, for example, that the National Governmental Bodies should provide the whereabouts of their athletes."

AEPSAD

SUBMITTED

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

It is necessary to clarify the role of officials and which professional profiles can be considered as officials since potential consequences could arise in certain circumstances for persons belonging to organizations without being responsible for any act or event, but just through being considered as 'officials'.

Irish Sports Council

SUBMITTED

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

Ø Articles 20.1-20.4 should require that all officials agree to be bound by the provisions of the Code.

Ø Sport Ireland would welcome the Code imposing a duty on Anti-Doping Organisations to investigate a matter when requested to do so by WADA.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

Qui vise-t-on par officiel ?

Si ce sont les personnes des OADs, cela semble aller de soi et la responsabilité doit, à notre avis, être celle du signataire (OAD) et non celle de ses membres individuellement. Sinon, c'est le droit commun de la responsabilité civile ou pénale qui s'applique.

Mener une enquête sur requête de l'AMA, pourquoi pas, mais alors prévoir une procédure souple, permettant une concertation, un dialogue avec l'AMA, notamment pour préserver l'autonomie opérationnelle des OADs.

Plus fondamentalement pour nous - c'est une si pas notre remarque principale de toutes - il conviendrait à notre avis, de reformuler l'article 20.5.7 du Code car ce dernier semble établir, in fine, une obligation de résultat, à charge des signataires, pour que des décisions conformes au Code soient toujours prises.

Or, dans notre cas, l'ONAD est compétente pour réaliser des contrôles et mener des enquêtes mais la compétence disciplinaire relève exclusivement pour le moment des fédérations sportives et dans un futur proche d'un seul et même tribunal antidopage tout à fait indépendant de l'ONAD. Nous ne voudrions pas, en vertu notamment du principe de la séparation des pouvoirs, pouvoir être considéré comme responsable d'une décision, prise en appel, par un tribunal indépendant, dès le moment où nous aurions fait appel d'une première décision non-conforme. En d'autres termes, nous voulons nous assurer que nous ne pourrions jamais être tenu responsable d'une décision non tout à fait conforme, prise en degré d'appel, par un tribunal antidopage indépendant, alors que nous avons fait appel pour tendre à la meilleure application possible des règles du Code relatives aux conséquences. In concreto, nous proposons de reformuler le final de cet article pour éliminer tout doute possible par rapport à cette crainte d'obligation de résultat que nous estimons en aucun cas ne devoir supporter.

Une proposition serait d'écrire "(...) et tout mettre en œuvre, dans le respect de la séparation des pouvoirs et de l'indépendance des juges, pour s'assurer de l'application correcte des conséquences".

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)

NADO - NADO

- 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 within the scope of these articles.

- 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.

NADA Austria

SUBMITTED

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

The provisions of the Code should bind every Official who is part of the sport- and Anti-Doping community. Otherwise, it is legally not possible to sanction these Officials by the provisions of the Code (esp. Art. 2).

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)

NADO - NADO

EADA fully supports the need for better tracking of Athlete Support Personnel and overall improvement in the investigation procedures.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)

NADO - NADO

Las Organizaciones Antidopaje deberían solicitar a todos sus oficiales un compromiso (formal) con las disposiciones del Código Mundial Antidopaje.

Opinión/Sugerencia:

Nos parece absolutamente pertinente y necesario que se introduzcan modificaciones en este sentido. Sin embargo, estimamos que otras disposiciones deben ser incluidas en el Código, con relación a los Oficiales de las ONAD, especialmente en relación con los Oficiales de Control de Dopaje. Su papel no parece crucial y tal vez sea la piedra angular del sistema antidopaje.

Parece indispensable establecer normas sobre el nivel técnico, la calificación y la clasificación de acuerdo con un escalafón mundial *ad hoc* (elaborado por AMA), que regulen la calidad de los Oficiales de Control de Dopaje y que sea respetados por todas las Organizaciones Antidopaje y Organizaciones Deportivas signatarias del Código Mundial.

Se ha llegado a establecer esta proposición debido a la experiencia negativa, en materia de antidopaje, que se observó en los Juegos Olímpicos de Río de Janeiro, en los cuales se verificó que una gran cantidad de oficiales no eran tales o no tenían el nivel como para desempeñarse en un evento de tanta envergadura. Las competencias parecieron inadecuadas en muchos niveles estructurales del Programa Antidopaje de los citados Juegos Olímpicos.

La experiencia de los Juegos Olímpicos de Río de Janeiro no es la única en la que se han producido “desajustes” debidos a la mala calidad técnica de los recursos humanos encargados de la recogida de muestras o a la inexistencia de un sistema de calificación que otorgue a cada Oficial tareas correspondientes con su nivel de preparación y con su experiencia.

Parece indispensable contar con una autoridad que regule estas materias que, a nuestro entender, no pueden ser entregadas a las ONAD, puesto que la diversidad de objetivos, enfoques, nivel de desarrollo, que éstas tienen, llevaría a establecer un cuerpo de OCD (DCO) absolutamente heterogéneo (justamente lo que ocurre hoy día) que contravendría dos de los principales principios que sustentaron la creación del Código Mundial Antidopaje: la armonización y la coordinación en el seno de la lucha antidopaje.

Canadian Centre for Ethics in Sport

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

SUBMITTED

CCES agrees that Article 20.1-20.4 should include the requirement that all officials agree to be bound by the provisions of the Code. To that end, CCES proposes the following edits:

- Add to Article 20.1 to 20.4 and 20.6: To cooperate fully with WADA in connection with investigations conducted by WADA pursuant to Article 20.7.10.
- Edit to Article 20.5: To cooperate fully with WADA in connection with investigations conducted by WADA pursuant to Article 20.7.10.
- Add to Article 20.1-20.6: To investigate a matter when requested by WADA to do so pursuant to (insert reference the new point under 20.7, suggested below)
- Add to Article 20.7: To direct Anti-Doping Organizations to investigate matters when requested to do so by WADA.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ agrees that Article 20 should require that all officials agree to be bound by the Code.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable au renforcement des dispositions sur les responsabilités des officiels.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)
Other - Other (ex. Media, University, etc.)

“Required” adoption of the Code remains one of its fundamental weaknesses. Officials, along with athletes, personnel and perhaps even signatories should have the opportunity to bargain.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Agree in principle but any such provision needs to reflect the practical reality of this for small under resourced ADOs. Perhaps it should be a broad "expectation" but narrow its mandatory focus only in relation to those attached to elite teams/events. ADOs are already required to "vigorously pursue" if this is not sufficient then it needs to be given more teeth generally and not just with respect to WADA requests. The ability of ADOs to balance this with a realistic assessment of their capacity to investigate multiple potential cases at once may need to be recognised.

GM Arthur Sports Representation

SUBMITTED

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

Officials: ‘Officials’ are included within the definition of ‘Athlete Support Personnel’, as long as they are ‘working with, treating or assisting’ Athletes preparing for sports Competition.

Any gap therefore exists in relation to Officials who have an involvement in or knowledge of doping, but are not engaged in ‘working with, treating or assisting’ Athletes preparing for sports Competition.

The policy objective is to ensure that these persons can be excluded from sport – perhaps the most efficient way to do this would be to give International Federations the power to exclude such person from their own sport, and for other International Federations to recognise such exclusions in their own governance.

Investigations: giving WADA the power to compel a NADO to undertake an investigation is not consistent with the NADO’s right to be operationally independent.

Article 20.5.7 of the Code requires NADOs to investigate doping matters, and the ISCCS regulates this. That is satisfactory. WADA should not be in a position to direct any third party to conduct an investigation, particularly at its own cost.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- We already implement a policy under which officials have to work to the same standards as athletes. We believe they should be subject to the same sanctions.
- Defining who is or isn't within the definition of ASP is difficult e.g. is a parent or the person who drives an athlete to a venue part of the athlete support community? Tracking all such individuals would be difficult
- We would very much support better tracking of Athlete Support Personnel as we go to great lengths to ensure our Support staff have completed thorough anti-doping education and we would encourage other to do the same.
- Questions were raised during discussions as to the process of investigating a matter requested by WADA. Who would bear this cost and how would it be handled?

Article 20 - New Signatories (9)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of such consideration.

Moreover, this should be reviewed in the light of more consistency in the Definitions of ADOs, Signatories, and Art. 23, that also mentions an "invitation" by WADA . In relation to this, a Definition of "International Federation" should be included in the Code.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

strongly agree

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Disagree. Such a matter of process is better addressed in the ISCCS or some other lower-level document that is easier to modify than the Code if necessary.

Council of Europe

SUBMITTED

Council of Europe, Sport Convention Division (France)

Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

At the meeting of the WADA Executive Committee (ExCo) on 20 November 2010, the issue of sport bodies seeking Code Signatory Status was raised and the WADA Management requested guidance from the ExCo as to whether to impose any criteria on federations seeking to sign the Code while evaluating their requests. It was decided that WADA would ask any sports bodies seeking Code Signatory status to provide verification of acceptance by the International Olympic Committee (IOC) or SportAccord.

The 2015 Code represents a global universal tool for the protection of clean athletes worldwide. The current WADA policy towards federations and sport organizations seeking Code Signatory Status limits the worldwide application of the Code and discriminates between athletes affiliated with IOC or SportAccord member-federations on the one hand and all other sport organisations and federations on the other hand.

The exclusive right of IOC or SportAccord member-federations to decide whether another sport organization or federation can become a Signatory to the Code is inconsistent with the principles of the Code and could potentially harm the global fight against doping in sport.

It is proposed therefore to widen the scope of the current policy and to allow federations that are not affiliated with the IOC and/or SportAccord to become Signatories to the Code without the need for approval from the IOC and/or SportAccord.

The current process is flawed and requires reform. There is no logic to having a third party being in a position to veto an applicant.

An applicant that fulfils the criteria for adopting the Code should be endorsed as a Signatory by WADA alone. There should not be any potential for conflicts of interest arise, particularly if vetos are applied by sports to preserve their own statuses.

Anti Doping Denmark

SUBMITTED

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

Article 20 about the Roles and Responsibilities of stakeholders should be amended to include an article about WADA itself and its structure and governance.

In addition, articles 20 and 23.1 should include independent anti-doping service providers such as ITA, PWC, IDTM etc. to ensure that these companies are bound by the Code. The ADO that hires such service providers should not be held solely responsible for the actions of the service providers in terms of Code compliance, following WADA International Standards, etc.

In accordance with this, we propose the introduction of a system of accreditation by WADA for such service providers along the same lines as WADA's accreditation of laboratories.

NADA Austria

SUBMITTED

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

Requirements for new signatories must be divided into the respective groups of applicants (e.g. new IF's, new testing organizations ITA etc.), what about organizations like PWC?

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES agrees.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

GM Arthur Sports Representation

SUBMITTED

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

At the meeting of the WADA Executive Committee (ExCo) on 20 November 2010, the issue of sport bodies seeking Code Signatory Status was raised and the WADA Management requested guidance from the ExCo as to whether to impose any criteria on federations seeking to sign the Code while evaluating their requests. It was decided that WADA would ask any sports bodies seeking Code Signatory status to provide verification of acceptance by the International Olympic Committee (IOC) or SportAccord.

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The exclusive right of IOC or SportAccord member-federations to decide whether another sport organization or federation can become a Signatory to the Code is inconsistent with the principles of the Code and could potentially harm the global fight against doping in sport.

It is proposed therefore to widen the scope of the current policy and to allow federations that are not affiliated with the IOC and/or SportAccord to become Signatories to the Code without the need for approval from the IOC and/or SportAccord.

The current process is flawed and requires reform. There is no logic to having a third party being in a position to veto an applicant.

An applicant that fulfils the criteria for adopting the Code should be endorsed as a Signatory by WADA alone. There should not be any potential for conflicts of interest arise, particularly if vetos are applied by sports to preserve their own statuses.

Article 20 - Laboratories (7)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

The IPC ADC holds it comment pending review of those recommendations.

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 has some concerns regarding the Laboratories. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Laboratories the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation

NADA Austria

SUBMITTED

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

No comments.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES currently has no comment since the recommendations have not been provided.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Institute of National Anti-Doping Organisations

SUBMITTED

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

It is not clear how this relates to 22.6 - autonomy of NADOs?

Compliance - WADA's Own Code Compliance (15)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Then WADA shall be removed from the list of Signatories in Art.23.1.1. and its Roles and Responsibilities under Art.20.7 should be removed.

Subsequently, the matter is not about monitoring WADA's Code compliance. This is rather a governance matter and relates to an independent monitoring and assessment of WADA's overall performance and efficiency, based on its strategic objectives and according to recognized international standards, should the case occur (for example the ISO 9001:2015 certification of the Code compliance program already in place).

Union Cycliste Internationale

SUBMITTED

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

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.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

There should be a mechanism for monitoring and enforcing WADA's own Code compliance. It should be in the hands of an independent body (such as a new WADA Ethics Commission as is being discussed in the WADA Governance Working Group).

AEPSAD

SUBMITTED

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

The document entitled “Review of the 2021 World Anti-Doping Code: Issues to be studied and discussed” clearly expresses (in the “COMPLIANCE” section) WADA's opinion that the WADA itself is not a Signatory. However, Article23 of the Code lists the entities that will be Signatories accepting the Code, mentioning first of all the WADA and the International Olympic Committee (IOC). The International Standard for Compliance with the Code defines the WADA as the party responsible for monitoring the Signatories' compliance with the Code and the application of the International Standards. The standard also states that the Code is the source of this definition of the WADA.

The fact is that, on the one hand, the Code foresees that compliance with the Code will be monitored by the WADA or in any other way agreed by this organization (art.23.5.1) and, on the other, that the signatories of the Code, as the ISCCS itself recalls, undertake to comply with a series of technical, legal and operational requirements established in the Code and in the Standards.

What neither the Code nor the ISCCS does at any point is exempt any signatory of the Code from compliance with it. This includes the WADA and the IOC, which would not be excluded either. Nonetheless, there is not a single word about the evaluation of the Code's fulfilment by WADA, nor even of its own rules.

This situation, in which the entity that dictates and proposes the rules is not expressly subject to the same regime as the other signatories, is irregular and can only lead to conflicts and malpractice. There is no justification for excluding one or more of the Signatories from oversight, all the more so when the Code itself foresees the possibility of approving alternative systems.

For this reason, and in view of the exemplary role that the WADA must play in this matter, it is proposed that both the WADA and the IOC also be monitored by external independent authorities, just like the other Signatories. This oversight could be performed through the contracting of external auditors engaged by an independent international body such as the UNESCO or another entity.

It must also be debated whether the compliance audit ought to be performed by entities from completely outside the world of the fight against doping as there is also no justification from a material standpoint for an institution that has the status of Signatory to evaluate and impose sanctions on other entities or organizations with an identical status. The complete and absolute independence of the auditor is a *sine qua non* condition for the credibility of the compliance oversight system, and in no case can any party who should be setting an example be exempted.

In exactly the same vein, the Code must establish the rules governing the WADA itself, determining a complete legal regime for its functions and responsibilities. Vague or grandiloquent declarations are not sufficient, rather the rules for good governance of the entity destined to lead the fight against doping must be developed in detail. In this regard, it is essential to endow the system with transparency. In fact, declarations regarding proportional representation of continents and countries, the right of Signatories to participate and be taken into account when drafting the budget and in the designation of members of Wada's organic structure are of little value if all of this is overshadowed by a lack of access to information. The WADA must be a democratic and participatory entity, but above all it must be transparent.

For this reason it is proposed to create a committee to draw up and develop the legal statute for the WADA for inclusion in the code and for this to include the following matters and be approved by a qualified majority of the signatories:

-

Accountability.

-

Regime for appointment, functions, competencies and operation of the various bodies and committees of the WADA (CRC, Scientific Committee, etc.) with the establishment of professional criteria and the plural representation of signatories.

-

Transparency in the WADA's accounts and economic management through the publication of an economic annual report audited by an independent entity.

Anti Doping Denmark

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

SUBMITTED

Article 20 about the Roles and Responsibilities of stakeholders should be amended to include an article about WADA itself and its structure and governance.

In addition, articles 20 and 23.1 should include independent anti-doping service providers such as ITA, PWC, IDTM etc. to ensure that these companies are bound by the Code. The ADO that hires such service providers should not be held solely responsible for the actions of the service providers in terms of Code compliance, following WADA International Standards, etc.

In accordance with this, we propose the introduction of a system of accreditation by WADA for such service providers along the same lines as WADA's accreditation of laboratories.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

WADA itself should be held accountable as well. In contrast to several ADOs that have a distinctive quality control (e.g. ISO certification), WADA lacks this completely. WADA would benefit from its own compliance / quality assurance process.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

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."

NADA Austria

SUBMITTED

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

WADA can not 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.)

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA agrees that WADA's own code compliance is of great importance and all measures should be taken asap to restore the WADA's strong position within the sports community.

Canadian Centre for Ethics in Sport

SUBMITTED

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

WADA is the global regulator so its actions and conduct are subject to review strictly within the revised WADA governance structure.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Compliance

We strongly agree that WADA's own Code Compliance should be monitored and enforced.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Du point de vue de l'AFLD, la question centrale n'est pas celle de savoir si l'AMA doit être soumise aux mêmes règles que les signataires du Code. En revanche, la question est celle de la bonne gouvernance de l'AMA, et celle du respect par cette dernière des règles qui lui sont applicables, qu'elles soient issues du Code, des Standards internationaux ou de sa réglementation interne. Des mécanismes de contrôle du respect par l'AMA de ces règles doivent exister. Ils pourraient par exemple prendre la forme d'audits indépendants.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)
Other - Other (ex. Media, University, etc.)

WADA should be sanctioned in some way when it does not comply with its obligations. WADA is a major cause of the crisis in anti-doping when, for example, WADA allows a hole to be cut in the WADA Sochi lab, ADAMS entries to be compromised in a WADA database, or samples tampered with in WADA-selected collection vessels. These are all breaches of various roles of WADA in s. 20.7 of the Code.

WADA does seem to be a signatory to the Code, because s 23.1.1 says “The following entities shall be Signatories accepting the Code: WADA...”

The substance or enforcement of sanctions against WADA are difficult to conceptualize. The best enforcement so far has been by journalists. Perhaps the role of journalists should be formalized in some way. Anti-doping funding sent to independent journalists would be far better spent than any kind of potential enforcement scheme. Penalties for WADA would seemingly need to be directed towards leadership staff, and should include bans on attendance at Olympics/Paralympics/WC, firings, and bans from participating as administrators in any sport for a period similar to athlete/personnel bans.

Institute of National Anti-Doping Organisations

SUBMITTED

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

WADA needs to distinguish itself from other signatories but recognise that it has numerous roles which are indeed governed by the Code and which it must comply with. Suggest that an alternative compliance process be generated by the independent Compliance Committee.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- WADA should be a signatory of the Code.

Compliance - Consequences (15)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of not incorporating such consequences in the Code itself. Make reference to the ISCCS.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

yes

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Yes. This warrants Code treatment.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

Yes consequences need to be incorporated into the code. Furthermore we feel there needs to be a mechanism to administer additional sanctions to IF's, NF's and NOC's that have multiple offences in a defined period of time

Ministry of sport of Russia

SUBMITTED

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

It is proposed to add a provision that 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.

Ministry of Culture

SUBMITTED

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 encourage WADA to:

■

Codify consequences for non-compliance: Just like sanctions for individuals' anti-doping rule violations, consequences for non-compliance should follow directly from the Code and not only from an International Standard.

Irish Sports Council

SUBMITTED

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

Ø The consequences for Signatory non-compliance currently set out in the International Standard for Code Compliance by Signatories should be incorporated into the Code as part of Code Article 12.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

see comment on "Compliance - WADA's own Code compliance"

NADA Austria

SUBMITTED

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

Consequences for non-compliance should be incorporated into the Code. However the ISCCS needs to be more transparent and requires an objective and efficient value system.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES does not believe the consequences for Signatory non-compliance should be in the Code. They should remain in the International Standard for Code Compliance by Signatories to avoid the Code becoming too complicated.

Comisión Nacional de Control de Dopaje

SUBMITTED

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

Todos los aspectos del cumplimiento para los signatarios, actualmente establecidos en el *Estándar Internacional para el Cumplimiento del Código por los Signatarios*, DEBEN ser incorporados en el Código Mundial Antidopaje -CMA-, como parte del éste, ya sea integrando artículos existentes, ya sea constituyendo nuevos artículos. No se debe olvidar el carácter "obligatorio" para los estados (gobiernos) que tiene la adopción de los principios del Código, a través del Artículo 4 de la CICDD, en sus propias normas antidopaje. Esta obligatoriedad no es tal para los Estándares.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:**1.Ministry of Health, Welfare and Sport,****2.NOC*NSF,****3.Athlete's Committee NOC*NSF****4.Anti-Doping Authority the Netherlands****Compliance**

We strongly agree that the consequences for Non-compliance should be incorporated into the Code.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

UK Anti-Doping

SUBMITTED

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

The consequences for signatory non-compliance listed in the ISCCS may be a bit lengthy to be incorporated in the Code. Possibly a summary of consequences, and reference to the ISCCS, could be listed in the Code instead.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Consequence of non-compliance of the Code by signatories should be written into the main Code.
- Clarification of expectations of National Federations within the code would be welcomed.
- We would welcome more information and clarification regarding Olympic and Paralympic Committees role in monitoring and enforcing Code compliance with NGBs.
- Can WADA make it clear how much notice they provide to Signatories when an audit is about to take place?
- Careful consideration should be given on whether to subject individuals who are responsible for non-compliance to sanctions. There will be many degrees and levels of fault and various situations that can arise under non-compliance. For example, failure to meet the

MLAs in the TDSSA compared to recent events surrounding Russian athletes. We need to be clear what we are talking about here.

Compliance - Role of the Compliance Review Committee (11)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In favor of not incorporating the role of the CRC in the Code itself. Make reference to the ISCCS.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

yes

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Yes

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

The role of the Compliance Review Committee should be specifically mentioned in the Code. We also believe the Compliance review Committee needs to be adequately resourced, and empowered, to enforce the code.

Irish Sports Council

SUBMITTED

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

Ø The role of the Compliance Review Committee (CRC) should be specifically mentioned in the Code.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

see comment on "Compliance - WADA's own Code compliance"

NADA Austria

SUBMITTED

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

There is no need to specifically mention the role of the CRC in the Code, everything else see the comments to “Compliance – Consequences”.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES believes the role of the Compliance Review Committee (CRC) should be outlined within the International Standard for Code Compliance by Signatories as it has a regulatory function.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete’s Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Compliance

We agree that the role of the CRC should be mentioned in the Code.

UK Anti-Doping

SUBMITTED

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

UKAD agrees that the role of Compliance Review Committee should be specifically mentioned in the Code. Agree clarification is required around the roles of IFs and NOCs/NPCs in monitoring and enforcing Code compliance by National Federations.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Its independent role should be entrenched in the Code to prevent any attempt to limit or undermine its critical role.

Compliance - Monitoring Compliance of Signatories’ Members (16)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

This is a key priority issue to address in the next Code. For example, the “mechanism” required in IFs CAR to ensure that all NFs are Code compliant shall be defined, be realistic, and indeed involve NOCs/NPCs, as part as their own compliance requirements. The role of NADOs in such process should also be considered, although the various nature of their relationships with NFs in each country makes harmonization difficult. Ideas for consideration could be the establishment of a list of a few basic mandatory roles and responsibilities involving no or only very little costs, a yearly harmonized and simple reporting to the Signatory, basic principles for consequences.

Union Cycliste Internationale

SUBMITTED

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

The UCI believes that this indeed should be clarified - signatories have limited resources and this obligation seems impractical to implement.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

This is a huge task which will be impractical and too costly for many IFs/NOCs/NPCs to manage fully.

To do everything possible to monitor etc would be appropriate wording

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

-

-

WADA needs to provide guidance. Signatories have neither the resources nor mandate of WADA's own CRC and, therefore, cannot be expected to have the full monitoring role that is in fact at the heart of WADA's mandate. WADA should not “download” Code compliance monitoring and enforcement to its Signatories.

-

The IPC is of the view that there are very few IFs with the necessary resource(s) to be able to enforce and monitor Code compliance on their respective members/recognised bodies. In addition to this significant capacity challenge, if Code signatories are required to monitor compliance without support and/or guidance this will likely result in different compliance measures being adopted by different signatories, thus resulting in compliance inconsistencies. Further, requiring Code signatories to monitor compliance of their respective members has the potential to result in such signatories turning a blind eye to knowledge of member non-compliance if that would reflect badly on their sport. It is the

IPC's view that a consistent and independent approach to compliance is necessary. Therefore one body should be tasked with monitoring compliance. If such a solution is not deemed practicable (which the IPC recognises is likely) and Code signatories are still tasked with monitoring member compliance, at the very least WADA needs to provide signatories with a compliance monitoring template or model procedures. Such a template or model procedures should be aligned with the CRC processes (albeit perhaps scaled down). Further, the CRC should have an explicit role in advising, guiding and training Code signatories regarding their monitoring and enforcement responsibilities. In addition, provision needs to be made to ensure there are not overlapping compliance responsibilities. If a Code signatory (e.g. the IPC) and the CRC are both responsible for monitoring compliance of the same entity (e.g. a National Paralympic Committee), the Code signatory should be exempt from such responsibility and the CRC (with greater capacity and expertise) should be the sole entity tasked with this responsibility. A related concern is the effect of non-compliance of a Code signatory on its respective members. If the IPC is deemed non-compliant does that then mean that its members/recognised bodies are also non-compliant and/or vice versa? Clarity is required.

Ultimately there could be in Article 20 explicit sanctions for failure to oversee Code compliance of subsidiary bodies as currently mandated (for the IOC – Articles 20.1.1, 20.1.2 and 20.1.4, for the IPC – Articles 20.2.1, 20.2.2 and 20.2.6, for the IFs – Article 20.2.3, 20.3.5 and 20.3.6, and for NOCs and NPCs – Article 20.4.2, 20.4.4, 20.4.5 and 20.4.7). But this should not be worded in a way that relieves WADA of the primary responsibility here.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

Signatories should be held responsible for the actions of their members. IFs should be required to ensure their member federations are adhering to the Code. If not, the IF should have an obligation to act.

Ministry of sport of Russia

SUBMITTED

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

It is proposed to add a provision that 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.

Ministry of Culture

SUBMITTED

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 encourage WADA to:

■

Include (in the Code) national sports federations and clubs which commit anti-doping rule violations: National sports federations and clubs are not specifically mentioned in the Code and any anti-doping rule violation (including circumvention of the anti-doping rules) they commit is therefore not sanctioned with a legal basis in the Code. I.e. any sanction such as exclusion or suspension of a national sports federation or a local club from the Sports Confederation/NOC for not enforcing the anti-doping rules is a disciplinary sanction taken under the rules and regulations of the respective governing body, e.g. on membership requirements, and not a sanction to be taken with a legal basis in the Code.

AEPSAD

SUBMITTED

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

COMPLIANCE

INTERNATIONAL OLYMPIC COMMITTEE

Together with the programme for the Code's compliance monitoring by the IOC, a framework of Consequences must be created for any non-compliance with the same and this may be included in the ISCCS or in the Code itself.

Irish Sports Council

SUBMITTED

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

Ø International Federations should be responsible for monitoring and enforcing Code compliance by their National Federations. National Anti-Doping Organisations should be given a role in enforcement measures.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

see comment on "Compliance - WADA's own Code compliance"

SUBMITTED

NADA Austria

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

As in all other areas of social interaction compliance must never be determined within an organizational structure itself (e.g. IF's deciding about code compliance of national member federations). As stated in question 24, code compliance must be audited by an external source according to auditing plan agreed upon by WADA's Executive Board and the external auditor.

Estonian Anti-Doping Agency

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

SUBMITTED

EADA supports that International Federations should monitor and enforce code compliance by National Federations, especially in prevention and education.

Comisión Nacional de Control de Dopaje

Roberto Dagnino, Secretario Ejecutivo (Chile)
NADO - NADO

SUBMITTED

El Cumplimiento del Código debe ser visto como una herramienta de lucha contra el dopaje, más que como una obligación formal contraída por una organización antidopaje (OAD). Así, los cuestionarios de cumplimiento y sus consecutivos Planes de Acciones Correctivas se deben transformar en plataformas de mejoramiento y desarrollo de las OAD. El carácter punitivo que puedan tener las consecuencias previstas en el Estándar Internacional para el Cumplimiento del Código por los Signatarios sólo debería operar ante negligencia manifiesta del cumplimiento. En esta misma perspectiva, estimamos que el estado de desarrollo inicial de las ONAD debe ser tenido en cuenta a la hora de evaluar el cumplimiento. Es una realidad que existen países en los cuales el nivel de desarrollo de las ONAD (y de la lucha antidopaje, en general) es incipiente y las capacidades de implementar acciones correctivas, serán coherentes con las capacidades técnicas y económicas de dicha organización que, como es lógico, son el reflejo del estado de desarrollo socioeconómico de sus países.

Canadian Centre for Ethics in Sport

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

SUBMITTED

The expectations of Signatories in terms of monitoring and enforcing Code compliance by their members/recognized bodies should be set out in the International Standard for Code Compliance by Signatories.

Signatories should be held responsible for the actions of their members. International federations should be required to ensure their member federations are adhering to the Code (through their NADO). If not, the international federation should be responsible for ensuring their compliance. CCES does not believe Signatories should be let off the hook as was the case with the IAAF in relation to the All-Russia Athletic Federation/ Russian Athletics Federation.

SUBMITTED

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Compliance

We strongly agree that the responsibilities in monitoring and enforcing Code compliance by members/recognized bodies should be clarified in the Code.

Freelance journalist

SUBMITTED

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

The International Cricket Council (ICC) clearly allows one of its National affiliates, the Board of Control for Cricket in India (BCCI) the freedom to not recognize the authority of the National Anti-Doping Agency (NADA) of India. It is strange that the ICC has an article in its anti-doping code which recognizes and legitimises the authority of the BCCI, a National Federation, to decide for itself whether the NADO of its country has any right or jurisdiction over the sport of cricket in India. The WADC does not recognize any such right for a National Federation in any sport and at the same time recognizes the jurisdiction and authority of the NADO over all sport at the domestic level. Yet, the ICC Is Code compliant. The BCCI claims it is Code compliant because it follows the ICC and WADA rules and also gets its tests done at a WADA-accredited laboratory. The whole issue has been turned into one of "we are competent to test since we follow our international federation rules which in turn are WADA Code compliant, and we do our testing at a WADA-accredited lab. Moreover we get our tests done by an independent service provider which is WADA recognized (whether recognized or not is not an issue here)" The question to ask is whether a National Federation can pick and choose which authority will have jurisdiction over domestic testing, results management and hearing procedures.

Compliance - Good Governance Standards (17)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Not in favor of such consideration, although certainly a "nice to have" it should not be a priority matter in the framework of the Code.

SUBMITTED

FIE

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

agreed

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Yes. The Code should articulate minimum standards and enforce them through the Code compliance process. Guidance and templates should also be provided by WADA to ensure such standards are adhered to.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

NADOs must demonstrate independence from their National Olympic Committee and governments. While this can be challenging for smaller countries, there should be a defined standard of independence (governance model).

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 insists that the 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.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

Oui, probablement, notamment par rapport à l'autonomie opérationnelle et à la question de l'indépendance des OADs.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

Yes, indeed, this is important. But not only to signatories but also to WADA itself, ITA and private service providers.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

see comment on "Compliance - WADA's own Code compliance"

NADA Austria

SUBMITTED

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

Minimum good governance standards could be made a must-requirement for all signatories. But again, these minimum requirements need to be objective, transparent and must be audited by an independent organization.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

It is suggested to add to the roles and responsibilities (Art 20) the following of the good governance principles, such as accountability, transparency, democracy and participation (or involvement of significant target groups).

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES believes minimum good governance standards impacting anti-doping activities should be set out in the International Standard for Code Compliance by Signatories.

Anti-doping must be independent. International federations, NOCs, NPCs and national governments should outsource or set up independent units, to deliver code compliant anti-doping programs. To this vein, CCES supports the development of a Code definition of "independence" in conjunction with adoption of a new WADA Independence Standard that outlines what anti-doping

independence actually means. The following indicia, at a minimum, might be relied on to flesh out the meaning of independence in the anti-doping context:

- A separate legal entity from the international federation, NOC, NPC, and national government.
- A separate and autonomous governance structure from the international federation, NOC, NPC, and national government.
- Financial autonomy in revenue, expenses, reporting, and audit from the international federation, NOC, NPC, and national government (regardless of the source of the operating funds).
- A separate Board of Directors whose members have no links whatsoever (common membership or otherwise) to the international federation, NOC, NPC, or national government; are not chosen by the international federation, NOC, NPC, or national government or stakeholders within the sport; and who are 100% responsible for the conduct and operational and financial independence of the separate entity.
- Staff who do not have similar or parallel responsibilities at the international federation, NOC, NPC or national government.
- Be free from influence in the fulfillment of anti-doping requirements.

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,**
- 2.NOC*NSF,**
- 3.Athlete's Committee NOC*NSF**
- 4.Anti-Doping Authority the Netherlands**

Compliance

We strongly agree that minimum good governance standards should be made a Code requirement.

SUBMITTED

Agence française de lutte contre le dopage (AFLD)

Floriane Cavel, Département des affaires juridiques (FRANCE)

NADO - NADO

Il est nécessaire d'introduire dans la nouvelle version du Code des principes de bonne gouvernance auxquels doivent être soumis tous les signataires du Code, et l'AMA elle-même. On peut lister notamment la prévention des conflits d'intérêt et la transparence.

UK Anti-Doping

SUBMITTED

Pola Murphy, Compliance Coordinator (United Kingdom)

NADO - NADO

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.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)

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

I caution that “governance,” especially “good governance,” may be too amorphous a concept to be useful. This is especially true across cultures. For example, the British expectation that directors of charities must be volunteers is not shared by the cultural or legal systems of many sport powers.

Institute of National Anti-Doping Organisations

SUBMITTED

Graeme Steel, Chief Executive (Germany)

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

Given that poor governance standards, including heavily conflicted governing bodies remains a serious impediment to high quality anti-doping programmes then some discipline contained within the Code would be helpful. While WADA is not a signatory it should itself meet any minimum standards established for the signatories.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)

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

- WADA compliance - iNADO, Sport Accord etc could be tasked with monitoring WADAs compliance. Code compliant members of these organisations could be selected at random or there could be a standing committee. Minimum good governance standards could be listed in the Code depending on what they entail. Is the thought that this is a detailed article or a list of bulleted points?

Compliance - Complicity (13)

SUBMITTED

ITTF

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

Too early at this stage to consider such ADRV against individuals. The implementation of the ISCCS must take place and be evaluated first. An issue would be to consider who would be responsible for investigating such cases ? WADA?

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that this would be appropriate, however there may be difficulties in the scope of application of such a responsibility.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
Sport - IF – Summer Olympic

The consequences of non-compliance should be enforced effectively rather than going after individuals.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

This is essential. Such rules would have deterred the corruption of Russia's anti-doping programme and laboratory.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

A priori, c'est la responsabilité civile ou pénale qui s'applique et le Code s'applique aux signataires...

Irish Sports Council

SUBMITTED

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

Ø Sport Ireland would welcome sanctions for individuals who are responsible for, or complicit in, non-compliance by a Signatory.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

see comment on "Compliance - WADA's own Code compliance"

SUBMITTED

NADA Austria

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

Sanctions for individuals who are responsible or complicit in non-compliance by a Signatory might be useful, but from a legal point of view it will be a challenge on what legal basis those persons will be sanctioned. For example, a person who works solely on an employment contract for a Federation or an ADO or an official working for a government institution will be hard to sanction by a sports tribunal, if there are no criminal or civil charges.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA proposes to look this idea together with revising the principle of Prohibited Association (Art 2.10).

Canadian Centre for Ethics in Sport

SUBMITTED

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

Yes, individuals who are responsible for, or complicit in, non-compliance by a Signatory should be subject to sanction under the Code. Edits to Article 20 would ensure this by adding that officials would be bound by the provisions of the Code.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,
- 2.NOC*NSF,
- 3.Athlete's Committee NOC*NSF
- 4.Anti-Doping Authority the Netherlands

Compliance

We agree that individuals who are responsible for Non-compliance should be subject to sanction *if that Non-compliance is the result of deliberate, fraudulent and/or criminal actions by those individuals*. Sanctions are not in place for non-deliberate, quality-related Non-compliance issues.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Pas de commentaires à ce stade du processus de révision.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Yes - presumably caught by a wider interpretation of 2.10.

Compliance - Substantial Assistance (14)**ITTF**

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection

Union Cycliste Internationale

SUBMITTED

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

The UCI agrees that this would be appropriate.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Expand definition of “substantial assistance” to include exposure of corruption of anti-doping, and to provide more incentive for other forms of collaboration, including for providing information about new doping substances or methods.

AEPSAD

SUBMITTED

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

We are of the opinion that, if athletes appeal, it is not enough for them to want to collaborate, as it would make no sense to declare themselves guilty and then appeal. Certain tables must be established on the basis of an objective assessment for the reduction in the sanction in accordance with the athlete's contribution (substantial assistance). For an athlete to be willing to collaborate does not mean that the contribution constitutes substantial assistance, as, in many cases, this does not depend on their will. However, at least an approximate quantification should be established for the scope of substantial assistance.

SUBMITTED

ONAD Communauté française

Julien Magotteaux, juriste (Belgique)

NADO - NADO

De manière générale, l'aide substantielle est une disposition très difficile à mettre en œuvre pour un pays de tradition de droit civil comme le nôtre.

Les conditions d'application de cette disposition sont en effet très difficiles à mettre en œuvre sur un plan juridique.

Irish Sports Council

Siobhan Leonard, Anti-Doping Manager (Ireland)

NADO - NADO

SUBMITTED

Ø Substantial Assistance (Article 10.6.1) should allow the provision of information on non-compliance to lead to a partial suspension of a sanction. Whistleblowers must be encouraged and protected.

NADA

Regine Reiser, Result Management (Deutschland)

NADO - NADO

SUBMITTED

see comment on "Compliance - WADA's own Code compliance"

NADA Austria

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

SUBMITTED

Providing information on non-compliance should lead to a partial suspension of sanction in the same way as in the case of an anti-doping rule violation. However this requires the ISCCS to implement a transparent, objective and efficient value system and an institution where non-compliance by such an organization will be sanctioned (CAS).

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)

NADO - NADO

SUBMITTED

Yes, coming forward with information on non-compliance should be able to reduce a sanction.

Dopingautoriteit

Herman Ram, CEO (Netherlands)

NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,
- 2.NOC*NSF,
- 3.Athlete's Committee NOC*NSF
- 4.Anti-Doping Authority the Netherlands

Compliance

We agree that providing information of Non-compliance could lead to a partial suspension of a sanction *if that Non-compliance is the result of deliberate, fraudulent and/or criminal actions by those individuals*. Partial suspension of sanctions is not in place for non-deliberate, quality-related Non-compliance issues.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable à l'introduction d'un tel dispositif.

UK Anti-Doping

SUBMITTED

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

Careful consideration should be given on whether to subject individuals who are responsible for non-compliance to sanctions. There will be many degrees and levels of fault and various situations that can arise under non-compliance. Substantial Assistance regarding non-compliance should be considered as it is felt that all incentives to expose doping and doping related practices should be explored.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Yes - e.g. to the benefit of Yulia Stepanova

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

- Substantial Assistance regarding non-compliance should be considered as it is felt that all incentives to expose doping and doping related practices should be explored.

WADA Governance (15)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

No objection, same related matter as WADA's own compliance discussed above.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

Agree.

AthletesCAN

SUBMITTED

Ashley LaBrie, Executive Director (CANADA)
Sport - Other

To achieve true athlete representation, athlete representatives must be elected by their peers in a transparent and structured election process with open nominations from within this important stakeholder group. While the WADA AC is an important mechanism for the inclusion of direct athlete feedback, it has no real decision making power within the overall governance of WADA. For the leaders of WADA to truly consider each of its stakeholders, the Foundation Board must move to a tri-party structure where athletes have an equal voice and vote within the decision making process.

We refer to a recent survey done by FairSport where the following feedback was captured around governance:

- **94% of athletes** believe it is desirable/essential to have transparency both in governance and anti-doping;
- **92% of athletes** want the right to representation and participation in the fight against doping; and
- **90% of athletes** want the right to participate in the creation of rules for sport and the governance of sport.

Dasha Peregoudova, President
Ashley LaBrie, Executive Director
AthletesCAN

Ministry of Youth and Sport

SUBMITTED

Viktoria Slavkova, Chair of Working Party Sport, Deputy member of FB on behalf of EU (Bulgaria)
Public Authorities - Government

SUBMITTED BY WADA
LAST EDITED BY ADMIN

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 of the fight to protect the integrity of sport.

All actors in the anti-doping system should implement the basic principles of good governance, such as accountability, transparency and democracy (Article 20 of the Code). In order to fully

protect the rights of clean athletes, the governance structures of WADA and Signatories must be free from any conflicts of interests.

The contents of the statistical report that Anti-Doping Organisations are required to publish at least annually (Article 14.4 of the Code) could be specified in more detail.

The EU and its Member States invite WADA to reflect on the role of WADA in the world anti-doping system, including in terms of WADA's own compliance to the Code.

Council of Europe

SUBMITTED

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

There is a great deal of concern and disappointment that this process has (a) taken so long and (b) appears to involve little more than maintaining the current governance status quo.

Organización Nacional Antidopaje del Uruguay (ONAU)

SUBMITTED

Federico Perroni, Miembro Consejo Directivo (Uruguay)
NADO - NADO

SE SUGIERE LA MODIFICACIÓN DEL TEXTO DEL ARTÍCULO 22.3 POR EL SIGUIENTE:

22.3. Todos los gobiernos promoverán la cooperación y el desarrollo de inteligencia policial entre la totalidad de sus servicios o agencias públicas y las Organizaciones Antidopaje para que intercambien información que pueda resultar útil en la lucha contra el dopaje, siempre y cuando al hacerlo no se infrinja ninguna otra norma jurídica.

AEPSAD

SUBMITTED

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

The document entitled "Review of the 2021 World Anti-Doping Code: Issues to be studied and discussed" clearly expresses (in the "COMPLIANCE" section) WADA's opinion that the WADA itself is not a Signatory. However, Article 23 of the Code lists the entities that will be Signatories accepting the Code, mentioning first of all the WADA and the International Olympic Committee (IOC). The International Standard for Compliance with the Code defines the WADA as the party responsible for monitoring the Signatories' compliance with the Code and the application of the International Standards. The standard also states that the Code is the source of this definition of the WADA.

The fact is that, on the one hand, the Code foresees that compliance with the Code will be monitored by the WADA or in any other way agreed by this organization (art.23.5.1) and, on the other, that the signatories of the Code, as the ISCCS itself recalls, undertake to comply with a series of technical, legal and operational requirements established in the Code and in the Standards.

What neither the Code nor the ISCCS does at any point is exempt any signatory of the Code from compliance with it. This includes the WADA and the IOC, which would not be excluded either. Nonetheless, there is not a single word about the evaluation of the Code's fulfilment by WADA, nor even of its own rules.

This situation, in which the entity that dictates and proposes the rules is not expressly subject to the same regime as the other signatories, is irregular and can only lead to conflicts and malpractice. There is no justification for excluding one or more of the Signatories from oversight, all the more so when the Code itself foresees the possibility of approving alternative systems.

For this reason, and in view of the exemplary role that the WADA must play in this matter, it is proposed that both the WADA and the IOC also be monitored by external independent authorities, just like the other Signatories. This oversight could be performed through the contracting of external auditors engaged by an independent international body such as the UNESCO or another entity.

It must also be debated whether the compliance audit ought to be performed by entities from completely outside the world of the fight against doping as there is also no justification from a material standpoint for an institution that has the status of Signatory to evaluate and impose sanctions on other entities or organizations with an identical status. The complete and absolute independence of the auditor is a *sine qua non* condition for the credibility of the compliance oversight system, and in no case can any party who should be setting an example be exempted.

In exactly the same vein, the Code must establish the rules governing the WADA itself, determining a complete legal regime for its functions and responsibilities. Vague or grandiloquent declarations are not sufficient, rather the rules for good governance of the entity destined to lead the fight against doping must be developed in detail. In this regard, it is essential to endow the system with transparency. In fact, declarations regarding proportional representation of continents and countries, the right of Signatories to participate and be taken into account when drafting the budget and in the designation of members of Wada's organic structure are of little value if all of this is overshadowed by a lack of access to information. The WADA must be a democratic and participatory entity, but above all it must be transparent.

For this reason it is proposed to create a committee to draw up and develop the legal statute for the WADA for inclusion in the code and for this to include the following matters and be approved by a qualified majority of the signatories:

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Accountability.

-

Regime for appointment, functions, competencies and operation of the various bodies and committees of the WADA (CRC, Scientific Committee, etc.) with the establishment of professional criteria and the plural representation of signatories.

-

Transparency in the WADA's accounts and economic management through the publication of an economic annual report audited by an independent entity.

Swedish Antidoping

Matt Richardson, Head of NADO (Sweden)
NADO - NADO

SUBMITTED

In the suggested questions sent out by WADA on December 12, 2017, under the topic WADA governance, the following issue was noted:

The recommendations that will be issued by the WADA ad hoc Working Group on Governance may require some changes in the Code, in particular in Article 20 (Roles and Responsibilities of Signatories).

Indeed, further up in the same document it is stated under the topic Compliance that

WADA is not a Code Signatory and its structure, jurisdiction and mandate are not compatible with those of a Code Signatory.

We feel that the WADA governance structures should be focus for discussion as part of the Code Review process, regardless of the outcomes achieved or recommended by the ad hoc Working Group. Like our first suggested question regarding clarification of NADO independence, we feel that WADA governance is also a vital discussion point for all Code Signatories and other parties that will be consulted as part of the Code Review process. This kind of open and transparent dialog regarding impartiality and legal certainty in decision-making structures should be the hallmark of the global antidoping infrastructure, at all levels.

Therefore, the Swedish NADO suggests that the current formulation under WADA governance is changed to the following:

Keeping in mind the ongoing work of the WADA ad hoc Working Group on Governance, that WADA governance structures are considered and discussed as part of the 2021 Code Review process in order to achieve a broad, global consensus regarding impartiality and legal certainty in WADA decision-making structures.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)
NADO - NADO

More substantial changes and clarifications are needed

NADA Austria

SUBMITTED

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

No comments.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The CCES agrees and strongly encourages WADA and the ad hoc Working Group on Governance to finalize this important work and bring forward a series of recommendations to strengthen WADA and its independence for the future.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est d'avis que des modifications sont à apporter à la gouvernance de l'AMA. Il y aura lieu d'insérer, le cas échéant, les recommandations à venir du groupe de travail ad hoc, ou tout autre modification pertinente, dans le Code.

UK Anti-Doping

SUBMITTED

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

It should be compulsory for Major Event Organisers to put an education programme in place for all events.

It should be compulsory for a country to have signed up to the UNESCO Convention before being awarded a major event.

WADA should consider adding in Management of their International Co-Operation programme as one of their responsibilities.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)
Other - Other (ex. Media, University, etc.)

Athletes, independently elected by the athletes of the world, should form a third pillar of WADA governance, as members of the WADA Foundation Board.
With great respect, that the WADA ad hoc Working Group on Governance did not recommend a change to the WADA Foundation Board structure, in the wake of such massive and uncontroversial failure of the system, regrettably calls all of the WADA ad hoc Working Group on Governance's recommendations into serious doubt.

Institute of National Anti-Doping Organisations

SUBMITTED

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

It is to be hoped that it will require more substantial changes than that.

Independent Anti-Doping Service Providers (19)

World Rugby

SUBMITTED

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

Given the crucial role that ISPs play in the international anti-doping network, World Rugby consider that they should be recognised as a formal part of the Code and held to certain standards in terms of regulation and compliance.

Related to the above we feel there is a need for all ADO doping control staff (NADO, IF and ISP) to be independently regulated and audited, and that this should be recognised in the Code and ISTI. As it stands in the ISTI (which we appreciate is under review), currently the responsibility is on the SCA which is meaningless without independent auditing. Perhaps this independent auditing could be considered as a future facet of the Code Compliance Process.

Notwithstanding the above, ADOs and ISPs who maintain a DCO workforce should be required to publish their training and accreditation process. This is crucial for the athletes as much as it is for other ADOs who contract their services, particularly for blood collection. Laboratories are held to high standards as part of the accreditation process but not DCOs, which seems a mistake given how crucial sample collection is to the integrity of the process.

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

This encompasses several situations including NADOs acting as commercial SCAs, private services providers, sport-specific anti-doping units and the newly established ITA. In the framework of the current Code, how shall those entities be accountable to their Signatories “clients” in terms of compliance? Except for the NADOs (could a NADO be declared non-compliant if it operates in a non-compliant way in managing a Signatory client anti-doping activity?), it seems that in the current Code framework this is rather a matter of contractual relationship between the Signatory “client” and its provider, rather than a Code matter.

FIBA (International Basketball Federation)

SUBMITTED

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

The case where acts in contravention of the Code are so clearly the fault of the Service Provider and not the Anti-Doping Organisation should not still be considered the non-compliance of the ADO.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

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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 organisations, but without the monitoring and enforcement capacity and mandate of WADA's CRC.

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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. Ditto 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. But query whether there is at the moment adequate supervision of service providers by ADOs.

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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.

SUBMITTED

Ministry of Culture

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 encourage WADA to:

■

Further specify that the liability of a signatory cannot be delegated to private service providers, independent agencies etc. who carry out some or all of its obligations under the Code, and ensures that it is addressed how their activities are monitored (in terms of compliance): Private service providers, as well as the ITA, carry out tasks on behalf of signatories. According to the existing rules, a signatory cannot delegate its liability in relation to compliance to a third party which is not a signatory. We find that this should be spelled out more specifically in the Code in order to improve the transparency and legal clarity. At the same time, however, the issue of monitoring the activities of private service providers, and the ITA, should be addressed in the Code.

Sport New Zealand

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

Independent Anti-Doping Service Providers

We note the question raised in WADA's 2021 *World Anti-Doping Code Review: Questions to Discuss and Consider* document about the status of independent anti-doping service providers. We consider these providers should be regulated under the Code. This issue takes on greater importance given the newly created Independent Testing Authority.

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 has some concerns regarding the Independent Service Providers. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Independent Service Providers the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

AEPSAD

SUBMITTED

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

COMPLIANCE**INDEPENDENT SUPPLIERS OF ANTI-DOPING SERVICES**

Independent Suppliers of Anti-Doping Services should have a regime in place for sanctions and this must be respected by the Signatories and be obligatorily reflected in the terms and conditions of the contracts with the suppliers, and could even lead to the impossibility of contracting with certain parties. All of this would have to be set out in a new article in the Code.

On the other hand, the opinion of the AEPSAD with respect to the new International Testing Authority (ITA) is that it must be made perfectly clear whether this is simply a service provider, in which case the preceding paragraph would apply; otherwise, the Authority would have to become a Signatory to the Code with all of the consequences thereof.

Anti Doping Denmark

SUBMITTED

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

Article 20 about the Roles and Responsibilities of stakeholders should be amended to include an article about WADA itself and its structure and governance.

In addition, articles 20 and 23.1 should include independent anti-doping service providers such as ITA, PWC, IDTM etc. to ensure that these companies are bound by the Code. The ADO that hires such service providers should not be held solely responsible for the actions of the service providers in terms of Code compliance, following WADA International Standards, etc.

In accordance with this, we propose the introduction of a system of accreditation by WADA for such service providers along the same lines as WADA's accreditation of laboratories.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

- 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

SUBMITTED

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

Independent Anti-Doping Service Providers must be Code compliant in the same way as Anti-Doping organizations regarding their area of service and regarding their structure of their organization. Compliance must be audited by independent auditors.

Canadian Centre for Ethics in Sport

SUBMITTED

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

CCES' view is that independent anti-doping service providers should not be Code Signatories. Current Signatories to the Code should continue to be fully responsible for compliance to the Code. Signatories can outsource these requirements, but they cannot outsource their responsibilities.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport, N

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Service providers

Service providers are commercial entities that play an important and appreciated role in the fight against doping in sport. They collect many samples, commissioned by anti-doping organizations, event organizers and others, and they are supposed to do this according to the World Anti-Doping Code and the relevant International Standards. If an AAF is established in any of these samples, the athlete will be prosecuted and sanctioned, and the same is true for NAFs that are observed or detected by the service providers. However, service providers are not Signatories to the WAD Code, nor is their role described in the Code (the Code does not mention them at all). WADA's Compliance Review does not include the service providers, and there is no other monitoring mechanism in place. In some countries, including the Netherlands, service providers compete with NADO's in the market for sample collection. To ensure a fair competition that does not negatively affect the quality of sample collection, the service providers have to be bound by the same standards, regulations and monitoring systems that bind NADO's.

Considering the important position of service providers, and the very serious consequences that can be the result of their work, the Dutch stakeholders find that the role and responsibilities of these organizations should be addressed by WADA. Service providers should be subject to a Compliance Review mechanism, just like all Signatories. Possibly even become signatories themselves, if that is the only solution to provide clarity about their role and to subject them to compliance monitoring. And this the more so, since a new but very important service provider, the International Testing Agency, has been established. The ITA will not only collect samples, but other essential elements of the work of NADO's (composing testing pools, managing whereabouts information, performing Initial Reviews, etc.) will be part of their work as well.

It is not our goal to subject service providers to the full extent of the monitoring mechanisms of the Code. If there is a possibility to subject them to monitoring of the aspects of the Code that concerns their work, that would be sufficient.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Il est essentiel que les fournisseurs de services indépendants soient tenus par les mêmes règles et puissent être sanctionnés. Ces fournisseurs doivent pouvoir être audités. Si un fournisseur de service agit de manière délibérée en violation du Code, des conséquences doivent pouvoir en être tirées (par exemple en interdisant aux OAD d'avoir recours à leurs services).

UK Anti-Doping

SUBMITTED

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

Code to 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. As a consequence, that 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. 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.

Freelance journalist

SUBMITTED

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

A service provider may be allowed to handle only sample-collection procedures based on a test distribution plan drawn up by the anti-doping authority. Anything beyond this function may mean diluting the responsibility and authority of the anti-doping authority.

Institute of National Anti-Doping Organisations

SUBMITTED

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

Agree they need to be discussed. In particular the new ITA which it appears will have a far more central role in planning, conducting and managing doping control processes than other providers who simply follow instructions. It seems necessary to bind them in a more direct way than simply through the rules of the parties who contract them. I have no immediate solution to this and believe it requires considerable discussion.

PWC GmbH

SUBMITTED

Volker Laakmann, Managing Director (Germany)
Other - Other (ex. Media, University, etc.)

on a DCF there are three authorities mentioned: TA, SCA and RMA. The TA and RMA must be a code signatory. The SCA can be an independent anti-doping service provider. In this case the TA always remains ultimately responsible under the Code for compliance with the requirements of the International Standard for Testing and Investigations relating to collection of Samples. I think this is not conclusive. There is no direct link between WADA and the independent anti-doping service provider. Thus WADA can not directly check/examine the code compliance. Within the whole chain of a doping control from the athlete up to the laboratory all entities are

subject to the Code - except the independent anti doping service providers.
 Conclusion: the role and responsibilities of independent anti doping service providers must become a subject to the Code. The scope of compliance should be in accordance with their scope of services and responsibilities.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
 Other - Other (ex. Media, University, etc.)

- We feel that a list of compliant independent Service Providers should be listed similar to how NADOs and IFs are so that they are held to the same standards as ADOs

Whistleblower Protection (23)

ITTF

SUBMITTED

Françoise Dagouret, Anti-Doping Manager (Switzerland)
 Sport - IF – Summer Olympic

Agree on the principle, however what is in the scope of the Code on this matter seems very limited. An official “whistleblower status” granted by WADA and recognized by Signatories? What would an individual being granted this status being entitled to? Financial reward? The most important and relevant measures in this respect seem rather matters for the UNESCO Convention and governmental laws.

World Rugby

SUBMITTED

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

World Rugby fully support the need for Whistleblowers to be recognised and protected under the Code.

Union Cycliste Internationale

SUBMITTED

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

The UCI absolutely considers that the status and protection of whistleblowers should be incorporated into the Code.

FIE

SUBMITTED

Clare Halsted, Anti-Doping Chair (UK)
 Sport - IF – Summer Olympic

yes there should be a clear whistle blower policy

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
 Sport - IPC

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The importance of whistleblowers should be identified in the Code. Retaliation against or threatening whistleblowers should be an ADRV (for individuals and for organisations). All ADOs must have a whistleblower policy with minimum requirements for the encouragement and protection of whistleblowers (look to match-fixing rules for inspiration).

Clear guidance and access to resources is urgently required to assist ADOs and protect whistleblowers.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

Provisions for recognition and protection of whistleblowers should be set out.

Australian Government

SUBMITTED

Dean Ebejer, Drug Analyst (Australia)
Sport - Other

While the potential value of tip-offs and informer information is fully appreciated, the operation of effective and responsive whistleblower arrangements can be onerous, complex and resource-intensive, particularly where they involve ongoing long-term physical and identity protection.

In our view caution is therefore needed when considering the inclusion of any whistleblower provisions in the Code which may impose specific obligations upon signatories, given the diversity of resourcing, expertise, and legal frameworks that exist across the anti-doping organisation cadre.

Sport New Zealand

SUBMITTED

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

Protection of Whistleblowers

We support the suggestion made in WADA's *2021 World Anti-Doping Code Review: Questions to Discuss and Consider* document that whistleblowers should be recognised and protected by the Code. Whistleblowers acting in good faith provide an important mechanism for uncovering wrongdoing.

Ministry of Youth and Sport

SUBMITTED

Viktoria Slavkova, Chair of Working Party Sport, Deputy member of FB on behalf of EU (Bulgaria)
Public Authorities - Government

SUBMITTED BY WADA
LAST EDITED BY ADMIN

WHISTLEBLOWERS

Whistleblowers make use of their right to freedom of expression, which is enshrined in the EU Charter of Fundamental Rights and in the European Convention on Human Rights.

The EU and its Member States fully support the objective of protecting whistleblowers against retaliation and encourages any efforts in that direction.

[The EU and its Member States could suggest specific provisions to be included in Article 22 of the Code on the involvement of governments with the aim of :

-

putting in place clear channels for reporting to national anti-doping organisations and facilitate recourse to them through appropriate measures.

-

ensuring protection of whistleblowers against retaliation of any form.]

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 has some concerns regarding the Whistleblower Protection. In the time available since the Code Review process was announced, the Council of Europe has been able to consult regarding certain aspects of the Code in more detail than others. In respect of the Whistleblower Protection the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

Anti Doping Denmark

SUBMITTED

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

Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. While appreciating the need for whistleblowers and the possibility provided by article 10.6.1 to partly suspend the sanction of the whistleblower, we propose that further provisions for the protection of whistleblowers are introduced, either in article 10.6 or in the ISTI part three (articles 11-12): Standards for intelligence gathering and investigations.

ONAD Communauté française

SUBMITTED

Julien Magotteaux, juriste (Belgique)
NADO - NADO

La protection des lanceurs d'alerte dépasse le seul cadre de l'antidopage puisqu'il convient parfois d'assurer une protection judiciaire à ces personnes.

Dès lors, fixer ce principe dans le Code ne risque-t-il pas d'obliger des signataires pour un domaine (la justice) qui dépasse leur seule compétence?

Ou alors, comme pour les décisions conformes au Code, il faut prévoir une obligation de moyens mais pas de résultat à charge des OADs sur ce point, car cela ne relève pas de leur responsabilité directe.

Irish Sports Council

SUBMITTED

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

Ø Sport Ireland would welcome the recognition and protection of whistleblowers in the Code.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

Policy/Standards for Whistleblowing applicable by all Anti-Doping-Organizations

NADA Austria

SUBMITTED

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

It will be difficult/impossible for WADA to protect whistleblowers the same way as government run organizations can do, however financial assistance might/must be possible.

Estonian Anti-Doping Agency

SUBMITTED

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

EADA fully supports the objective of protecting whistleblowers against realiation and encourages any efforts in that direction.

Canadian Centre for Ethics in Sport

SUBMITTED

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

The provisions for recognition and protection of whistleblowers should be set out within the International Standard for Code Compliance by Signatories.

Drug Free Sport New Zealand

SUBMITTED

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

DFSNZ considers that there should be some recognition of whistleblowers under the Code, particularly where the whistleblower is a Minor. However, careful consideration needs to be given to the situation where a whistleblower is also in breach of the Code. For example, an Athlete who impugns the conduct of another Athlete ought not to be completely immune from proceedings by virtue of his or her whistleblowing. The right balance must be found and the Code should

differentiate between identifying or labelling an athlete or other person as a whistleblower (with the associated protections) and an athlete or other person providing substantial assistance.

CITA

SUBMITTED

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

Whistleblowers are an important source of information and should be recognized as such in the Code.

Dopingautoriteit

SUBMITTED

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

- 1.Ministry of Health, Welfare and Sport,
- 2.NOC*NSF,
- 3.Athlete's Committee NOC*NSF
- 4.Anti-Doping Authority the Netherlands

Whistleblower protection

We support the idea of additional clarification concerning whistleblowers IN Article 10.6.1.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

L'AFLD est favorable à l'introduction de mesures de protection des lanceurs d'alerte indépendamment de l'article 10.6.1 du Code mondial. Ces dispositions couvriront des situations beaucoup plus larges que le dispositif de l'aide substantielle. En effet, un lanceur d'alerte n'est pas nécessairement une personne qui fait l'objet d'une procédure disciplinaire pour une violation des règles antidopage.

UK Anti-Doping

SUBMITTED

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

UKAD is in favour of an additional clause for RADOs stating, 'To promote whistleblowing / the provision of information about ADRVs'.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United

Kingdom)

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

- Whistleblowers should be recognised and protected in the Code.
- Whistleblowers should be protected under the WADA code! The majority of ADRVs are intelligence-led rather than resulting from failed tests. It is vital that individuals are confident that if they are to come forward with information relating to doping violations they will be provided with suitable protection. We have a current state of affairs where many individuals have a complete lack of faith in the procedure involved in speaking out regarding ADRVs. This has in some circumstances led to individuals taking their information to journalists for publication instead of to the anti-doping authorities. Until there is sufficient protection it is likely that this will remain the same. Of course, any programme on whistleblowing needs to be made as consistent as possible across nations.
- Whistleblowers should be addressed in a separate Code article. Whistleblowers must be separated from substantial assistance as a whistleblower does not have to be a person subject to an ADRV. More than anything the Article should exist to protect clean athletes and support personnel coming forward with information to assist in the fight against doping
- As part of the new code would WADA consider having a standardised whistleblower programme for all NADOs (which they have to adhere to keep WADA code compliance status) and helping NADOs to achieve this standard.

Other Suggestions (48)

World Rugby

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

SUBMITTED
LAST EDITED BY ADMIN

ITTF

Françoise Dagouret, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

SUBMITTED

ITTF acknowledges the “limited scope” of the present review and the relevance of the selected topics, with WADA not wishing to address the principles where no consensus has been reached in the past. However, on the occasion of such a revision process, and without developing here, it seems important to express ITTF’s favorable consideration for a Single List coupled with making the potential or actual performance enhancement criteria mandatory for placing a substance or method on such Prohibited List.

Fédération Equestre Internationale

Aine Power, Deputy Legal Director (Switzerland)
Sport - IF – Summer Olympic

SUBMITTED

Article 20.3 - Roles and Responsibilities of International Federations

Under the current WADA Code, it is the responsibility of the International Federations to ensure that its National Federations have Code compliant anti-doping measures in place. While of course the IFs do have a role to play, it is a big challenge for IFs to be responsible for the compliance of National Federations. National Anti-Doping Agencies and/or National Olympic Committees have stronger local and more regular interactions with National Federations and, as a purely practical matter, NADOs and NOCs speak the same language as the National Federations so are in a

better position to review their rules and to liaise with NFs in relation to their anti-doping responsibilities. Therefore, the FEI proposes that NADOs and NOCs should have a formal role to play in relation to monitoring NF anti-doping compliance and that this responsibility should be reflected in the 2021 Code.

Union Cycliste Internationale

SUBMITTED

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

The UCI submits the following preliminary issues that could be considered in a revision of the Code:

· 3.1 Burdens and Standards of Proof

- 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.

· 3.2.1: challenges pertaining to analytical methods and decisions limits

-The WADA 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 in the first instance proceedings.

· 10.2.3: Review the definition of “Intentional” and especially the notion of “cheating”

· 10.4 / 10.5.1: The UCI considers that there should be a specific regime for recreational drugs (for example cocaine) that is consistent with that applied to cannabis.

· 10.4/10.5.1: Given that the notion of “intention” has been introduced into the Code, and considering the basis on which specified/prohibited substances are distinguished (i.e. the likelihood that a substance was used for a purpose other than performance enhancement, for example for therapeutic use) the UCI considers that WADA should revisit whether different levels of sanctions are indeed appropriate for specified/prohibited substances once intention has been ruled out.

· 10.1: Disqualification

-Clarify application in case of APF. The rule does not perfectly square with the disqualification of results in the context of an ADRV based on an APF and Panels have taken different views on the interpretation of “fairness” in this regard. For example, should only results where an abnormality has been detected be disqualified or should all the results as of the first abnormality in the profile until the provisional suspension be disqualified.

· 10.6.3. Substantial assistance

o Lower the threshold to grant credit: this would enable ADOs to give incentive 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.

· 10.12.1 Status during Ineligibility

o Clarify scope of “activity”.

o Clarify scope of “other member organization of a Signatory’s member organization”.

o Clarify scope of “international or- national-level event organization”.

· 13.2.3. d)

-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 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

FIBA (International Basketball Federation)

SUBMITTED

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

Related to article 10 - Labs should move towards clinical lab reporting where an interpretation of test results is provided. For more scientifically complex cases, there could perhaps be an expert WADA team that interprets results and whose conclusions would benefit from the same presumptions as lab results.

Related to article 20.3.11 - the scope of the provision should be revisited, especially the application to junior World Championships and “*other International Events*”.

International Paralympic Committee

SUBMITTED

Vanessa Webb, Anti-Doping Manager (Germany)
Sport - IPC

■

■

The concept of mandatory provisional suspension should be expanded beyond Article. 2.1 – not just for the presence of a specified substance/prohibited method. We can foresee multiple scenarios of (e.g. charge of tampering) where a mandatory suspension might be very relevant.

■

When prohibited IV infusions are used without the intent to dope (IS Prohibited List section M2.2), this should be treated as a specified substance/method so that appropriate sanctions can be granted which are fair and measured.

■

There should be a more harmonized approach to how IFs manage TUE obligations with respect to International Athletes so that it’s not basically a different system for each IF depending on their rules, as this would make it a lot easier for NADOs to explain to athletes

and minimize the administrative back and forth on who has responsibility. The current approach is simply not consistent or practical.

■

Guidance is needed for the management of TUE applications in case athletes are not included in any testing pool and (occasionally) compete internationally

■

For retroactive TUE applications upon notification of an AAF, the spirit of the Code and ISTUE are laudable, but the practicalities of implementation (and complexity for athletes to understand) are multiple. An example being that the hearing panel might suggest that a retroactive TUE might be suitable, but the TUEC ultimately decides not to grant the TUE knowing (indirectly) that the application results from an AAF. Guidance is required so ADOs have a clear understanding of the circumstances that may warrant a retroactive TUE so the opportunity to apply is, as far as possible, provided prior to any hearing being conducted.

■

Requirement for WADA to allow electronic DCF information to be uploaded electronically to ADAMS if it meets specified requirements.

■

Minimum standards for supplement analysis to require the use of a WADA-accredited laboratory, semi-quantitative analysis (amount/gram).

■

Introduction of laboratory reporting limits for IS Prohibited List section S5 diuretics, similar to substances prohibited in-competition (% of MRPL).

■

A mandatory independently certified international standard for sample collection equipment (ISO or other) so that we are not relying on very general requirements in the ISTI to be evaluated subjectively by the manufacturers.

■

Mandatory education for medical support personnel.

■

A clear definition of performance-enhancement in the Code and more transparency regarding how substances or methods are added to the Prohibited List.

■

Requirement for focused human urinary pharmacokinetic terminal excretion/clearance studies to be completed before a new substance is added to the IS Prohibited List to prevent

another meldonium incident (parameters to define what is a new substance vs. substance in existing category to be explored).

■

More transparency around what substance/metabolites each of the WADA-accredited laboratories is required to include in their methods. There is some concern that depending on what laboratory a sample arrives at, there could be different substance/metabolites in their menu.

■

Requirement for WADA to disclose in any media communication the specific nature of any non-compliance issue with respect to an ADO and/or laboratories, to prevent all ADOs and/or laboratories from being tarnished with the same brush with respect to non-compliance and to protect the reputation of ADOs/laboratories that commit minor non-compliance.

■

Clear conflict of interest policies for WADA laboratory directors serving in audit, disciplinary or expert roles with respect to laboratory compliance or non-conformity issues.

■

To better direct scarce anti-doping resources, provide a summary results management / hearing process for Specified Substances, reserving the full results management / hearing process for non-Specified Substances. A template “agreement to accept consequences” could assist in this regard.

■

Develop and apply a “strict liability” principle for Athlete Support Personnel and for organisations (clubs, teams, etc.), and ensure that an organization with multiple ADRVs is subject to Code consequences. In other words, the same treatment as Athletes receive.

■

In relation to Code Articles 21.1.6 and 21. 2.5, a new Article 2 ADRV (separate from Complicity) of failure to cooperate with anti-doping investigations (not just to be covered in “other rules”).

■

Harsher sanctions for Complicity (to get to root causes of doping).

■

In relation to Code Article 2.5 (Comment), a new ADRV of “offensive conduct” (not just to be covered in “other rules”).

■

Reduced sanctions for recreational athletes (subject to retroactive elevation to full sanctions if they seek to enter elite sport).

■

Treat successful rehabilitation (subject to minimum requirements) like substantial assistance and provide possibility of reduced suspension.

■

Article 20.6 require MEOs to actually conduct a Code-compliant anti-doping programme at their Events, and wherever possible, rely on the NADO in doing so.

■

For ABP management, make it the default position that IFs must share passports with NADOs – so that NADOs get automatic access to passports with IF custodians.

■

Control (or delay) athlete access to their own ABP blood values so that they cannot use this information to manage a course blood doping.

■

Amend Articles 20 and 23 to address systemic corruption of anti-doping in countries (through exclusion from international competition of their NOCs, NPCs and NFs).

■

Article 10.7.1 should be more flexible to treat serial and serious ADRVs more harshly (as opposed to incremental sanction for a second violation).

■

Article 14.3 should require publication of all CAS (and other tribunal awards) in full with reasons.

■

Article 10.12.3 should specify a process by which an ADO determines that a violation of a prohibition against participation and that a “reasoned decision” is required whatever that process might be.

■

Make it clear that an ADO need not police ADAMS whereabouts filings during Games-time when the MEO has other reliable sources of information to locate athletes (such as delegation arrival and departure information, delegation rooming lists, venue training session schedules, transportation schedules, electronic accreditation screening) for both in- and out-of-competition doping controls. It is redundant and a waste of time and resources to insist on complete ADAMS whereabouts for athletes subject to such MEO supervision.

■

Article 4.4.8 provides that when WADA overrules an ADO TUE decision (to deny a TUE application), the ADO appeal is against WADA. However, when WADA declines to review the TUE decision, or reviews but does not overrule the TUE decision, the athlete appeal is against the ADO that made the TUE decision (Art. 4.4.7). WADA's decisions under Articles 4.4.7 and 4.4.8 both ought to be subject to appeal against WADA. Both are substantive decisions that involve consideration of the merits of the TUE application. There is no logical reason to treat them as having different status for the purposes of appeal.

■

Greater guidance is required on how to educate/explain the definition of "Ineligibility" to those sanctioned under the Code. Clarity is also required regarding how ADOs should monitor compliance regarding periods of Ineligibility, particularly where an athlete has been provisionally suspended and, as such, that fact remains confidential to all those who are not a party to the case pending the determination (or otherwise) of an ADRV.

■

The definitions of both "Competition" and "Event" in Appendix 1 are clear. However, governing sports bodies use the reverse definitions (i.e. a "Competition" is a series of individual "Events" and an "Event" is a single race, match, game etc.). This is confusing for athletes and sport officials. Consideration should be given to amending (reversing) these definitions in Appendix 1.

Guatemalan Olympic Committee

SUBMITTED

Gustavo Rehwooldt, Legal Affairs Director (Guatemala)
Sport - National Olympic Committee

We had a case with a golfer athlete who was positive in a test, adducing bad procedure went to the CAS and the audience only spoke of bad procedure but never how the substance came to the body. The National Anti-Doping Agency lost the case and has to pay an amount of money greater than its budget for a long time.

The athlete's lawyer has a recognized friendship with a CAS member who was part of the court in the case.

After the resolution of the CAS, unfortunately, it can not be appealed.

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 WADC is not only the core document that harmonizes anti-doping policies, rules and regulations within the sport movement around the world. The Code is the key tool in the global

fight against doping in sport. We commend WADA for having established clear and consistent rules regarding WADC compliance for Signatories, and we are pleased that WADA is open to constructive overall views as to how other parts of the Code could be improved and thus has initiated this Code review process. We are grateful for the opportunity to offer our contribution in this regard, 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 clean sport.

As a consequence of how the sport organisation in Norway is structured, 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 22. March, serving as the basis for the comments made in this document.

On a general note it would be highly appreciated if the document "2021 World Anti-Doping Code Review: Questions to Discuss and Consider" had been more explanatory in form, to clarify the questions that are raised by WADA. For the current and future reviews, we believe that this recommendation would facilitate a smoother, consistent and more cohesive review process.

Reasons for amendments

We urge WADA to provide reasons for any amendments in WADC 2021 1.0. It is a challenging task for the stakeholders to give opinions on an alteration without knowing the rationale behind the proposed amendments. If the Code is amended, the amendment must be reasoned, as the legislative background is useful in the interpretation of the Code, securing that similar cases are considered within the same context.

The complexity requires further emphasis on the protection of the legal rights of the athletes

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 the athletes. This may be mitigated by WADA implementing more specified requirements on the hearing process and other means to guarantee due process. We believe this would safeguard the Code and further strengthen the efforts of protecting clean sport. Please confer below on Article 8.

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, some too descriptive and some not designed to serve as a comment to a legally binding text. We believe that comments should merely be clarifications to the articles, and 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 revised and published by WADA, ready and available whenever the need arises. We also recommend that WADA considers establishing a database containing all decisions rendered according to the WADC.

CAS' jurisprudence

The WADC was established, not only to protect the athletes' fundamental right to participate in doping-free sport, but also to ensure harmonized anti-doping programs at the international and national level. Against this backdrop we advise WADA to consider how to also ensure harmonized jurisprudence. Today there are hundreds of hearing bodies rendering decisions based on the WADC, and there is no doubt a need for an appeal body whose decisions are considered binding for the various hearing bodies, and further also a source of precedence and guidance in deciding

subsequent cases with similar legal issues or facts. We are concerned that CAS panels, as individual arbitral tribunals, are not structurally equipped for ensuring such uniformity of jurisprudence. Please confer below on Article 13.

ARTICLE 4: THE PROHIBITED LIST

Article 4.3: Criteria for including substances and methods on the Prohibited List

Firstly, any sanctioning rule must have legitimacy both in its essence and in its effect. Doping is, amongst ordinary people, perceived as an athlete's use of prohibited substances or methods to improve sport performance damaging the overarching standard of fair play. The definition of doping in the WADC is wider, as doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10. Performance enhancing potential is not a requirement when considering including a substance or a method in the Prohibited list. It is sufficient that the substance or the 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 thus, in the long run, could be damaging to the legitimacy of the anti-doping rules and detrimental to the important fight against doping in sport. We are also concerned that the wide definition of doping, where all athletes are being characterized as "cheaters", does not sufficiently differ between athletes that use prohibited performance enhancing substances, and athletes that use an unhealthy, non-performance enhancing substance.

Secondly, as we are of course strongly in favor of protecting the athletes' health, we have concerns regarding the criteria for including substances and methods on the prohibited list, and the classification of substances into categories. As protecting the health, according to the Code, is equally important to protecting the clean athletes and a level playing field, we fear that the public in general does not understand why not more unhealthy substances are prohibited. And, as protecting the health, again according to the Code, is equally important to protecting the clean athletes and a level playing field, we fear that the public in general will not understand why unhealthy substances as narcotics and cannabinoids are prohibited only in-competition and not out-of-competition, i.e. the remaining part of the year.

In our opinion, the fight against doping in sport is too important to risk having the public questioning the rationale behind the Prohibited list and its substances and methods. In light of these concerns, we call on WADA to consider whether it is better to address health issues outside the scope of the Code, for example by adopting a separate set of rules aimed at protecting the health of the athletes but with other requirements and reactions/sanctions. This may also serve as a standard towards the general public, as we recognize the actuality of addressing these issues outside the scope of organized sport.

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. Hence, we ask WADA to consider amending this rule adding the same requirement as found in Article 10 (1), cf. if the athlete establishes that he bears no fault or negligence for the violation, the athlete's individual result shall not be disqualified, unless the athlete's results in the competitions in which the anti-doping rule violation occurred were likely to have been affected by the athlete's anti-doping rule violation.

ARTICLE 5: TESTING AND INVESTIGATIONS

To protect the integrity of sport while simultaneously ensuring that athletes are treated equally, the testing and the subsequent analysis must be flawless. Today there are several bodies responsible for collecting doping samples, for example NADOs, IFs, ITA as well as private commercial

companies. 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 obvious impact a failure in the doping control procedure could have on the outcome, we worry that this is not enough to protect our athletes. Hence, we allow ourselves to suggest 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 refers to a "continuing debate involving which organizations have the right to conduct result management in different circumstances." Assuming this has reference to testing procedures, please allow us to make the following remark: We worry that such questions about jurisdiction draw the attention away from what should be our focus; protect the clean sport and the clean athletes. Hence, we ask WADA to consider whether a solution to this could be establishing one single organisation responsible for all testing. By doing so, no questions of jurisdiction will be addressed. Furthermore, this body may be linked to the effort to ensure that all DCOs have the same high level of competence, mentioned above. If all Signatories provided funding, such 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.

ARTICLE 6: ANALYSIS OF SAMPLES

As mentioned under Article 5, protecting the athletes, requires that the analysis of samples must be flawless. Today there are several WADA-accredited laboratories responsible for these analyses. Again, given recent historic events, we worry that this is not sufficient, and that it might be 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 7: RESULT MANAGEMENT

Please confer Article 5 above.

ARTICLE 8: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISIONS

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 the athletes. Hence, the athlete's 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.

First instance hearing bodies

In ordinary criminal proceedings, each case is assessed individually based on the specific circumstances of the case. 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 basically only allows 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. However, this issue requires individual attention. 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. Considering this, we suggest that WADA will consider establishing a similar arrangement in all doping cases as was done during the Olympic Games in PyeongChang, with CAS acting as a first-instance hearing body and as an appeal body. If established, we trust that the Code can be amended providing more room for discretionary assessment, and we trust that WADA will recognize that anti-doping work is organized differently in each country and amend WADC accordingly, allowing more flexibility to Signatories that apply the Code to all level of athletes. Please confer below on Article 10 and on the definition of "Athlete".

ARTICLE 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

Please confer Article 4. 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 mere 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 seems unnecessarily harsh. We ask WADA to consider amending this

rule adding the same requirement as is found in Article 10 (1), cf. if the athlete establishes that he bears no fault or negligence for the violation, the athlete's individual result shall not be disqualified, unless the athlete's results in the competitions in which the anti-doping rule violation occurred were likely to have been affected by the athlete's anti-doping rule violation.

ARTICLE 10: SANCTIONS ON INDIVIDUALS

Please confer Article 8 and "First-instance hearing bodies", and Article 13.

ARTICLE 13: APPEALS

Even though CAS is the final hearing body and it is of utmost importance for the athletes how these proceedings are managed, the Code does not contain any procedural rules for the proceedings before CAS. CAS has its own rules and is not part of the Code-requirement. We deem it important for the athletes that also the procedural rules are found in the Code. Hence, we advise WADA to ensure that the procedural rules of appeals to CAS in accordance with the Code, are integrated into the Code.

In addition to a possible restructure of CAS in a first instance and appeal body, please confer with the above, we also ask WADA to consider whether proceedings brought before CAS in accordance with the Code require a remodeling of CAS. As a court of arbitration, there is an underlying contractual nature which defines CAS' 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 a court of precedence. In fact, rendering decisions that are binding on or persuasive for other judicial bodies 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, and we call on WADA to consider how to evolve CAS into a proper court of precedence for anti-doping cases. For example, WADA should consider whether doping proceedings should be organized by an antidoping division in both first and second instance with a limited number of arbitrators. WADA should also consider introducing 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 etc. We therefore call upon WADA to consider the costs of CAS proceedings for the athletes, including strengthening the legal aid available to the athletes.

ARTICLE 14: CONFIDENTIALITY AND REPORTING

Article 14.3.3

Please confer above regarding Article 8 and the "Requirements of the hearing bodies."

DEFINITIONS

Provisional Suspension

The definition of "provisional suspension" needs clarification as to the restrictions laid on an athlete during a period of provisional suspension.

Athlete

The definition of an athlete is a key point in the Code. In Norway, NIF has chosen to apply anti-doping rules to athletes on all levels. We call on WADA to amend the definition thus recognizing that anti-doping work is organized differently in each country and provide the necessary flexibility to Signatories 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 unproportionate sanctions.

As we have 1,3 million members under our jurisdiction that are subject to the WADC, we find it unnecessary and inexpedient to support a mandatory requirement of whereabouts information from our lower level athletes.

Canadian Olympic Committee

SUBMITTED

Robert McCormack, CMO (Canada)
Sport - National Olympic Committee

The suggestions above represent the opinions/suggestions of the Canadian Olympic Committee and reflect the consensus the Ethical Sport Symposium they hosted in Calgary November 2017. The COC leadership also reviewed these suggestions.

Thank you for your consideration. We look forward to the subsequent steps to improve the WADA code.

Dr. Robert McCormack

Chief Medical Officer, Canadian Olympic Committee

no

SUBMITTED

ANGELO SBERNA, dr. (italy)
Sport - Other

1. Il devrait être spécifié qu'il est possible faire une notification de contrôle antidopage d'un sportif avant le début de la compétition et après faire le contrôle à la fin de la compétition elle-même, avec une obligation d'un degré moindre (selon la réelle possibilité) de contrôle continu du sportif depuis le chaperonne (puisque entre la notification et le contrôle a lieu une compétition et en plus ceci devient très compliqué si cette compétition se déroule sur la route). Le point du Code 5.5. exige que les contrôles soient faits en conformité avec le standard ISTI-SICE, et ISTI-SICE spécifie qu'il est nécessaire accompagner et observer le sportif depuis la notification de contrôle jusqu'à l'arrivée au poste de contrôle du dopage désignée (points 5.2.d -5.4.1.e)i.- 5.4.2.a)). Cette nouvelle spécification permet d'éviter (en particulier entre les sportifs qui ne sont pas d'élite et surtout pendant les compétitions avec nombreux participants) l'abandon de la compétition avant sa fin, fait afin d'éviter la notification de contrôle; le risque d'avoir des conflits légaux suite à une manque de notification (impossible si le sportif s'est rendu hors de portée); enfin cela rend possible une immédiate accusation d'infraction du point du Code 2.3. (la notification faite avant la compétition n'est pas suivie par une présentation au contrôle à la fin de la compétition). Ceci est très important pour les contrôles prévus sur les sportifs qui sont suspectés de dopage par les enquêteurs et le contrôle est leur nécessaire afin de démontrer l'effectif usage des substances dopants. D'autre part ces sportifs ont un grand intérêt d'éviter le contrôle. Par conséquent, le point du Code 5.1.1. devrait spécifier que le but du contrôle est aussi l'évaluation de la violation du point du Code 2.3. (se soustraire ou refuser le prélèvement d'un échantillon). C'est pourquoi il devrait être modifiés même les points ISTI-SICE traités ci-dessus. En conclusion, ça va dans la direction de faire les contrôles pas seulement finalisés à la recherche des substances interdites, mais aussi à la recherche des violations pas analytiques. De cette façon, les contrôles se révèleront plus utiles aux enquêtes et permettront d'accuser et sanctionner plusieurs sportifs arnaqueurs.

2. Modifier les points 2.5. et 2.9. du Code en spécifiant que ces violations doivent être imputées aussi aux enquêteurs et/ou à tous ce qui font des fausses accusations ou modifient les éléments afin d'endommager des sportifs, personnes ou organisations non coupables.

Australian Government

SUBMITTED

Dean Ebejer, Drug Analyst (Australia)
Sport - Other

Article 5.2

Text in article 5.2 says testing *may* be delegated to a NADO from an international federation (IF) or major event organiser (MEO), however, the extent or totality and application of the delegation is unclear. Article should be reworded to be clear that any or all aspects of testing authority may be delegated to NADOs by MEOs and IFs and to provide further explanation / examples relating to the respective roles and responsibilities of each organisation. As an example, the responsibility for developing test planning requirements and conducting the testing in accordance with these requirements may be delegated to the NADO with the overall responsibility for the anti-doping program remaining with the MEO/IF.

Gene Doping

Gene therapy promises to revolutionise approaches to the treatment of specific diseases. Unfortunately, the same technologies may be misused by athletes seeking to enhance athletic performance, as recognised by the inclusion of gene-doping as a prohibited method under the Code Prohibited List.

Exploitation of gene technologies for performance enhancement in sport, whether on an individual or institutionalised basis, represents a wilful and calculated intention to cheat. Further, it is likely this threat will only grow as related technologies - and accessibility to them - increase. It is therefore critical that an uncompromising and definitive position on gene doping now be reinforced by elevating sanctions for proven gene doping to lifetime ineligibility to compete in sport.

Enhanced recognition of the role of Intelligence and Investigations

The last Code revision saw investigations and intelligence gain increased prominence as effective detection tools. It is our view, borne of experience in prosecuting doping violations in Australia under the current Code, that further enhancements are necessary to optimise the application of investigations and intelligence techniques and their interoperability with testing.

By way of example, Code Article 10.11.1 provides relief in the timing of application of a sanction for an athlete who commits an anti-doping rule violation where there is a delay at any stage of the doping control process not attributable to the athlete. The Code acknowledges that no relief should be provided when the anti-doping organisation is investigating the individual's case. However, the Code does not appear to adequately cater to circumstances in which the violation triggers a broader investigation of possible violations by others, and limits the opportunity for investigation in relation to access and the complicity of others in the commission and/or concealing of the violation. We submit the Code should be adjusted to remove relief when the finalisation of a violation has been delayed because the anti-doping organisation has, in response, been obliged to conduct a broader investigation.

Signatory Status

We would like to open discussion on how to better recognise a NADO's signatory status to the Code, ensuring strict compliance and a globalised anti-doping effort.

Therapeutic Use Exemption Committee Compliance

We are conscious of the various current debates regarding the application and operation of Therapeutic Use Exemptions (TUEs). Recognising some of these issues may be attributable to the application of TUE standard rather than any weakness within the standard itself, the situation suggests there is a need for greater monitoring of the application of and adherence to the standard, including TUE committee membership, rigour adopted by such committees in making TUE assessments, and effective audit and central review by the World Anti-Doping Agency. TUE Committee peer review may be one mechanism by which improvements may be realised.

Australia is also concerned about whether there needs to be an authority to forward the medical details of an individual collected in a TUE application when requested by anti-doping investigators. It is argued there should be some level of legal requirement to release medical letters and tests and it may be appropriate to address this in the Code.

Law

SUBMITTED

Michael-T. Nguyen, Sports Lawyer (Canada)
Sport - Other

I'd like to thank you for giving me the opportunity to voice my comments and concerns. Although the general public only notices when sport stars face anti-doping rule violations, there still remains a great number of amateur, minor aged and uneducated athletes who are left facing WADA and ADO's by themselves. That's why we appreciate that WADA continues its ongoing process of developing and clarifying its Code.

I remain available should you have any questions about my comments. I'm also open to collaborate with athletes, ADO's and other sport organizations on an anti-doping level. This could be through educational purposes which I consider essential to all actors in sports, and helping organizations with their anti-doping responsibilities such as results management procedures. Best regards, Michael Nguyen Canadian Lawyer

AthletesCAN

SUBMITTED

Ashley LaBrie, Executive Director (CANADA)
Sport - Other

A submission on behalf of AthletesCAN, the Association of Canada's national team athletes for the 2021 WADA Code Review MARCH 30, 2018

On behalf of Canadian national team athletes and the AthletesCAN Board of Directors, please accept our review of 2021 World Anti-Doping Code (the "Code") as well as its application within Canada through the Canadian Anti-Doping Program ("CADP").

We strongly support clean sport. We believe in the rights of our athletes to compete in a doping-free environment that provides a fair and level playing field.

At the same time, we believe in the need to protect the rights and safety of clean athletes. Some of the actions and comments by those in power positions within the anti-doping movement have, in our eyes, bordered on discrimination and bullying and have influenced a culture of prejudiced and short sighted assumptions about many of our fellow competitors and human beings. We strongly urge those leading and participating in high performance sport to recognize that the winning at all costs mentality - whether expressed in the quest for the podium or the quest for clean sport - has negative unintended consequences. This behaviour goes against the very nature of the Olympic movement and has no place in sport or society.

There is a fine line between the ever growing Code restrictions and responsibilities imposed on athletes in the fight against doping and the infringement of basic human rights. It is extremely important that the fundamental human rights of athletes are recognized explicitly within the 2021 Code and are embedded into the governance of WADA, the International Olympic Committee (“IOC”), and the International Paralympic Committee (“IPC”) moving forward.

SCOPE OF REVIEW & REVIEW PROCESS

The narrow scope of review is a disservice to this process. We also find the statement of ‘broad support for most of the 2015 Code’s basic principles’ including and especially the concept of strict liability to support it, to be over-reaching and self-serving. The current review process lacks impartiality and transparency around the stakeholder feedback which lends itself to discretionary decisions made by a small group of individuals building consensus on what the ‘best stakeholder feedback’ looks like.

In good faith, we urge the members of the Code drafting team to reconsider the concerns and recommendations below to ensure the Code is more effective and reflective of its current stakeholders’ needs and rights.

PROHIBITED LIST

International Federations (“IFs”) should have the ability to bargain the development of sport-specific prohibited lists based on the risk assessment that is already completed for each sport and provided to NADO’s and IFs to build their testing plans.

As we understand, there are three criteria, namely performance enhancing, health risk, and spirit of sport, two of which substances need to meet to be included on the extensive prohibited list. We also understand that WADA has not publicly disclosed which substances meet which criteria.

To increase transparency and to clarify the risk or nature of a substance within the context of fairness and health, AthletesCAN is imploring WADA to release the criteria met for each of the substances within the prohibited list to system stakeholders immediately.

As the fundamental rationale for the WADA Code, the spirit of sport, also explained as the pursuit of human excellence through the dedicated perfection of each person’s natural talents, is the overarching culture that Olympism strives to express. Unfortunately, in some parallel cultures, this pursuit of perfection is cultivating a winning at all costs mentality which breeds the very conduct the Code seeks to prevent.

We believe to ensure health and safety of the athlete and to protect the fair and level playing field, the prohibited list needs to reflect these intrinsic priorities to effectively foster the play true values.

The Prohibited List, whether tailored by sport or status quo, should only include substances that are deemed performance enhancing or masking agents based on reliable and transparent science.

Any substances not listed as performance enhancing, but which have been identified through reliable and transparent science to be a health risk, should be maintained in a separate list for the sole purpose of education and awareness. Substances which are not identified by the medical/scientific community as being a health risk to the general population should not be included within this list. Any positive test for a substance on this list should require a mandatory education regime and the opportunity for counsel. However, use of these substances should not be considered an anti-doping rule violation.

Substances which may have been included in the prohibited list because their use in some form ‘threatened’ the spirit of sport; but are not classified as a health risk should be identified within signatory Codes of Conduct at their respective discretion. The spirit of sport is an overarching expression of a fair and ethical sport culture. However, it is certainly not a reliable scientific

criterion for ensuring the health and safety of athletes and a level playing field. The idea that this is a criterion used for identifying substances that tens of thousands of athletes must then be responsible for understanding to ensure their career is not jeopardized by a potentially disproportionate and very public violation, seems immoral. Spirit of sport should not have a place as a determining factor in the addition of a substance on the prohibited list and should be removed as such.

Contaminated products and food contamination

AthletesCAN is in agreement with the recommendations put forward in the area of contaminated products and food contamination by the Canadian Centre for Ethics in Sport ("CCES").

PROPORTIONATE SANCTIONS& PUBLIC DISCLOSURE

We strongly support a reduction in the scope of sanctions around access and participation in sport for any inadvertent doping infraction. Specifically, the scope of the sanction should only limit access and participation to NSO/IF sanctioned events for any inadvertent doping infraction. Similarly, the public disclosure of information related to inadvertent anti-doping rule violations should be withheld to protect both the reputation, livelihood and mental/physical wellbeing of an athlete. The general public is uneducated on what various levels of doping violations mean, and though these infractions are inadvertent, their disclosure often results in negative reputational consequences for athletes that affect their mental health, both on and off the field of play. Further, the public does not understand nor are they aware that athletes who 'commit' these violations are guilty until proven innocent and are forced to carry the burden of proof. As such, whether there was intent or not, public disclosure will have unintended and very destructive consequences on an athlete's ability to make a living (in many cases loss of their career), let alone their mental and physical well-being. This has been referred to as the "collateral damage of wrong and disproportionate sanctions". Inhumane outcomes cannot be justified by the fact that "rules must be followed".

INTELLIGENCE

As the intelligence operations of WADA to fulfill the mandate of the Code are gaining momentum and funding, there are real concerns around the fundamental human rights of athletes and specifically privacy as it pertains to our members. Transparent standards for intelligence gathering need to be developed and enforced to ensure ethical lines are not crossed. The threat of backroom deals and covert searches with no real authority must be considered. Our athletes are already subject to a level of scrutiny and surveillance that few others in the human race are. There needs to be a strategic focus on catching 'cheats' centered on historical and empirical evidence and information from credible whistleblowers.

In our previous submission regarding the CADP to our own NADO - CCES - we reaffirmed our strong position against the invasion of privacy of our athletes to further the intelligence agenda.

In both 2014 and 2017 we wrote:

Further, outside of the consents required during the doping control process, we remain steadfastly opposed to the need for athletes to provide consent to CCES to use their personal information with law enforcement and border agencies to pursue doping investigations and intelligence gathering.

While we trust that the athlete's best interest and personal privacy would be of upmost concern to the CCES, the unknown and unintended collateral damage of such a proposal makes it impossible for us to support.

We understand that Canadian athletes are still being forced to sign agreements providing this specific consent.

Regrettably, the unknown and unintended collateral damage we referred to manifested itself concretely on the world stage in the aftermath of the Rio Olympic and Paralympic Games. As widely reported in the media, hackers gained access to the Therapeutic Use Exemptions (“TUEs”) granted to the world’s athletes and published this confidential information. The World Anti-doping Agency (“WADA”) International Standard on TUEs or on the Protection of Privacy and Personal Information were little solace to the athletes who had the difficult task of reacting to such leaked information. We trust CCES agrees that a similar leak of information regarding the details of information shared by CCES to law enforcement and border services agencies would be catastrophic to that athlete, his or her family, and the credibility of the anti-doping system.

The international standards, referred to throughout the CADP were implemented in 2014 by WADA, before WADA and CCES secure databases were comprised. The attack by hackers demonstrated a significant risk for athletes. The expectation that athletes would still consent to the sharing of personal information held by law enforcement agencies with the CCES is unreasonable.

We ask that you reconsider the practice of both sharing information with law enforcement and border services agencies and requiring consent to do so from athletes as a condition of participation in sport until demonstrating the ability of CCES to keep athlete information safe.

ACCESS TO JUSTICE

World Anti-Doping Code 2015: INTRODUCTION – PART 1 DOPING CONTROL

“They are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and human rights. When reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware of and respect the distinct nature of the anti-doping rules in the Code and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport.”

This introduction to Doping Control within the 2015 Code lends itself to a separate civilization living above the laws that govern the rest of the world. What is “Intended to be applied” and what is “applied” are two very different things. A recent survey administered by the independent FairSport saw more than 2100 athletes from 60+ countries respond to various areas of concern within the current anti-doping environment amongst other areas of athlete rights. According to the survey, **95%** believe it is desirable/essential to have the right to procedural and substantial justice (including a fair hearing, and swift, consistent, and transparent enforcement of all rules).

On a broader scale, there exists a need for considerable reform to bring about an arbitration system that is completely transparent and independent of any influence from international sporting federations, governments, the Olympic movement and WADA. The creation of a truly independent system that is based on and respects the fundamental rights of athletes as both people and labourers should eliminate direct, and as much as possible, indirect conflicts and abuses of power that are currently justified in the name of clean sport.

HEALTH, SAFETY & THE RIGHTS OF ATHLETES

In sport, there exists a duty of care to protect the health and safety of all of our athletes. There is a need for mandatory education regimes and support programs (including counseling) for all levels of violations, and perhaps most importantly, for those athletes intentionally using performance enhancing substances or substances that are a risk to health.

Above this basic need, the culture expressed through the ‘spirit of sport’ must remain free from discrimination at all times. Many within the anti-doping movement have too often jumped at the opportunity to ‘make an example of’ certain groups based on nationality, sport, etc. These

generalizations go against the very essence of Olympism and disregard the rights of clean athletes. There is no scenario where ‘innocent casualties of the war against doping’ should exist. Human rights are athlete rights. Currently, we do not recognize WADA’s ability to protect, respect and remedy the violations of rights of our athletes.

With the understanding that it is the intention of WADA to incorporate an Anti-Doping Charter of Athlete Rights within the Code, and as a signatory to the Universal Declaration of Player Rights, we urge both the WADA Foundation Board and Athletes’ Committee (“AC”) to explicitly articulate the fundamental human rights grounded in the UN Guiding Principles on Business and Human Rights as the basis for the athlete rights within the proposed charter.

COMPLIANCE

As the collective voice of Canada’s national team athletes, we strive to ensure a fair sport system for our members. As in our own country, we demand secondary and reciprocal obligations and standards for those requesting specific actions and/or imposing responsibilities on athletes. A very simple example of this is the right to and responsibility of anti-doping agencies to provide clean, uncontaminated testing equipment to athletes that are obligated to submit to testing. These are reciprocal obligations, and one does not exist without the other. Signatories to the Code, and especially WADA itself should be held to the same level of accountability as our athletes as it pertains to their conduct and responsibilities within the anti-doping movement.

GOVERNANCE

To achieve true athlete representation, athlete representatives must be elected by their peers in a transparent and structured election process with open nominations from within this important stakeholder group. While the WADA AC is an important mechanism for the inclusion of direct athlete feedback, it has no real decision making power within the overall governance of WADA. For the leaders of WADA to truly consider each of its stakeholders, the Foundation Board must move to a tri-party structure where athletes have an equal voice and vote within the decision making process.

Again, we refer to a recent survey done by FairSport where the following feedback was captured around governance:

- **94% of athletes** believe it is desirable/essential to have transparency both in governance and anti-doing;
- **92% of athletes** want the right to representation and participation in the fight against doping; and
- **90% of athletes** want the right to participate in the creation of rules for sport and the governance of sport.

One of the key success factors in change management is the degree of stakeholder engagement throughout each stage of the process. The culture of sport is currently in a crisis state. We need to identify where the issues are taking place, and learn more about the environment that is fostering these detrimental problems. Until we can understand the cultural cracks influencing ‘cheats’ within the high performance landscape from the inside-out perspective, we will fail at attempts to deter and protect exerted from the outside-in.

On behalf of Canada’s national team athletes, we value the opportunity to provide general feedback within the 2021 WADA Consultation process. This is an important opportunity for athletes and for Canada as a strong ally of the clean sport movement, and one that we wish to support through continued dialogue, to ensure the best possible outcomes for the sustainability of high performance sport and a strong sport culture.

Yours in sport,

Dasha Peregoudova
President, AthletesCAN

Ashley LaBrie
Executive Director, AthletesCAN

Ministry of sport of Russia

Veronika LOGINOVA, Head of Antidoping Department (Russia)
Sport - Other

SUBMITTED

1. Languages

To avoid ambiguous interpretation of some provisions of the Code, it is proposed to add a clause stating that 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.

2. Criteria for Including Substances and Methods on the Prohibited List

It is proposed to make public 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. 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.

3. Therapeutic Use Exemptions

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 substances include those that are used in the treatment of attention deficit hyperactivity disorder in precise sports and disciplines such as artistic and athletic gymnastics, jumping, high jumping and others.

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.

It is also proposed to consider the possibility of publishing on the WADA website a list of athletes using prohibited substances or methods in accordance with the issued TUEs, indicating the substance or method used and the period of such use.

4. Automatic disqualification of individual results

It is proposed to supplement Article 9 with the provision to grant to an anti-doping organization the 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.

5. Review of the decision due to the newly discovered/new circumstances

The obvious gap of the World Anti-Doping Code is the absence of possibility for the anti-doping organization to review its decision due to the newly discovered/new circumstances, although such an option is an integral part of any legal system around the world.

Often, an anti-doping organization or an athlete, in relation to whom a decision is made, gets circumstances that existed on the time of the decision, but were not known (newly discovered circumstances) or circumstances that appeared after the decision is made (new circumstances), and which could significantly influence the decision-making process on a particular case. In such cases, the anti-doping organization should have the right to initiate a review of the case due to newly discovered/new circumstances, if it recognizes that they are of significant importance for a specific doping case.

6. Specific aspects of imposing sanctions on para-athletes

The current version of World Anti-Doping Code does not fully reflect the rights and interests of para-athletes in terms of applying sanctions on the identified facts of anti-doping rule violations.

We consider it necessary to introduce changes and additions that take into account the specific aspects of the para-athletes, due to which deviations from the expected standard of behavior are possible, including:

- specific aspects of daily life of para-athletes with severe impairment (severe defeat of the locomotor system, totally blind, persons with intellectual disabilities),
- frequently the lack of choice for the para-athletes of their personnel (coach, doctor, support personnel and others),
- the impossibility of independent control over food, drink, prescription and reception of medicines,
- the impossibility of having a significant impact on the process of timely applying for TUE.

This is especially true for para-athletes with extremely severe impairment of the locomotor system, with intellectual disabilities, totally blind para-athletes, whose capacity is limited as a result of the severity of the impairment.

For the reasons mentioned above, para-athletes with severe impairment are significantly more at risk of unintentional violation of the Anti-Doping Rules in the form of unauthorized use of medicines containing Prohibited Substances, untimely applying for TUEs, non-appearance of the procedure

for submitting samples and violation of the procedure for providing information about their whereabouts.

Ministry of Culture

SUBMITTED

Per Aasmundstad, Deputy Director General (Norway)
Public Authorities - Government

NORWEGIAN MINISTRY OF CULTURE - CONTRIBUTION TO THE WORLD ANTI-DOPING
CODE REVISION - Phase one - 31 March 2018

FAIR TRIALS

The present 2015 World Anti-Doping Code article 8.1. states that a fair hearing within a reasonable time by a fair and impartial hearing panel should be provided.

It is our opinion that fair trials can only be secured through the separation of powers. Reliable, independent and impartial structures must be set up, in line with Human Rights Principles.

Therefore

To obtain true separation of powers, independence must be secured, and therefore the Norwegian Ministry of Culture proposes the following amendment be added to WADC article 8.1:

"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."

In relation to Fair Hearings, we would also like to propose the following to be added:

All hearings to be open and public.

Ministry of Culture

SUBMITTED

Martin Holmlund Lauesen, Special Adviser (Denmark)
Public Authorities - Government

Submission from Denmark to the 1st stakeholder consultation phase in the Review of the World Anti-Doping Code

The Danish Ministry of Culture, The Sports Confederation /NOC of Denmark, 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 1st 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.

In order to ensure a strong and consistent fight against doping across borders and sports organisations, the role of World Anti-Doping Agency (WADA) as the global regulator of anti-doping should be strengthened through the revision of the Code and International Standards.

An even more robust anti-doping system is needed. On the one hand the global anti-doping bar should be raised. On the other hand, however, it is also necessary to allow flexibility to enable a strengthened local fight against doping without compromising the quality of the international anti-doping efforts.

In addition to the points raised under the different themes, we encourage WADA to:

- *Include improper influence of the doping control process as anti-doping rule violations – e.g. physical or psychological violence or corruption:* Just like any other sports official or public official, DCOs should be able to carry out their functions in a safe working environment without physical and psychological violence. Recent events have shown that corruption has made it possible to circumvent anti-doping measures. However, the definition of corruption varies across different legal systems and corruption in connection to anti-doping is not necessary covered by criminal law provisions. It would be desirable, if the Code reflects that such behaviour (violence and corruption) is not acceptable in connection with anti-doping.

▪

Take into consideration that some countries have an extensive anti-doping programme designed for and taking into consideration the specificities of low-level and recreational sports, which – from a perspective of proportionality – is only possible if the Code allows for less extensive programme for those non-elite athletes: In Denmark for example, people engaged in recreational sports within the national governing bodies or activities in fitness clubs or centres (commercial or under the auspices of the national sports organisations) are covered by an anti-doping programme specially designed for recreational sports. The programme does, at large, mirror the principles of the WADC in terms of testing and results management. However, in terms of, inter alia, sanctioning levels, TUE's and requirements of publication, the specificities of the recreational sports and fitness activities are reflected in the rules and it would be disproportionate to treat people engaged in these recreational activities the entire same ways as elite athletes in competitive sports. The current Code takes this into consideration and it is of utmost national importance for us to ensure, that this will also be the case for any future Codes.

Sport New Zealand

Sam Anderson, Senior Advisor (Legal) (New Zealand)
Public Authorities - Government

SUBMITTED

Application of the Code to low-level athletes

1.

We suggest the Code should clarify how anti-doping rules are to be applied to athletes below National-Level-Athlete. We consider there are strong policy reasons for treating low-level athletes differently to International and National level athletes and that the Code should be explicit about this.

2.

The definition of “Athlete” in the Code indicates that Anti-Doping Organisations (ADOs) have discretion to apply anti-doping rules to athletes below National-Level-Athlete. However, it is not clear whether this discretion simply means there is a choice between applying the rules in their entirety or not at all. The possibility of applying the rules to low-level athletes but with the ability for the ADO to exercise discretion about bringing a case forward, and for a more lenient set of sanctions to apply does not appear to be contemplated by the Code.

3.

Consideration should be given to whether:

1.

there should be a discretion not to bring a case against a low-level athlete (those below National-Level-Athlete). In such a situation, the anti-doping rules would still apply to low-level athletes, but the relevant ADO would have the discretion not to pursue a case, for example where the violation is a one-off and/or relatively low level. Such a discretion is common within law enforcement and allows law enforcement agencies to focus their limited resources on the most serious cases; and/or

2.

a more lenient set of sanctions should apply to low-level athletes (those below National-Level-Athlete). In such a situation, the anti-doping rules would still apply to a low-level athlete but a more lenient set of sanctions could be applied.

4.

The Code appears to have been drafted with elite athletes in mind. This is particularly clear in relation to the sanctions regime, which refers to 4-year and 2-year starting points respectively. We consider the anti-doping rules should treat low-level athletes differently and that in some instances a warning, rather than full ‘prosecution’, would be justified. This is particularly true where the athlete involved participates at such a low level that he or she has never received anti-doping education and may not even be aware that the rules apply to him or her.

5.

The issue of low-level athletes is likely to be raised more frequently in the future as ADOs rely more on intelligence and less on testing. Currently, ADOs may feel the Code compels them to apply the full force of the rules against low-level athletes. We suggest such an approach is not an efficient use of an ADOs limited resources nor a desirable outcome from a public policy perspective.

6.

We have first-hand experience of this issue in New Zealand and would be happy to discuss with WADA the impact this has had on the individuals involved, our NADO and the bodies that hear these cases.

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 note that both the WADA Athletes Committee and the IOC have raised concerns about CAS in the wake of recent decisions.

3.

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.

rigorous and transparent criteria for the appointment of CAS arbitrators

3.

rigorous and transparent criteria that applies to the hearing of cases

4.

require the prompt publishing of written decisions

Article 10

We suggest there should be a discretion to allow a lower sanction to be imposed on a person for *attempting* to commit an Anti-Doping Rule Violation (ADRV) as opposed to committing the full ADRV. In other words, in some cases it may be appropriate to apply a lower sanction for attempting to commit the ADRV.

Article 10 currently applies the same sanction to persons who attempt to commit the ADRV and to those who commit the full ADRV. This conflicts with the general legal principle that the maximum sanction for an attempt should be lower than the maximum sanction for the full violation. Providing

a discretion would allow the body hearing the case to assess a person's culpability and arrive at a sanction that is proportionate given the circumstances.

We acknowledge that a discretion power could be abused and that its use would need to be monitored.

Secretaria de Estado da Juventude e Desporto

SUBMITTED

Paulo Fontes, Advisor (Portugal)
Public Authorities - Government

The Portuguese State has participated in the definition of common positions at the level of the EU and also of the Council of Europe. In complement to the issues identified in the common positions we would welcome that the Code Review could also address the following concerns:

- To ensure, beyond the dimension of high competition, a public health dimension in the fight against doping. - To create mechanisms to support and empower the regions of the world with less coverage in the fight against doping - To ensure that all sports phenomena with a multinational impact and competitive nature are covered by the Code - To clarify and better coordinate the terms of access and permanence in the worldwide network of anti-doping laboratories.

Ministry of sport of Russia

SUBMITTED

Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

To avoid ambiguous interpretation of some provisions of the Code, it is proposed to add a clause stating that 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.

Ministry of Youth and Sport

SUBMITTED

Viktoria Slavkova, Chair of Working Party Sport, Deputy member of FB on behalf of EU (Bulgaria)
Public Authorities - Government

SUBMITTED BY WADA
LAST EDITED BY ADMIN

1.

INTRODUCTION

The EU and its Member States cannot yet provide a specific wording for the different articles, but have highlighted areas which the EU and its Member States would like WADA to consider when elaborating the first draft of a revised Code. The EU and its Member States share the view that the following elements could be considered in the World Anti-doping Code Review process.

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, which is in the making, could

become an integral part of the Code, depending on its final content. The EU and its Member States encourage WADA to consider if the sanctions in the Code are appropriate for minors.

ROLE OF NON-SIGNATORIES

It is recognised that some entities, such as the Regional Anti-Doping Organisations, the International Testing Agency and other service providers, are involved in the anti-doping system, without being Code Signatories and with more limited supervision than for Code Signatories. The EU and its Member States consider that the role of such entities and their obligations should be clarified in the Code, to ensure that all of the mentioned entities addressed by WADA are complying with the rules.

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 considers that the following articles have to be included in the revision process and comments allowed for the 2nd phase of the consultation:

Article 2 ANTI-DOPING RULE VIOLATIONS

Article 4 THE PROHIBITED LIST

Article 8 FAIR HEARINGS

Article 10 SANCTIONS ON INDIVIDUALS

Article 19 RESEARCH

PURPOSE, SCOPE AND ORGANISATION OF THE WORLD ANTI-DOPING PROGRAM AND THE CODE

FUNDAMENTAL RATIONALE

Article 2 - ANTI-DOPING RULE VIOLATIONS

2.3 Evading, Refusing or Failing to Submit to Sample Collection

There remains some confusion over the scope and definition of the three violations referred to in Article 2.3:

- a) Evasion: it would clarify matters if Evasion was expressed not to be subject to the 'Compelling Justification' exception. That is the intention, but the expression in the Code is ambiguous.
- b) Refusal: it would be simpler if the 'Compelling Justification' exception was made express and clear.
- c) Failure to Comply: it would be simpler if the 'Compelling Justification' exception was made express and clear.

In respect of the Article 2.3 the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

Article 2.4: Whereabouts Failures

There are two observations:

a) The sanction of 1-2 years is of dubious proportionality.

Article 2.4 is unique in that it by definition does not involve any doping. If an Athlete is suspected of abusing whereabouts requirements to avoid being tested, that Athlete will be charged with evasion. Athletes who commit an Article 2.4 violation are not 'dopers'.

That being so, the sanction to be applied should be based solely on their fault. Experienced athletes with comprehensive support staff have less of an excuse than inexperienced athletes in minority sports.

In addition, an Article 2.4 violation should not 'count' as a first violation under Article 10.7.3.

b) It is not proportionate or acceptable for National or International Federations to impose financial or other penalties on athletes who miss a test or commit a filing failure. That is a collateral sanction and unreasonably punishes an athlete for simple negligence.

Article 2.7: Trafficking

Article 2.8: Administration

Article 2.9: Complicity

Administration is a narrow violation, and is for practical purposes covered by Article 2.7. It is more or less impossible to administer without 'trafficking'. Administration might best be referred to as a sub-set of Trafficking, 'freeing up' Article 2.8.

There is a potential problem with the definition of 'Complicity', in that it covers conduct that might also be covered by the more serious violations in Articles 2.7 and 2.8. Providing an Athlete with a steroid is 'Trafficking', but if it is provided so that athlete can cheat, it is also covered by Article 2.9. But the sanctions are different: Article 2.7 starts at 4 years, but Article 2.9 is capped at 4 years. This does not work.

Article 4 THE PROHIBITED LIST

Health

Public health has diminished in its significance in the Code, whereas health is a fundamental part of a national sporting strategy. In particular, Article 4.3 should emphasise the public health risks caused by doping substances and methods.

ARTICLE 8 FAIR HEARINGS

The Code's provisions regarding fair hearings are dated and sparse. The Council of Europe has produced a detailed recommendation on fair hearings, and recommends that WADA use this (and its own excellent Results Management Guidelines) as the basis of either a Standard on Hearings, or a soft standard.

The Council of Europe would be happy to assist with the formulation of such a standard.

Article 10 SANCTIONS ON INDIVIDUALS

Sanctioning Policy

The Code has maintained throughout its various versions a consistent sanctioning policy, in that every Athlete is treated the same. This no longer appears to be appropriate. In particular, lower-level/sub-elite athletes are held to exactly the same standards as their elite-level counterparts. These athletes have little in common aside from the sport they compete in.

Consideration needs to be given as to whether graduated sanctions, that take account of relevant experience, competition level and infrastructure, should be introduced. Athletes who compete at a purely social level are now facing long bans from a sport for failing to check supplement products closely enough, or remember the specifics of bi-annual anti-doping 'education' sessions that last barely an hour.

In respect of the policy objectives and practical implications of Article 10.2.1, disproportionate sanctioning policy for tampering/evasion in Article 10.3.1, sanctions for substances of abuse and substantial assistance provisions (Article 10.6.1) the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

ARTICLE 10.12.1 *Prohibition against Participation during Ineligibility*

It is strongly recommended that 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 anti-doping rule violation. This should be the responsibility of the relevant NADO.

ARTICLE 19 RESEARCH

The Council of Europe considers that the Article 19 needs revision and refocus, especially in connection with the new approach that will be introduced through the International Standard for Education and respective changes in the Article 18. In respect of the Research the Council of Europe will provide comprehensive comments as part of its response to the 2nd phase of the consultation.

PURPOSE, SCOPE AND ORGANISATION OF THE WORLD ANTI-DOPING PROGRAM AND THE CODE

FUNDAMENTAL RATIONALE

The Council of Europe proposes to revise the introduction of the Code and consider reflecting that the main purpose of WADC should be serving as the basis for clean sport culture through prevention, bearing in mind that:

- a) prevention consists inter-connectedly of education, deterrence, detection and enforcement;
- b) culture is created by using language that focuses on positive outcomes (rather than fight against doping)

The Code ideally would follow a more logical approach to doping prevention – one that mirrors the interventions that would be taken when implementing an effective anti-doping programme.

Across the anti-doping system, a language shift from anti-doping to clean sport could be considered to better support the culture we are trying to develop and the values we seek to instil.

Organización Nacional Antidopaje del Uruguay (ONAU)
Federico Perroni, Miembro Consejo Directivo (Uruguay)
NADO - NADO

SUBMITTED

SE SUGIERE MODIFICAR EL TEXTO DEL ARTÍCULO 3.1 ("CARGA Y GRADO DE LA PRUEBA"), POR EL SIGUIENTE:

“Recaerá sobre la Organización Antidopaje la carga de probar que se ha producido una infracción de las normas antidopaje. En aquellas Organizaciones Antidopaje Nacionales de países con normas jurídicas de raíz latina, podrán estas establecer el siguiente criterio de valoración de la prueba: Las pruebas podrán ser valoradas por separados y en conjunto de acuerdo con las reglas de la sana crítica, salvo que otra norma del Código expresamente disponga una regla de apreciación diversa. No se podrá imponer una sanción a un deportista o a otra persona sin que medie plena prueba de que resulte racionalmente la certeza de la infracción y su responsabilidad.”

SE SUGIERE AGREGAR EN EL ARTÍCULO 5 ("CONTROLES E INVESTIGACIONES") UN NUEVO NUMERAL (5.9) QUE TENDRÍA EL SIGUIENTE TEXTO:

5.9 Sin perjuicio de lo dispuesto en el presente artículo, las organizaciones antidopaje destinarán al menos un 40% de su presupuesto anual para las actividades de colaboración con los gobiernos y sus servicios o agencias públicas en tareas de inteligencia destinadas a descubrir o tramitar una ofensa criminal y/o tramas organizadas y planificadas de dopaje en el deporte.

MODIFICACIÓN DEL ARTÍCULO 6.1 (Utilización de Laboratorios Acreditados y Aprobados). Se sugiere el siguiente texto:

“A efectos del Artículo 2.1, tratándose de deportistas de Nivel Internacional, las Muestras serán analizadas únicamente por laboratorios acreditados por la AMA. Tratándose de deportistas de nivel nacional, la Organización Antidopaje responsable de la gestión de resultados podrá escoger para la realización de análisis aquellos laboratorios que sin ser acreditados, cuenten con la habilitación de la AMA. La elección del laboratorio acreditado o aprobado por la AMA utilizado para el análisis de las muestras dependerá exclusivamente de la Organización Antidopaje responsable de la gestión de resultados.”

. AGREGAR UN NUEVO PÁRRAFO AL ARTÍCULO 10.12.1:

“Sin perjuicio de lo dispuesto, para casos de deportistas de nivel nacional de condición amateurs, el período de suspensión podrá reducirse por el órgano que dictó la resolución hasta la mitad de la misma si el deportista demostrase fehacientemente haber realizado un tratamiento de rehabilitación médica o psicológica y haberse sometido a un plan progresivo de al menos dos controles antidopaje sin resultados adversos, a su costo, además de arrepentimiento”.

AGREGAR UN PARRAFO EN EL ARTICULO 14.3.2 CON EL SIGUIENTE TEXTO:

Sin perjuicio de lo dispuesto, en aquellos asuntos en que intervenga un Tribunal de Expertos, el Signatario deberá publicar dentro del mismo plazo y por un período no menor de 60 días en su página web la totalidad del fallo firme dictado así como sus considerandos, tanto en primera como de segunda instancia, si existiere.

AGREGAR UN PARRAFO AL ARTÍCULO 18.2 QUE ESTABLEZCA "Sin perjuicio de lo dispuesto en el párrafo anterior, cada signatario podrá dentro del ámbito de su competencia, fijar cursos de educación en antidopaje de tipo preceptivo para deportistas afiliados en ciertos deportes y por ciertos períodos".

Anti-Doping Norway

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

SUBMITTED

Submission of proposals for the 2021 World Anti-Doping Code

Anti-Doping Norway

Anti-Doping Norway has put focus on major principles for the Code and the anti-doping work at this stage of the process instead of detailed feedback for each paragraph in the current Code.

Emphasis on the athlete's health

Anti-doping was mainly initiated due to concerns related to athlete's health following illness and even death after using doping substances.

A recent decision in the European Court of Human Rights (ECHR 018 (2017) relating to whereabouts particularly focused on the athlete's health as one of the main pillars of anti-doping:

"With respect to the legitimate aim or aims of the interference, the Court observed that the "protection of health" was enshrined in the relevant international and national instruments which presented the prevention of doping as a health concern. As a result, the whereabouts requirement was intended to address health issues, and not only the health of professionals, but also that of amateurs and in particular youth."

Anti-Doping Norway believes that the principle of securing the athletes health should have more focus in the preamble of the anti-doping rules.

Fault requirement in the Code – Art. 2

In order to fully understand the essence of an article, it is essential that important conditions or requirements, such as conditions related to Fault, is clearly expressed in the article itself, (ex. art. 2.7 and art. 2.8) and not in the comments or definitions.

Article 8 - Right to a fair hearing and notice of hearing decision

In the previous versions of the Code, the principles of fair hearings were in many ways not taken thoroughly into account as that would have created a too radical change in an overwhelmingly dysfunctional legal system; both at national level and at international level. Anti-Doping Norway believe that now is the time to revisit this fully and comprehensively.

Anti-doping Norway refer to 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). The principles in the Recommendation should be mandatory for all hearing and appeal panels.

■

The principles in article 6.1 of the Convention for the Protection of the Human Right must be observed also in terms of independence.

■

All signatories to the Code should be responsible for ensuring that independent, impartial and legally competent hearing and appeal panels are established and available allowing for their athletes and other persons to have their possible rule violation heard in a fair hearing as per the requirements of Article 8 of the Code and the mentioned CoE Recommendation.

We suggest that a Supreme Panel for anti-doping is established in the Code, replacing CAS, allowing for a similar process of fair trial as mentioned above. Such a Supreme Panel may also be able to carry out a plenary review in principally important cases. An arbitration court is appropriate for commercial disputes. Today's doping cases are more often involving investigations and collaboration with law enforcement and should be dealt with by a "supreme panel" for anti-doping rather than an arbitration panel. As such a doping case has more in common with a

criminal case than a commercial dispute. We believe a supreme panel will ensure more harmonized jurisprudence and ensuring processes in line with fundamental rights for fair trial. This is in our view not only about what is legally acceptable from a human right perspective, but ensuring best practice for the judicial system in anti-doping. Members of an established Supreme Panel/Court for sport could be appointed by external institutions. We are ready to discuss this further with the Code Review Team.

All decisions from a hearing panel should be binding by all stakeholders. The current structure where a decision from a Major Event Organisers only are valid for that competition may create a chaotic situation weakening the trust of the anti-doping system, especially when they not are made during the Games as intended.

Article 10 Sanctions

We would ask the Code review team to consider the minimum sanction regime. We believe changing the judicial system and ensuring fair trial through independent, open and reliable hearing and an international supreme panel, more authority could be given to the judicial bodies. Under a best practice regime ensuring fair trial, the sanctions could be more flexible.

Anti-Doping Structures and good governance

We 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. 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.

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.

We believe the principles in the IADA Policy should be reflected in a new Code. The IADA policy is attached.

Anti-Doping Structures and good governance for NADOs

Additional roles and responsibilities are regulated in article 20, stating that the National Olympic Committee and National Paralympic Committee, together with their government are responsible for establishing a National Anti-Doping Organization, where one does not already exist. This is a good principle and should be furthered. We suggest requirements for the NADO to include:

-

That national rules clearly require the establishment and funding of a single independent^[1] and impartial NADO in that geographical area.

-

That the NADO funding allow for a predictable anti-doping planning in both a long-term and intermediate-term perspectives, requiring the NADO to provide overall plans and measurable goals for its activities followed by performance reporting.

-

That the organisational structure of the NADO on all account is independent from sport and other relevant stakeholders ensuring that the NADO cannot be instructed in their operational decisions and activities.

■

That the appointment of the NADO management and staff safeguard the principles of equality and ensures no conflict of interest, in addition to securing adequate knowledge, competence and capacity.

■

That the anti-doping organisational structure allow for close cooperation with Governmental bodies such as Customs and Police enabling the appropriate flow of information and other forms of assistance between the agencies in relation to potential doping activity.

■

That all NADOs 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.

■

That the national rules clearly require the establishment and funding of one national independent and impartial Hearing and Appeal Panel structure, including the requirement of describing sound processes in line with the human rights.

■

That the responsibility also includes the establishment or selection of an independent^[2] WADA accredited laboratory, including funding as required.

Anti-Doping Structures and good governance for International Federations

We suggest requirements related to international federations to additionally include:

■

That the international federations require their national federations to respect the autonomy of the National Anti-Doping Organization and not interfere in its operational decisions and activities.

■

That any organisation responsible for sport do not plan or carry out doping control or investigation in anti-doping matters themselves, but ensures that an independent entity carry out these tasks. Policies and mechanism, ensuring that any information and intelligence of possible anti-doping rule violation is forwarded to the selected independent entity, must be established.

Anti-Doping Structures and good governance for WADA

We suggest requirements related to WADA to additionally include:

We believe WADAs Governance structure should be changed. An option for a WADAs Governance model is a Foundation Assembly and an Independent Executive Board. The Foundation Assembly could consist of representatives appointed by its stakeholder (Public Authorities and Olympic Movement) as of today.

The Executive Board could consist of independent persons appointed by the Foundation Assembly.

Responsibilities in such a model:

-

The Foundation Assembly:

-

Approval of rules and regulations (Code, standards, mandatory documents)

-

Budget

-

Constitution

-

Strategic plan/direction

-

Approval of reports and accounts

-

The Executive Board:

-

Oversight of Management

-

Code Compliance and monitoring

-

Reports to Foundation Assembly.

We believe it is crucial for WADA to change its management model to avoid a perceived conflict of interest in its monitoring activities. The current structure where the WADA President and several Executive Committee members holds central positions in international sport is in our view damaging for the trust of the anti-doping work.

Further, we do not think it's appropriate for an independent body to decide the financial contributions for its stakeholders, neither the rules the stakeholders must oblige to. Therefore, these decisions must be taken by a representative body, namely the Foundation Assembly.

Lower level athletes - definition

The definition of "athlete" is divided in three categories; international level athlete; national level athlete and athletes that are not international nor national level athlete (i.e. lower level athletes). Close to 30% of the testing carried out by ADNO is on lower level athletes. For some of these athletes testing positive and serving the period of ineligibility dictated by the Code can be perceived as very harsh due to circumstances that is not a part of their sport. We believe that, although top level athletes support strong and harsh period of ineligibility, they were not considering lower level athletes. We therefor suggest that the Consequences for lower level athletes only (and this can even be recreational athletes), allow for more flexible ways in which Consequences can be imposed.

Enclosure (it was not possible to attach documents through this online feedback system so that we have sent the two attachments by e-mail to code@wada-ama.org :

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IADA Policy document

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Council of Europe. T-DO/ Rec (2017) 01 - Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases.

[1] In order to be effective, the NADO must operate independently from both government and sport. Recognizing a mutual interest in and benefit from doping-free sport, it is understood that the resources for NADO operations will involve government and/or sport. Accountability by the NADO for funding is essential, yet neither Government nor sport should have any role in directing the operation of a NADO.

[2] "This also includes "Independence" from the NADO

ONAD - Colombia

Isabel Giraldo Molina, Abogada - En representación de los Abogados
ONAD de América del Sur (Colombia)
NADO - NADO

SUBMITTED

Group of South American Lawyers from NADOs

1. VIOLATIONS.

In relation to the term "complicity", it is suggested that the expression should be also understood as a degree of participation in the violations, that is to say: author, accomplices or accessories, without prejudice to the conduct described in the Article 2, paragraph 2.9 of the Code.

2. TRANSLATION AND TERMINOLOGY.

It is necessary to improve the translation from English to Spanish. There are concepts whose translations do not correspond with the meaning proposed, at least in the South and Central American region.

We recommend to ask the key Latin-American interlocutors to participate in the translation of the Code.

3. COORDINATION MEASURES.

Aiming to fight against the structures that supports doping in sports, it is suggested to include the paragraph 20.5 in the Article 20, " Roles and Responsibilities of the Anti-Doping Organizations", the promotion of measures allowing to fight doping in sports together with other national authorities (for example police, public prosecutors, custom, and sanitary authorities, among others) .

It is proposed that the signatory States promotes in their criminal legislation the establishment of the crime of supplying doping substances, which will facilitate the police to act against such conduct.

As an example, we suggest to write the Article 362 d of the Spanish Penal Code, developed in the Chapter on Crimes against Public Health, as follows:

"ARTICLE 362

1. Those who, without therapeutic justification, prescribe, dispense, supply, administer, offer or facilitate non-competitive federated athletes, non-federated athletes engaged in recreational sports or athletes participating in competitions organized in Spain by sports entities, banned pharmacological substances or groups, as well as non-regulatory methods, intended to increase their physical capabilities or modify the results of competitions which, by their content, repetition of ingestion or competing circumstances, endanger life or health will be punished with a penalty of prison varying from six months to two years, fine of six to eighteen months, and special declassification for employment or public office, profession or qualification from two to five years.

2. The penalties provided for in the previous paragraph shall be imposed in the upper half when one of the following circumstances occurs:

- 1. The victim is a minor;*
- 2. That deception or intimidation has been used;*
- 3. That the responsible has taken advantage of labor or professional superiority.*

4. PENALTIES FOR COACHES AND SPORTS ORGANIZATIONS.

It is suggested to include measures to punish coaches and other support staff for repeated infractions committed by the athletes under their supervision. (Example: The coach who has in his/her group of athletes more than two athletes with adverse analytical results). This fact should not only be intentionality typified but also as a negligent action.

5. PROVISIONAL SUSPENSION.

To establish an explanatory note as to the scope of the “Hearing” in the Article 7.9, in order to specify that other means are allowed for the athletes to be heard (virtual media or written media). to facilitate the statement of the athlete.

Although this provision is already found in the Guide of Results Management, it is recommended incorporating it in the Article 7.9.

6. RESPONSIBILITIES OF NATIONAL SPORTS FEDERATIONS AND PROFESSIONAL CLUBS.

In the Article 20 “ Additional Roles and Responsibilities of Signatories’, item 20.3, we suggest to incorporate new requirements from the International Federations to the National Sports Federations, for example, that the National Governmental Bodies should provide the whereabouts of their athletes.

7. UNIFICATION OF CRITERIA.

It is suggested to organize technically (in order of precedence) the way to read the Code. For example, the fact of misconduct, fault, negligence, admission, being developed in separate chapters. The purpose of this recommendation is to allow a better understanding of the Code provisions.

(Comment: the admission is developed in the Articles 10.6.2, 10.6.3 and 10.11.2 – it is considered necessary to organize this juridical figure in only one chapter in order to make them more understandable.

)

8. SANCTIONS.

To establish a chapter in the Code developing the aggravating and mitigating facts to be considered when implementing the sanctions.

9. ELIMINATION OF THE SAMPLE B

We recommend the elimination of the sample B.

We consider that, if a new analysis is necessary, it should be on the sample A.

The decision related to the elimination of the sample B should be based on the following studies:

1. Number of cases of exemption when the result of analysis of the sample B was different from that of the sample A;
2. Number of cases in which the athlete requests the opening of the sample B;
3. Reduction of costs for the ONAD in the acquisition of the doping control material and transportation of the samples to the DCOs and Laboratories;
4. Reduction of costs for the accredited laboratories for storage of the samples;
5. Reduction of the time of the athlete in the doping control station using a single bottle.

RUSADA

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

SUBMITTED

1. The International Convention against Doping in Sport requires that member countries act in accordance with the principles of the Code. However, there is no article in the Code itself, in which all the principles are put together, it is only possible to figure them out by reading the entire text of the Code. Given that the principles are the foundation on which all anti-doping activity is built, we believe all the principles should be listed together in one in the article at the very beginning of the document.
2. To ensure the uniformity of setting in-competition and out-of-competition periods for representatives of one sport across the world, we propose to establish that in- competitive and out-of-competition periods for each specific sport should be defined by the rules of the relevant international federation (without reference to the rules of the organizers of the competition, since many organizers do not set this period in their regulations, or establish drastically different periods, thus creating unequal conditions for athletes to apply for a therapeutic use exemption, use of drugs that are prohibited only in-competition). Also, the introduction of such article would help to avoid confusion in determining in- and out-of-competition periods for athletes who simultaneously participate in competitions of different levels.
3. To create an option to initiate a review of a case based on newly discovered circumstances after the expiration of the period for filing an appeal. If the investigation of the case in question (which may take a considerable amount of time and therefore can severely delay the proceedings) or an investigation of another case reveals the circumstances that can affect the imposed period of ineligibility, the National Anti-Doping Organization should have a power to initiate a review of the case based on newly discovered circumstances, by the analogy with the norms of civil and criminal procedural legislation.
4. In order to ensure the compliance with Article 21.1.6, the WADC should contain provisions that allow NADOs to hold other entities liable and to specify sanctions in the national anti-doping rules in case of refusal to cooperate with ADO investigations of anti-doping rule violations.
5. In order to restore faith in the effectiveness of anti-doping system and demonstrate equal treatment of athletes worldwide we propose to amend the Article 14.4 "Statistical Reporting" to make it compulsory for ADOs to publish reports containing athletes names and number of tests conducted on at least quarterly basis.

Anti Doping Denmark

SUBMITTED

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

Definition of athlete:

The current definition of Athlete may not be satisfactory for ADOs whose anti-doping work includes testing of recreational athletes.

The current definition reads (excerpt): "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; or not require advance TUEs 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."

It is important to bear in mind that such testing is conducted purely 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. Therefore, just as a limited menu of prohibited substances is acceptable, a limited sanctions regime should also be acceptable. Furthermore, for these athletes a prescription of a prohibited substance by an authorized MD/GP should be enough evidence of medical documentation without the athlete and the ADO having to go through all the TUE procedures.

Accordingly, this part of the definition could 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."

Article 2.8:

Intent is a precondition for the use of article 2.8 - "administration".

The article should provide for sanctioning negligent and not just intentional administration.

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 4.3.1:

We understand that WADA does not wish to discuss changes to the conditions for including a substance on the prohibited list in this Code revision.

However, for the record and the sake of good order, we wish to make it clear that we are of the opinion that only performance enhancing substances and methods should be considered doping. Thus, a substance or method should only be included on the Prohibited List if it meets the current criteria 4.3.1.1 of performance enhancement and in addition at least one of the other two current criteria, health risk and spirit of sport.

Accordingly, the article 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 medical or other scientific evidence, pharmacological effect or experience proves that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance; in addition, the substance or method shall meet one of the following two criteria: [health risk and spirit of sport]."

If such a change is made, a number of substances such as social drugs with no regular performance-enhancing effect would be deleted from the List. We would consider this a huge advantage, both from an educational, an administrative and a financial point of view, as these cases are expensive and have more or less nothing to do with sport. Social drugs are part of a social problem that should not (and can not) be solved through anti-doping regulations in sport.

A further simplification of the List could then be introduced as a logical consequence. We propose a thorough examination of whether the Prohibited List could be amended so that all substances on the list are prohibited at all times.

The reason for this proposal is that the current distinction between substances prohibited in and out of competition creates problems for athletes and ADOs alike, due to the enhanced sensitivity of the analyses in the labs which may lead to athletes testing positive for substances only prohibited in competition, although the intake of the substance may have taken place several weeks before the competition in which the athlete is tested.

Finally, we propose a change in the definition of doping group S0 on the Prohibited List. The current definition ("Any pharmacological substance which is not addressed by any of the subsequent sections of the List and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or

discontinued, designer drugs, substances approved only for veterinary use) is prohibited at all times") is too broad in our opinion. In theory, this definition may contain a number of substances with would not otherwise fulfil the criteria in article 4.3.1.

In accordance with our previous proposals, we propose the wording of the definition to be amended to:

"Any pharmacological substance, if it enhances or has the potential to enhance sports performance, which is not addressed by any of the subsequent sections of the List and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or discontinued, designer drugs, substances approved only for veterinary use) is prohibited at all times."

Article 4.4:

The administration of TUEs is a major burden on ADOs, and steps should be taken to limit these burdens, thus freeing money and manpower to other important anti-doping tasks.

We propose that a TUE granted in accordance with the ISTUE and registered in ADAMS is automatically recognized by all other ADOs, be it NADOs, International Federations or others without additional examination or paperwork.

WADA should still have the authority to review and, if need be, alter the decision of granting or denying a TUE.

Accordingly, the article could read:

"4.4.2 An Athlete who is not an International-Level Athlete should apply to his or her National Anti-Doping Organization for a TUE. If the National Anti-Doping Organization denies the application, the Athlete may appeal exclusively to the national-level appeal body described in Articles 13.2.2 and 13.2.3.

4.4.3 An Athlete who is an International-Level Athlete should apply to his or her International Federation.

4.4.3.1 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 International Standard for Therapeutic Use Exemptions, then the International Federation must recognize it.

4.4.3.2 If the Athlete does not already have a TUE granted by his or her National Anti-Doping Organization for the substance or method in question, the Athlete must apply directly to his or her International Federation for a TUE as soon as the need arises. If the International Federation (or the National Anti-Doping Organization, where it has agreed to consider the application on behalf of the International Federation) denies the Athlete's application, it must notify the Athlete promptly, with reasons. If the International Federation grants the Athlete's application, it must notify not only the Athlete but also his or her National Anti-Doping Organization.

4.4.4 A Major Event Organization may require Athletes to apply to it for a TUE if they wish to Use a Prohibited Substance or a Prohibited Method in connection with the Event. In that case the Major Event Organization must ensure a process is available for an Athlete to apply for a TUE if he or she does not already have one. If the TUE is granted, it is effective for its Event only.

4.4.4.[2] Where the Athlete already has a TUE granted by his or her National Anti Doping Organization or International Federation, if that TUE meets the criteria set out in the International Standard for Therapeutic Use Exemptions, the Major Event Organization must recognize it.

4.4.5 If an Anti-Doping Organization chooses to collect a Sample from a Person who is not an International Level or National-Level Athlete, and that Person is Using a Prohibited Substance or Prohibited Method for therapeutic reasons, the Anti-Doping Organization may permit him or her to apply for a retroactive TUE.

4.4.6 WADA may review TUE decisions at any time on its own initiative. If the TUE decision being reviewed meets the criteria set out in the International Standard for Therapeutic Use Exemptions, WADA will not interfere with it. If the TUE decision does not meet those criteria, WADA will reverse it.

4.4.7 Any TUE decision by an International Federation (or by a National Anti-Doping Organization where it has agreed to consider the application on behalf of an International Federation) that is not reviewed by WADA, or that is reviewed by WADA but is not reversed upon review, may be appealed by the Athlete and/or the Athlete's National Anti-Doping Organization, exclusively to CAS.

4.4.8 A decision by WADA to reverse a TUE decision may be appealed by the Athlete, the National Anti-Doping Organization and/or the International Federation affected, exclusively to CAS.

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."

Article 5.3.2:

Article 5.3.2 about event testing is unnecessarily complicated and 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 5.2.4:

According to article 5.4.2, "WADA shall have In-Competition and Out of Competition Testing authority as set out in Article 20." Article 20.7.8 authorizes WADA 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."

We appreciate that it might be an appropriate solution that WADA conducts doping controls in exceptional circumstances, but we believe that this solution is not properly followed up by corresponding articles in the Code that govern WADA's actions as to results management etc., bearing in mind that WADA has authority to monitor and sanction other ADOs' compliance or non-compliance with the Code.

We propose that articles 5.2.4 and 20.7.8 (and other relevant articles) are redrafted to include provisions for results management, monitoring of compliance, etc., when it comes to WADA's own doping controls.

Article 8.1:

Article 8.1 refers to a "fair and impartial" hearing panel. While this is appreciated, there is a need for a stronger wording, making sure that the status of hearing and appeals panels is operationally independent of the political and operational management of the ADO in question.

Thus, the wording could be: "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 that is operationally independent of the Anti-Doping Organisation. 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."

Article 8.3:

Waiver of Hearing. 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 10.6.1.:

Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. While appreciating the need for whistleblowers and the possibility provided by article 10.6.1 to partly suspend the sanction of the whistleblower, we propose that further provisions for the protection of whistleblowers are introduced, either in article 10.6 or in the ISTI part three (articles 11-12): Standards for intelligence gathering and investigations.

General comment:

For the future, when drafting the Code and the standards, WADA should bear in mind and respect that the text is going to be translated to many different languages. The current text is hard enough to understand in English (double negations etc.), and in translation it can become almost unreadable. Please stick to a simple but correct language and short sentences.

AEPSAD

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

SUBMITTED

The World Anti-Doping Agency (WADA) has launched the first phase in the process for the review of the 2021 World Anti-Doping Code and has requested our comments in this regard.

The WADA proposes a limited review of the 2021 Code under the premise that the current 2015 Code is considered by “WADA’s partners” as a fair and effective document in the fight against doping, and that the rules contained in the 2015 Code have been systematically confirmed by the Sports Arbitration Tribunal (TAS) and “other courts” and its basic principles are “widely accepted”. For this reason, the Council of the WADA Foundation has asked the drafting team to limit the scope of the review and to concentrate mainly on new viewpoints and arguments to strengthen the effectiveness of the Code.

However, the WADA acknowledges that some of these principles have been called into question since the first version of the Code (2003 Code, now 15 years ago) and that no consensus has been reached on such subjects as the criteria for including substances and methods on the List of Prohibited Substances and Methods. Bearing this in mind, the drafting team undertakes to study carefully all of the comments submitted by “partners”.

This request is accompanied by a document entitled “Review of the 2021 World Anti-Doping Code: Issues to be studied and discussed” summarizing all the points the drafting team believes require discussion. This list is intended to stir up comments without attempting to be comprehensive nor to exclude any other point of view regarding improvements to the Code.

Bearing in mind the foregoing and taking into account the practical structure the WADA proposes for comments to be submitted through WADAConnect, this Spanish Agency for Health Protection in Sport (AEPSAD) has drafted the comments above.

GENERAL COMMENTS.

Despite the request by the Council of the WADA Foundation for the new 2021 Code to be drafted with limited changes and focusing on a short series of articles and issues, the parties responsible for this Agency do not wish to limit themselves to these articles and issues. While acknowledging the robustness of the Anti-Doping Programme and its impact on the defence of clean athletes and sport without cheating, close examination of the 2015 Code must lead to the conclusion that some of the limitations and the lack of specificity in the regulations for the fight against doping around the globe stem from the bases on which the 2003, 2009 and 2015 Codes have been established. For this reason, the contributions by the AEPSAD are now of a general scope and are intended to trigger further discussion of these bases. In future phases of the review of the 2021 Code, we will certainly provide “*wording*” for the specific texts.

According to the 2015 Code, the foundation to be protected in sport is what it says is “often referred to” (sic) as the “spirit of sport”, which is acknowledged as having intrinsic value for sport and this would be what the anti-doping programmes “aim to protect”. The Code provides multiple definitions for this spirit:

- “the very essence of the *Olympism*”.
- “striving for human excellence through perfecting the natural talents of each individual”.
- “play true”
- “celebration of the human spirit, body and mind, reflected in the values we find in sport” (and a list is provided by way of example).

With respect to “*Olympism*”, its definition (according to the *Oxford Dictionary*) is: “The spirit, principles, and ideals of the modern Olympic Games; commitment to or promotion of these values”. In other words, that sporting spirit would be the essence of another spirit and the essence

of certain principles and ideals of Games in which few athletes have the chance to participate and only in certain sports.

The definition is also based on such actions as a “search” or a “celebration” (although it is difficult to identify whether this celebration is passive or active, i.e. whether the human spirit, body and mind reflected in the values we find in sport are actually the ones celebrating or the ones being celebrated).

All this implies that attacks against that spirit would be the obstacles placed in the way of those actions and would be trying to prevent that “search” or that “celebration”. These actions are very difficult to verify as they take place in the privacy of each individual (no-one can know what percentage of participants, or even of spectators, are “searching for” that excellence, nor even if they are able to understand that “celebration”).

Finally, this spirit would focus on “fair play”, with which it would be totally equivalent without any clearer definition. As we shall see, this equivalence between the “spirit of sport” and “fair play” might be totally redundant.

All this indicates to us a term of undoubted poetic or even philosophical value, but one showing an enormous lack of definition, thus making it totally unsuitable as the foundation for a legal text that clearly affects important rights of individuals and may represent undoubted economic impacts.

Sporting spirit is not defined or developed in any legal text but rather is open to arbitrary interpretation, from time to time, by those with the power to interpret its content.

For this reason, we propose its elimination from the Code.

Other important aspects for the AEPSAD are related to the Protection of Minors’ Rights, the Fair Empowerment of all ADOs on an equal footing.

With respect to the Fair Empowerment of ADOs, it is necessary to analyse the role of RADOs. Regional Organizations arose at a moment when the demands for compliance were laxer and no sanctions were contemplated for cases of non-compliance. They were established as tools to facilitate the application of the World Anti-Doping Programme in those states where the lack of resources prevents or hinders the establishment of anti-doping policies with a minimum level of national implementation. Nowadays, the situation is very different with the forthcoming entry into force of the International Standard for Code Compliance by Signatories (ISCCS), intended to have universal application. To continue to accept that some countries, due to economic reasons, can be exempted from all or some of the rules and consequences contained in the ISCCS creates a division among countries that are more or less demanding in this area, when all of them are allowed to participate and potentially achieve victory in international sport.

This is not to condemn countries with fewer resources to perpetual non-compliance; rather, if WADA is monitoring compliance by the different countries, it is a matter of not having WADA as a judge and party at the same time. It is not possible to assess compliance with anti-doping programmes when the guidelines are dictated by the party that must assess that compliance.

The NADOs of states with more limited anti-doping resources, experience or culture must receive the financial support of WADA, the IOC and the other NADOs to implement their anti-doping systems and assume responsibility for being the protagonists of the fight against doping in their respective territories. RADOs must take a step back in these regions in order to place all signatories on an equal footing vis-à-vis the ISCCS and in the eyes of the other Signatories.

Inevitably connected with this is the budget increase demanded by WADA, which might be more easily understood if this is aimed at showing solidarity with these NADOs from less developed countries, but not if the aim is to replace the national authorities in these countries through the RADOs, using the economic resources of other countries.

The role of the RADOs and their obligations must be clearly set out in the Code and we believe that their presence and size must be reduced so that they fulfil an exclusively advisory mission in accordance with criteria of territorial decentralization, in which case their functions, costs and selection criteria for their personnel must be clearly established, or else they must simply disappear.

All these aspects are developed more fully in the following points.

CORNERSTONES OF THE WORLD ANTI-DOPING CODE

As we have set out and duly argued in our general comments, we propose the elimination of the concept of "*sporting spirit*" as a cornerstone of the Code.

The purposes of the World Anti-Doping Code and the Global Programme are, in the words of the Code, to protect the fundamental right of Athletes to participate in sporting activities free from doping, to promote health and ensure in this way fairness and equity in sport for all Athletes in the world.

That protection of health and equality are clear and unambiguous mandates. The same cannot be said for the third criterion,

"The main foundation of the Code must be the Protection of the Health of both Athletes and the Collective."

An accessory foundation in addition to the above might be the protection of clean sport (part of the definition of the "sporting spirit") and equality in sports competition among athletes protecting their own health and that of others.

ONAD Communauté française

Julien Magotteaux, juriste (Belgique)
NADO - NADO

SUBMITTED

Dans la standard pour les contrôles et les enquêtes, pour les contrôles hors compétition, la procédure "standard" pourrait être davantage précisée, notamment l'article I.4.3 c) des standards, qui évoque que l'ACD ait agi "de façon raisonnable, dans les circonstances (...) pour tenter de localiser le sportif sans pour autant donner au sportif un préavis du contrôle". Le commentaire de cet article indique par exemple que l'ACD peut, en dernier ressort, appeler le sportif par téléphone mais n'est pas tenu de le faire.

Ce même commentaire indique aussi que l'absence d'appel téléphonique n'est pas un moyen de défense pour un sportif par rapport à une allégation de contrôle manqué.

Cette disposition et son commentaire gagneraient à être précisés. Peut-être l'article devrait-il être reformulé et une partie du commentaire devrait être intégrée à la disposition pour clarifier cette question des appels notamment.

Swedish Antidoping

Matt Richardson, Head of NADO (Sweden)
NADO - NADO

SUBMITTED

Riksidrottsförbundet (the Swedish NADO) would like to suggest five new topics for discussion and consideration as part of the 2021 World Anti-Doping Code Review, as well as an adjustment of one topic already raised in the suggested questions sent out by WADA on December 12, 2017.

New topics for discussion and consideration

1. NADO independence

The current code states in 20.5, Roles and Responsibilities of National Anti-Doping Organisations, that a NADO is *“to be independent in their operational decisions and activities.”*

The intention of this paragraph is certainly well-meaning; however, it does not clarify which parties the NADO is to be independent from, how this independence should be achieved, and in what manner independence can be verified by internal and/or external audit.

Thus, the Swedish NADO requests that a more in-depth description of what NADO independence must entail be discussed and considered as part of the 2021 Code Review process. The question could be formulated as follows:

NADO independence is required in the 2015 Code but no other guidance is provided on how this should be viewed or achieved. Which parties should the NADO be independent from? What key elements are required in terms of organisational, governance and funding structures for this independence to be achieved? How should this independence be audited or verified internally and/or externally?

The Swedish NADO acknowledges that a related question in the document sent out by WADA on December 12th, 2017, under the topic Compliance partially addresses our own suggestion:

Whether certain minimum good governance standards impacting anti-doping activities should be made a Code requirement for all Signatories.

We do not feel, however, that it addresses the issue of independence for NADOs specifically, and should remain a separate discussion.

2. Economic consequences for ADOs following changes in the Code and its related documents

Changes to the Code, its standards, but also technical documents such as the TDSSA, have considerable economic consequences for an antidoping organisation, in particular a NADO. While there is in many cases a consultation period involved before such changes, there is to our knowledge no official cost nor cost/benefit analysis conducted or made public, nor is there any calculation example or tool made available for an antidoping organization to quickly or easily assess specific economic outcomes arising from such changes.

Therefore, the Swedish NADO proposes the following topic for discussion and consideration:

Changes in the Code, its standards, and related technical documents can result in significant economic consequences for an antidoping organization. Should proposals for such changes be accompanied by a cost analysis, as well as a cost/benefit analysis conducted by an independent third party or alternatively a representative stakeholder group composed of the various organizational forms that make up the global anti-doping infrastructure (e.g. WADA, international sports federations, NADOs, NOCs, laboratories, etc.)? Should decisions to implement changes be accompanied (in advance) by calculation tools or examples to facilitate economic analyses and planning by the organisations that would be affected by the changes?

3. Clarification of the “spirit of sport” criterion for classifying a substance or method as prohibited

The current criteria for inclusion of a substance or method on the Prohibited List (4.3 in the Code) includes the “spirit of sport” (4.3.1.3). This criterion is described in the introduction to the Code, whereby a list of values is used to describe its meaning (although these values are not further elucidated by positive or negative examples). While the Swedish NADO agrees in principle with the intention of this criterion, it can be particularly challenging for an individual athlete, and in some cases even anti-doping experts and personnel, to be able to clearly understand and/or explain how such rationale can be applied to substances consequentially and reproducibly. It is especially difficult in comparison to the other two criteria – performance enhancement and health risks – which can be based upon quantitative research or data. Considering that the legal consequences for violations of the Code and the Prohibited List are so consequential, we do not believe that this criterion should be given the same determinant status as the other two.

Thus, the Swedish NADO proposes the following topic for discussion and consideration:

To increase legal certainty, should the “spirit of sport” criterion for inclusion of substances on the Prohibited List be removed or given another determinant status than the criteria for performance enhancement and health risks?

4. Alternative sanctions involving rehabilitation programs for young athletes

The current sanctions scheme for anti-doping rule violations is based entirely upon punishment i.e. forbidding the violating athlete from participating in sport. This is undoubtedly a strong deterrent for many established athletes. Imposed upon younger or less established athletes, however, such sanctions may be a significant social and psychological hinder to achieving desirable behaviour in line with the sporting ethos. There is a great deal of research literature confirming the lack of effect of increasing sanctions for many non-sport-related criminal actions, as well as the beneficial effects of evidence-based rehabilitation programs – Sweden has considerable experience in the latter. The potential for application of such programs within the anti-doping system should not be disregarded.

Thus, the Swedish NADO proposes the following topic for discussion and consideration:

Should evidence-based rehabilitation programs be considered for young and/or lower-level athletes that commit anti-doping rule violations – possibly only for first time offenders - in return for reductions in, or removal of, time-based sanctions for participation in sports?

5. Prohibited association with athletes currently serving sentences

The current Code addresses prohibited association with Athlete Support Personnel, including coaches, trainers, medical personnel, etc. However, we feel the Code does not clearly address prohibited association among athletes themselves. Examples of this kind of association might be sparring among boxers, where one is serving a suspension, or two cross-country skiers training together in unorganised forms.

The Swedish NADO therefore proposes the following topic for discussion and consideration:

Should the Code more clearly define prohibited association among athletes, for example situations where an athlete serving a suspension trains with other athletes that are members of Signatory-associated clubs or member organisations, even if the training occurs outside of organised training locations or sessions?

ART 10.12 Should it be possible for young and low-level athletes to train in their teams despite their ineligibility. That could help them to stay in the clean path and prevent from the social exclusion. The decision should be made on a case-by-case basis and the team should report regularly to the NF or NADO.

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

General

1. Fundamental clarification by WADA on the direction of the WADC as a "law" or as a "living document" with concrete assistance, instructions and solutions for the individual case

Comment: Suggested implantation under "Purpose, scope and organization of the World Anti-Doping program and the Code". Create a new bullet point:

- To lead / To guide the application of the Code, especially for results management / disciplinary proceedings

2. Organization/composition and structure of the WADC in relation to the International Standards

Example: *International Standard for Code Compliance by Signatories*

In principle, the WADC is presumed to be a *Level 1*, International Standards *Level 2* and Model Rules and Guidelines *Level 3*-Document. However, for the first time, the *International Standard for Code Compliance by Signatories* stipulates "superordinate" implications of non-compliance by ADOs and its impact on the WADC. Therefore, this framework should structurally and legally dogmatic be "higher-ranking" than the WADC.

3. Strengthening athlete rights ("fundamental right" in the preamble)

Comment: Currently, the right to open the B-sample (and to request the Documentation Package) is the only statutory right of the athlete that is at legal "eye level" with the regulatory user (ADOs).

4. The protection of minors as well as data protection (and data security) must be key points ("fundamental rights") in the WADC 2021.

5. Adaptation of Art. 23.2.2 WADC regarding the "mandatory" implementation of consistent procedural principles and requirements for disciplinary bodies (Article 7, Article 13 WADC).

6. WADA should bear in mind and respect the fact that the text will be translated in different languages. Currently the texts are hard to understand in its original version. Translation might lack the meaning and purpose. The text should be kept as simple as possible with short sentences.

7. Article 2.4

Introduction of equal requirements for the imposition of "strikes"

Comment: Based on case studies and examples, "clusters" should be prepared for review and evaluation and made available to the relevant ADOs. In addition, there should probably be an adaptation of the International Standard for *Testing* and Investigations.

(Problem: National „particularities“ -

Some Federations started imposing inadmissible sanctions on the athletes (such as release from the squad status, fines) right after the athlete's very first strike.)

8. NEW 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.

Antidoping Switzerland

SUBMITTED

Matthias Kamber, Director (Switzerland)

NADO - NADO

Art 4.4 (TUE)

The Code 2015 brought certain improvements compared to former versions but there are still a number of questions and unresolved disputes. For instance when a national level athlete gets his or her TUE, it is often not automatically recognized by an IF. This leads to insecurity when this athlete participates in a competition under the responsibility of an IF. Therefore, the principles should be:

- A TUE issued by a compliant TUEC should be valid for all level of competitions and out-of-competition testing unless challenged by either an IF (in case of a national TUEC) or a NADO (in case of an international federation's TUEC)
- Due to data protection issues, only a TUEC decision should be uploaded into ADAMS, but no supporting medical documents
- Supporting medical documents should only be exchanged between an IF and a NADO in case of dispute and challenged TUE decision
- Until the dispute is resolved (e.g. by CAS), the TUE decision remains valid for an athlete

NADA Austria

SUBMITTED

Alexander Sammer, Head of Legal (Austria)

NADO - NADO

- Addend to Article 5:

There is a number of ways to increase the effectiveness of anti-doping agencies:

■

Instead of forcing every testpool athlete to provide whereabouts for a whole quarter it would be sufficient to receive a list of individual competition highlights for the whole season and whereabouts for two weeks in advance which is long enough to schedule doping controls. Considering the time and effort of the current system, this change makes a relevant difference for the athlete, in degree if not in kind. In addition, this regulation would reduce the unintentional error-rate and allow doping control managers to define the right time and place if they take the individual competition highlights into account.

■

No access for athletes to findings of blood or urine samples in order to prevent defrauders from benefitting from additional knowledge.

■

More transparency will improve the test distribution plans, because they have to pass public opinion. If there is traceability which athletes were tested how often, at which time and place (only general information to ensure privacy and data protection) and which additional analytics were performed, trust is earned.

■

The current custom of contracting external sample collection organisations should be reassessed. While the mission of NADOs, RADOs and IADS is the protection of clean athletes, the main task of these contractors is making profit. Admittedly there are many who identify themselves with the clean sport agenda, but it cannot be ignored that some companies pay more attention to the working hours of their employees than to the needs of intelligent testing. This mentality results in doping controls being favorably conducted during the "time-slot" to reduce unsuccessful attempts

■

Harmonizing the legal framework governing the taking of blood samples; taking blood samples abroad is problematic, especially by persons not authorized to practice their profession there (e.g. natural health professionals- Heilpraktiker - in Austria).

■

No advance information or notice of testing without any exceptions – also in competition. At present occasional announcements that testing will be conducted and (only) the winners will be tested.

■

Professional chaperons: the important responsibility of monitoring must not rest with poorly qualified and inexperienced persons.

The mandatory "4-eyes principle" in doping controls must be introduced, as it is already implemented in Austria for several years. There must always be at least two DCOs or DCO with an

assistant to perform testing, especially with regard to any other witness in anti-doping procedures (eg athlete confidant) which could testify in favor of the athlete.

- Addend to Art. 5.7: Retired Athletes returning to competition

A clarification of the rules in the event of acquittal or a retroactive reduction of a sanction by an appeal body is desirable. In a specific case it may be that an athlete has been banned 4 years and ended his career. After a partly successful appeal, the period of ineligibility is reduced to one year. If the whole proceeding including the appeal has lasted one and a half years, the athlete was in fact allowed to compete since six months but could not do so, because of the time of the decision. In addition, the athlete is not allowed to compete for another 18 months, because he has to be included in a testing pool. In this particular case the reinstatement period results in a total period of ineligibility of 3 years, although he was sanctioned only for one year.

In addition there must be a clarification regarding the level of competition that is necessary for this provision to apply. If an athlete retired, is it really necessary that he has to announce this 6 months prior if he wants to compete for fun 10 years after his retirement.

It's necessary to define a level for the reinstatement – 6 month prior only for a reinstatement on the same or comparable Level.

- Addend to Art. 11: Consequences to teams

Athletes in team sports are not treated equally compared to athletes in individual sports, e.g. whereabouts.

Team sports should be treated the same way as individual sports, meaning the same risk assessment criteria. If a team sport falls into a high risk category, the extended national team members (e.g. football about 25-35 players) should be required to fill out individual whereabouts.

- Addend: Purpose, Scope and Organization of the World Anti-Doping Program and the Code

Independency is Key

The last years have shown that sports organisations and federations are not capable of handling the big business into which sport has grown without external guidance and support. Bribery and fraud in various sports, but also questions of employment law, social insurance and human rights indicate that we will see a radical change within the next years.

From a historical point of view the involvement of sports federations and major event organizers (MEO) in anti-doping work is comprehensible. But the obvious incompatibility of promoting sport in a multi-million-dollar-business on the one hand and testing athletes on the other hand must end as soon as possible. Sports federations and major event organizers cannot deny the conflict of interest between economic dependencies, financial obligations, advertising considerations and the idea of clean sport.

Doping controls and results management, analyses and anti-doping proceedings must be carried out by organisations which are fully independent from the sport establishment. These organisations should act without any influence from national or international sports federations or organisations, major event organizers or governments - and this also includes no entanglement of the three different institutions that conduct testing, perform analyses and decide on eventual sanctions.

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”.

The call for independence also applies to WADA which is - according to its constitution and funding - heavily influenced by international sports federations and public authorities.

- Separation of powers

As reaction to the recent problems in Russia the International Olympic Committee requested WADA to “study taking responsibility for testing as the global centre of competence in anti-doping”. While the fundamental idea is correct, WADA is not the appropriate institution to answer this call.

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.

- 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.

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 lapsed 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 lapsed 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. 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.

- Evaluation

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 not of 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.

Estonian Anti-Doping Agency

Elina Kivinukk, Executive Director (Eesti)
NADO - NADO

SUBMITTED

- EADA's position has been developed together with the main target groups (experts from anti-doping panel, policy-makers, EADA staff).
- Part 1 – doping control should be rephrased into more general part, taking into account intelligence gathering, investigation and sanctioning.
- In Definitions it should be defined, what is meant by Testing Pool (not just RTP), as the term is been used in the draft International Standard of Education.
- Article 2.10 - EADA suggests to review the article 2.10 (prohibited association) and make it more efficient or explain better.
- Article 20 - It is suggested to add to the roles and responsibilities the following of the good governance principles, such as accountability, transparency, democracy and participation (or involvement of significant target groups).

Canadian Centre for Ethics in Sport

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

SUBMITTED

CCES wishes to make the following additional comments:

1. Interpretation:

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.

2. 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.

3. 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.

4. Prohibited List adjustments:

CCES supports imposing threshold limits for more substances that are not especially performance enhancing, especially certain stimulants that are only prohibited in-competition. Athletes face uncertainty with respect to knowing the clearance times for substances which are permitted for use out-of-competition and being used out-of-competition but which are still present in their system at the time of an in-competition test because the substance had not yet cleared their system. Establishing threshold limits could assist in reducing these instances.

The Prohibited List criteria as described in 4.3.1 should be changed to include as a mandatory element that the substance has the potential to enhance or enhances performance. In addition, it must meet either of the two additional criteria (it is harmful to an athlete's health and/or it violates the spirit of sport.)

5. Sample Collection Equipment:

CCES recommends that the International Standard for Testing and Investigations (ISTI) be amended to include further details regarding the requirements associated with sample collection equipment. The ISTI should define what is meant by "tamper-evident" and the standards to which companies should be compliant in order to demonstrate their products are tamper-evident.

Dopingautoriteit

Herman Ram, CEO (Netherlands)
NADO - NADO

SUBMITTED

SUBMISSION OF THE FOUR DUTCH STAKEHOLDERS:

1.Ministry of Health, Welfare and Sport,

2.NOC*NSF,

3.Athlete's Committee NOC*NSF

4.Anti-Doping Authority the Netherlands

Athlete's rights

Anti-doping work aims to protect our main stakeholders: the clean athletes. But in the current version of the Code, the rights of the athletes are not defined. The Dutch stakeholders find that these rights should be formally recognized and described in the Code. In that way, the values that we aim to protect are made explicitly clear, and there will be little or no uncertainty about the rights of the athletes under the Code.

The easiest and most practical way to embed athletes' rights in the Code, is incorporating the Charter of Athletes' Rights (which is currently being drafted) into the Code, at least in as far as the Charter is relevant for anti-doping work.

Prohibited List criteria

Maintaining and promoting 'the Spirit of Sport' is one of the most essential goals of anti-doping work. It is described in the Fundamental Rationale for the WAD Code, and rightly so. We support this wholeheartedly.

However, 'the Spirit of Sport' as one of the three Prohibited List criteria has been debated and criticized since it was included.

Science Officer Olivier de Hon of Anti-Doping Authority the Netherlands has analyzed the use and necessity of this criterion and he has concluded that maintaining 'the Spirit of Sport' as a Prohibited List criterion is redundant, because this concept is present in all anti-doping rules and regulations.

De Hon's analysis was published in the International Journal for Sport Policy and Politics. To link to the article:

<https://doi.org/10.1080/19406940.2017.1348380>

We refer to the article for your information and consideration. Striking this redundant criterion will focus discussions regarding the contents of the Prohibited List on the potentially performance-enhancing and health risk properties, which will guide doping-related discussions towards the core of what the concept of 'doping' should be.

Drug Free Sport New Zealand

Nick Paterson, Chief Executive (New Zealand)
NADO - NADO

SUBMITTED

DFSNZ has three further significant items it wishes to raise for consideration as part of the 2021 Code review:

- Administration of the Code

A universal theme in the feedback received by DFSNZ is that Athletes seek comfort that everyone bound by the Code is subject to the same level of rigor in its administration. In order to ensure this is the case, DFSNZ proposes that a greater level of transparency be instituted around key processes undertaken by Anti-Doping Organisations (**ADOs**) and WADA itself. By making certain information freely available, such as which Athletes are tested, frequency of testing, which cases progress to ADRV hearings, and those that do not, as well as reasoning for key decisions made, ADOs would be in a position to hold each other to account. Sharing this information would increase WADA's efficacy by introducing an aspect of self-regulation between key stakeholders.

- Sanction regime

It is axiomatic that the Code is intended to ensure clean sport at all levels. This needs to be supported by ongoing education, whereabouts procedures, TUE support, testing, and a robust sanction regime. With regards to the imposition of sanctions, the Code must be calibrated to strike the right balance. While the current sanction regime is appropriate for high-performance athletes at the international and national level, DFSNZ has concerns about its implications for athletes at the other end of the spectrum.

With the evolution of anti-doping practices expanding further into investigations and employment of intelligence, there is increased potential for greater numbers of low-level athletes, at the lower end of offending, to be exposed. Imposing the full force of the code in such situations may lead to sub-optimal outcomes. While DFSNZ strongly believes that all athletes ought to be held to the same standard of integrity, it considers that it would be beneficial for WADA to re-examine the current sanction regime to consider whether it appropriately accounts for Athletes competing at a social or casual level whose breaches are comparatively minor.

We recognise that it may be difficult to differentiate between athletes who compete on a social or casual basis and athletes who aspire to higher honours (and seek an unfair advantage to get there). Further research may be required in this area to understand the reasons for taking prohibited substances in such circumstances.

If an alternative sanction regime was adopted for lower level athletes, this might include an option for an ADO to issue a formal and public written warning. Alternatively, a sanction reduction mechanism might be considered for athletes who participate in a set number of educational activities during a period of ineligibility.

It could be a powerful and persuasive educational tool to have people who have fallen foul of the rules participating, particularly at school level.

Nonetheless, the Code currently operates in a broadly 'all or nothing' manner. Athletes below national level can be included or excluded at the discretion of the ADO, but where the Code is applied, they face the same penalties as high performing athletes, notwithstanding the generally lower levels of knowledge.

Some better ability for the Code to respond to the situations of such athletes would greatly enhance the effectiveness and suasion of the Code.

- Court of Arbitration for Sport time frames

As the Court of Arbitration for Sport is the designated appeal body under the Code, the current review presents a timely opportunity to raise DFSNZ's concerns about the time taken for CAS decisions to be issued. These concerns do not relate to the speed at which the arbitrators reach their conclusions, nor the Oceania registry, but rather to what seems to be an administrative backlog within the Lausanne registry. In DFSNZ's experience, significant delays of up to six months in the issuing of awards is commonplace. This is regrettable as it can be unfair for the Athlete involved and have flow-on effects, for example delaying the delivery of decisions at the Sports Tribunal of New Zealand level. DFSNZ proposes that WADA investigate the cause of these delays and implement remedial procedures accordingly.

- Other Suggestions

DFSNZ continues to receive feedback from some national sport organisations that reduced sanctions should apply in relation to recreational drugs, where there was no intent to enhance performance, in particular, reducing the four-year sanction for in-competition use. This could

involve changing the status of certain recreational drugs on the Prohibited List from non-specified to specified stimulants which would allow the starting sanction to be reduced to two years.

Where an athlete can demonstrate some form of mental impairment, such that he/she is not in a position to properly consider risk at the time of committing an anti-doping rule violation, this could be a factor in considering a reduction in the period of ineligibility

CITA

SUBMITTED

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

1.

One of the most important changes we propose is to the Article 4.3 of the Code. CITA propose 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.]

2.

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

CITA is of the opinion that a coach with knowledge of an attempted or committed anti-doping rule violation who doesn't address it in any way must be considered a complicit under the Article 2.9 with regards to 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 of Article 2.9.

In that respect we consider the Comment to Article 21.2.5 stating: "Failure to cooperate is not an anti-doping rule violation under the Code..." to be contrary to such definition of complicity regarding the Athlete Support Personnel and needs to be reviewed and defined in further process.

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

■

ARTICLE 4 - Prohibited list items: NADO Flanders is in favour of banning all corticosteroids and requiring a TUE for admission of all corticosteroids, since the current prohibited list leaves to much opening for non-therapeutic use of these substances. If the risk of use outside a therapeutic context is significant, those substances should be without any exception included in the list.

■ REGISTERED TESTING POOL DEFINITION

NADO Flanders would like to see a minimum set of criteria to determine which athletes should be included in the registered testing pool of a NADO. This is to prevent that there is a significant difference between the size of an RTP and the level of the athletes included in the RTP. It can still be a decision by a NADO to include more athletes, but a minimum set of criteria should provide a level playing field.

■ ATHLETE DEFINITION

NADO Flanders believes further clarification is needed in the athlete definition. With the current definition, it has been established in the comment that the National Anti-Doping Organisation can decide which consequences apply to recreational level fitness athletes. NADO Flanders would like to see that elaborated, so it is clear that the NADO may impose consequences, but can decide to set up a different sanctioning regime which may include consequences that are not foreseen in the WADA Code, such as a rehabilitation programs, mandatory anti-doping education, probation, obligation to be tested within a probation period, etc. Applying all consequences provided in the Code, has proven to be disproportionate and ineffective in many cases.

It should also be reiterated that in such cases, a NADO cannot be found non-compliant based on the way it handles fitness athletes who never compete, if the NADO decides to apply a sanctioning regime that differs from the regime set forth by the Code.

In applying those principles, it should be possible to indicate in the ADAMS system or when sharing information with WADA concerning those cases, that those are in fact fitness athletes.

Japan Anti-Doping Agency

SUBMITTED

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

Increase flexibility on the Length of the sanction based on Article 10.2.1

Under Article 10.2.3 of the 2015 WADC, "Intentional" violation includes two types of cases where an Athlete falls under either of the following;

(1) If he or she engaged in conduct which he or she knew constituted an anti-doping rule violation;
or

(2) If he or she knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

If a Prohibited Substance in the sample is a non-Specified Substance, the period of Ineligibility shall be 4 (four) years in accordance with Article 10.2.1 of the 2015 WADC, unless the Athlete can establish that his or her violation does not fall under either of case (1) or (2).

The intent of an Athlete in case (2) is relatively unserious than in case (1). For example, the intent of an Athlete who takes a number of supplements which include non-Specified Substance but is not aware that the substance is included, versus, the intent of an Athlete who is fully aware that he or she is taking non-Specified Substance. The length of the Ineligibility of 4 (four) years is imposed on the Athlete regardless of their conduct falling under either case (1) or (2). Hence, the 2015 WADC lacks flexibility.

In order to increase flexibility, case (2) should be excluded from "Intentional" violation. Under the new WADC, the sanctions should be categorized in the following three cases;

(a) 4 (four) years - If he or she engaged in conduct which he or she knew constituted an anti-doping rule violation;

(b) 2 (two) years at minimum and 4 (four) years at maximum - If he or she knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and

manifestly disregarded that risk; and
(c) 2 (two) years - Cases other than above (a) and (b).
Regarding (b), it is assumed that the period of Ineligibility will be determined depending on the degree of recognition of risk and how recklessly the Athlete ignores the risk.
It should be addressed whether or not Article 10.5.2 of the 2015 WADC should be applied to category (b) to reduce the period of Ineligibility. If it is applied, it should also address that the application does not create any contradiction between the interpretations of relevant Articles of the WADC.

Agence française de lutte contre le dopage (AFLD)

SUBMITTED

Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

Commentaires généraux

Le Code mondial dans sa version actuellement en vigueur est, s'agissant de certaines de ses dispositions, inadapté aux sportifs de niveau infranational. La rigueur du Code se justifie lorsqu'elle s'applique à des sportifs de haut niveau qui ont bénéficié de programmes d'éducation adaptés. Si la définition du sportif prévoit la possibilité d'adapter le menu des analyses en fonction du niveau du sportif, si l'article 4.4.5 permet à l'OAD d'autoriser un tel sportif à demander une AUT avec effet rétroactif, le régime de sanction est quant à lui identique pour tous les sportifs. Les contrôles réalisés sur des sportifs de niveau infranational, souvent requis par les gouvernements ou les législations nationales, répondent à un objectif de protection de la santé publique, et non pas nécessairement exclusivement à l'objectif de protection de l'intégrité des compétitions et de l'éthique sportive. Cette réalité doit être prise en compte par le CMA, qui doit octroyer une plus grande flexibilité aux organisations antidopage dans la gestion disciplinaire des dossiers des sportifs de niveau infranational. Il faudrait considérer la possibilité d'introduire des sanctions graduées, qui tiennent compte de l'expérience et du niveau de pratique du sportif.

Le principe de proportionnalité est mentionné dans l'objet du code en page 11, dans les termes suivants: «Le Code a été rédigé en tenant compte des principes de proportionnalité et des droits de l'homme». Il y est également fait référence dans l'introduction de la partie 1 du Code, en page 17, dans les termes suivants: «Ces règles et procédures propres au sport [sont] destinées à s'appliquer d'une manière respectant le principe de proportionnalité et les droits de l'homme». Ce principe est également mentionné à l'article 10.10 du Code, lequel prévoit que «les sanctions financières ne peuvent être imposées que si le principe de proportionnalité est satisfait».

Or, le régime de sanctions découlant de l'article 10 ne permet pas de prendre en compte le principe de proportionnalité s'agissant de l'imposition d'une période d'inéligibilité. Les différentes hypothèses de réduction d'une période d'inéligibilité sont fondées sur d'autres critères, en particulier le degré de faute, eux-mêmes basés sur des notions ne renvoyant pas au principe de proportionnalité. Ce principe devrait être plus généralement mentionné dans l'article 10 et permettre la prise en compte des conséquences concrètes d'une sanction sur un sportif.

Article 7.4 - Examen des résultats atypiques

L'article 7.4 impose de notifier au sportif le fait que le résultat d'analyse atypique sera ou non présenté comme un résultat d'analyse anormal. Même si l'article 7.4.1 prévoit que l'OAD ne rapportera pas de résultat atypique tant qu'elle n'aura pas terminé son examen et décidé si elle présentera ou non le résultat atypique comme un résultat d'analyse anormal, la notification au sportif d'un résultat d'analyse atypique qui ne sera pas présenté comme un résultat d'analyse anormal pose question.

En effet, un résultat atypique peut refléter une pratique dopante insuffisamment probante pour permettre de présenter un RAA et d'ouvrir des poursuites disciplinaires. Cela peut orienter des

investigations et des ciblage de contrôles permettant de révéler des VRAD. Si le sportif est informé de la clôture d'un résultat atypique n'ayant pas conduit à l'ouverture d'une procédure disciplinaire, cela peut le conduire à modifier ses pratiques, le cas échéant, et fragiliser les éventuelles investigations. Il pourrait être utile de ne notifier que les OAD pertinentes, et non le sportif.

Article 10.6.1 - Aide substantielle

L'aide substantielle, qui a été introduite dans le CMA 2015, s'est révélée très utile et fructueuse. L'expérience française montre cependant que les conditions et la procédure définies pour préserver la confidentialité de l'aide substantielle apportée par un sportif pourraient être améliorées afin notamment de permettre le bon déroulé des enquêtes subséquentes.

En particulier, il sera noté que l'octroi du sursis n'est possible qu'en cas d'aide substantielle. La publication d'une sanction avec sursis révèle au grand public l'existence d'une aide substantielle. Cela pose des questions quant à la protection du sportif ou de l'autre personne qui collabore au titre de l'aide substantielle, et peut dissuader les sportifs de révéler les informations dont ils auraient connaissance, au détriment de la lutte contre le dopage.

Assouplir les modalités de publication des décisions impliquant une aide substantielle pourrait contribuer à protéger le sportif et les investigations en cours.

UK Anti-Doping

SUBMITTED

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

Aggravating Circumstances:

UKAD is in favour of a consideration of bringing back "aggravating circumstances" provisions to deal with conduct that does not reach the level of tampering.

Disqualification of results:

It would be helpful to clarify who it is that makes this determination e.g. the ADO with results management, or the relevant tournament organiser(s).

Failure to report an ADRV:

Consideration should be given to this being an ADRV in its own right.

TUE Retroactive:

Clarify no right of appeal against WADA/ADO decision not to grant retroactive TUE on basis of fairness.

Whereabouts: We have seen a number of instances whereby IFs/MEOs have placed entry requirements on athletes/countries in order to be entitled to compete at events. This obviously has related mainly to Russia, however we have also seen IFs such as the IWF implement whereabouts requirements in advance of their events as well. This is the prerogative of the IF/MEO, however in such cases whoever is stipulating the requirements should facilitate (or at least have a role in facilitating) the delivery of these requirements. Without this, the pressure is then put ultimately on the NADO to deliver these for the NF – at no point should an IF be able to dictate a NADO's testing programme like this. We feel there should be some reference to this.

Other/2.10: Could there be a reconsideration of sanctions for athletes that test positive for recreational drugs in-competition. From a psychological perspective, the motivation for taking recreational drugs is often completely at odds with the motivation for taking performance-enhancing substances, yet the sanctions are the same. Athletes taking recreational drugs are likely to use using such substances as a means of coping with a deep-rooted psychological problem or disorder. For that reason, a maximum 4 year ban from competition, is likely to further

impact negatively on their psychological health. I would recommend the examination of enforcing mandatory periods of drug rehabilitation, psychoeducation and psychotherapy in combination with a reduced length of ban from competition as an alternative approach to athletes testing positive for recreational drugs during competition.

Other/2.3:

Current drafting: For example, it would be an anti-doping rule violation of “evading Sample collection” if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of “failing to submit to Sample collection” may be based on either intentional or negligent conduct of the Athlete, while “evading” or “refusing” Sample collection contemplates intentional conduct by the Athlete. Clarification may be helpful on (i) the distinction between a refusal and intentional failure to submit to sample collection, and (ii) what constitutes “notification” of testing.

Other/2.4.1:

The Prohibited List treats certain substances as being performance enhancing and/or harmful agents depending on when they are used, that is, in-competition or out-of-competition. We think that this is a problem because, in effect, the Prohibited List says that some substances are sometimes performance enhancing and/or harmful doping agents, and sometimes they are not. This is confusing and carries a mixed message for athletes and athlete support personnel. It also creates unintended traps. Not only is the boundary between in-competition and out-of-competition sometimes less than clear, but the “legitimate” use of a substance out-of-competition can become “illegitimate” if the athlete does not expel that substance from his or her system by the time he or she competes and is tested. Substances that are performance enhancing regardless of when they are used are rightly prohibited at all times. However, the basic premise of the Prohibited List, which is that certain substances are deemed to be performance enhancing if they are used in-competition, but not if they are used out-of-competition, lacks logic. Training and preparation are essential components of sporting success, but the Prohibited List allows a number of prohibited substances to be used to enhance such training and preparation. However, the same substances are not allowed to enhance actual competitive performance. If a substance is truly performance enhancing (that is, that it allows an athlete to achieve a level of sporting performance that the athlete would not otherwise be able to achieve without using that substance) then it is irrational to permit that substance to be used at any time. In addition, substances which are on the Prohibited List primarily because they are a danger to health and/or violate the spirit of sport should be prohibited at all times. Again, if a substance is a danger to health, then it makes no sense at all for it to be, in effect, permitted for use sometimes. Likewise, substances that are deemed to violate the spirit of sport violate that spirit at all times, not just in-competition. One unified List would help remove these distortions. It would also enable a more focussed approach to be taken to the List, ensuring that only those substances that are genuinely performance enhancing, harmful or injurious to health, and contrary to the spirit of sport, are retained.

Other/4.4:

Confidence in the global TUE system could be strengthened through making it a Code or ISTUE requirement for:

- all ADOs to upload their TUE decisions to ADAMS – this would give the WADA Medical Department greater oversight of the system
- WADA to establish a formal auditing system to increase the scrutiny of National Anti-Doping Organisation and International Federation TUE processes and TUE Committee decisions
- all ADOs to publicise anonymised annual statistics of their TUE programme to increase public transparency and to identify policy areas within national and international TUE systems that may need further review or scrutiny.

Other/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 not on a testing pool). Whilst some International Federation rules include a specific provision around this, not all do.

Consider whether this article can be amended (as opposed to relying on the sport's rules) to give ADO's authority to test if a license has not been renewed (e.g. if an athlete has not retired, they remain eligible for testing X months after a license has expired).

Other/5.2:

Clarification of what constitutes 'serious and specific suspicion' is needed.

Other/5.4:

Reference to the Technical Document. If this is the TDSSA could it be amended accordingly?

Other/5.7.1:

Retired athletes returning to 'active participation in sport' – more clarity about this would be helpful. This could be recreational or low amateur level in which case we would not necessarily require 6 months' notice and whereabouts during this period. Whilst there is a clause that states exemptions to this can be applied, perhaps 'active participation in sport' should reference something like 'at a national/international level.' A related query is whether this Article applies to a return to *any* sport, and if so, whether this could be made explicit.

Other/9:

Should disqualification include remuneration / payment, in addition to prizes? This would cover the situation where athletes receive money not contingent on victory.

Other/10.12.1/10.12.2 (and comment thereto):

The prohibition on activities under Art 10.2.1 does not expressly cover the exception set out in Art 10.2.2, i.e. using the facilities of a club or other member organization of a Signatory's member organization.

Other/17:

Consider making provision for proceedings to be commenced following discovery of circumstances giving rise to a potential ADRV within the ten year period (i.e. to cater for the hypothetical discovery on the 364th day of year 9).

Other:

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)?

on behalf of WADA Athlete Committee

Ben Sandford, Athlete Committee (Switzerland)
WADA - Others

SUBMITTED

SUBMITTED BY WADA

LAST EDITED BY ADMIN

1. Anti-Doping Charter of Athlete Rights to be incorporated in the Code. See attached draft.

2. Currently if an athlete has not been notified of a first ADRV and commits a second ADRV then they count as one violation. This should be changed so that if the two violations relate to two different doping instances then they can be charged separately. This will likely become more of an issue with the increase in investigations and retesting.

3. Bring back Aggravating Circumstances. There a number of situations where we believe it would be beneficial to be able to use a provision like this.

Firstly if point 2 above isn't addressed it could be addressed by allowing aggravating circumstances to be added onto a sanction where a second doping offence has occurred but there has been not been notification. Secondly, at the moment if an athlete is likely to receive a maximum ban it is possible for them to present false evidence to a hearing without extra consequences. Having aggravating circumstances in this situation would allow a panel to add on time for such conduct, and hopefully act as a deterrent.

Reintroducing aggravating circumstances would also need to be done in a way that it could be applied more effectively than it was in the past.

4. 10.9 Reform the section on forfeited prize money so that prize money is more likely to be returned to the athletes that have missed out.

5. Article 8. Make sure panels are independent. It should not be the case that an athlete has to appear before a panel which has charged him and/or investigated him. The charging and investigation should be done by separate bodies/panels, the hearing panel must be independent of them to ensure that the hearing is fair.

6. 14.4 Statistical reporting- introduce a standard form that all ADO's must publish publicly yearly in at least one of WADA's official languages.

7. There is a comment to section 10.8 that nothing in the Code precludes clean athletes who have been damaged by the actions of a person who has committed an ADRV from seeking damages from such person. We believe that this provision should be strengthened, either by making it a provision in the Code instead of a comment, and/or changing the wording to 'an athlete has a right' instead of 'nothing.. precludes'.

8. Develop a section for the protection of whistle-blowers, outlining the duties of ADO's, athletes and other persons. This should involve what duty of care is expected, what is required for the protection of whistle-blowers and outline sanctions.

Anti-Doping Charter of Athlete Rights

PREAMBLE

1.

Whereas one of the purposes of the World Anti-Doping Code and the World Anti-Doping Program is to protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide;

2.

Whereas all Athletes, Participants, and Anti-Doping Organizations share the interest of and responsibility to protect the integrity of sport by ensuring that it is doping-free;

3.

Whereas protecting the Athletes' right to participate in doping-free sport must be considered as one of the highest priority sporting interests;

4.

Whereas it is recognized that protecting Athletes' rights is in the interest of preserving the social institution of sport, as well as its popularity and viability; and

5.

Whereas the clean Athletes of the world seek to further protect their rights by obtaining a strengthened and universal commitment from their fellow Athletes, Participants and Anti-Doping Organizations.

It is agreed by all Athletes, Participants, Anti-Doping Organizations and other sport organizations that every Athlete has the right:

Article 1 – Clean and fair sport

To compete in clean, ethical and fair sport and to obtain a binding commitment from their fellow Athletes and all other Participants that doping has no place in sport. In this regard, all Athletes and Participants agree that results in training and competition must only be obtained on the basis of an Athlete's merit, including their physical abilities, talent and effort, and without resort to any means of assistance that constitute a violation of the World Anti-Doping Code.

Article 2 – Equality of opportunity

To equal opportunity in their pursuit of sport to perform at the highest potential level in both training and competition, free from any hindrance or limitation by other Athletes who dope, or Participants, or Anti-Doping Organizations that otherwise violate the principles of clean, fair and ethical sport. Equality of opportunity shall also include equal treatment of every Athlete by all other Athletes, Participants and Anti-Doping Organizations.

Article 3 – Equitable and fair testing programs

To be subject to testing programs worldwide that are implemented in a manner that ensures that all athletes in all countries are tested equitably and fairly and in a consistent, harmonized and intelligent manner.

Article 4 – Protection of health

To the protection and preservation of their physical and mental health and to be free from any pressure by any other Athlete, Participant or Anti-Doping Organization that would jeopardize their physical or emotional well-being through doping. When receiving medical treatment, Athletes have the right to be treated and supported with integrity and respect by health care professionals and must not be prescribed, provided or administered any Prohibited Substance or Method in the course of medical treatment or otherwise by any Participant or Person unless the athlete has been granted an approved Therapeutic Use Exemption.

Article 5 – Corruption-free sport

To be subject to the authority of Anti-Doping Organizations that are ethical and comply with the Code and relevant and applicable International Standards and that are free of doping corruption or

conflict of interest. Athletes also have the right to participate in training and competitions that are free from doping-related corruption or any other form of doping-related manipulation that could affect the outcome on the field of play.

Article 6 – Right to justice

To justice, including the right to be heard, the right to affordable hearings, the right to a fair and timely hearing before an impartial hearing panel, the right to obtain a decision in a timely manner as well as the consistent and transparent enforcement of applicable Anti-Doping Rules in a harmonized manner.

Article 7 – Right to accountability

To ensure that all anti-doping stakeholders, including governments, Athletes, Participants, and Anti-Doping Organizations are held accountable and liable in the case of any form of proven corruption, cover-up, conspiracy, complicity or manipulation related to anti-doping.

Article 8 – Right to representation

To a mechanism to report athlete rights issues to a WADA-appointed independent Athlete ombudsman and to obtain representation to protect their rights.

Article 9 – Access to information

To access information in order make informed decisions regarding the Doping Control process that permits them to respect the Code and any relevant and applicable International Standard including, but not limited to, the use of permitted medications, substances and methods.

Article 10 – Freedom of expression

To freedom of expression and opinion with respect to anti-doping without fear of retribution.

Article 11 – Whistleblowers and Substantial Assistance

To be provided with a confidential and independent mechanism to report any potential doping behaviour by applicable Athletes, Participants, and Anti-Doping Organizations that may allow the Participant to benefit from Substantial Assistance.

Further, any Person that comes forward as a whistleblower to an Anti-Doping Organization shall have the right to confidentiality and anonymity as well as the protection of their physical security.

Anti-Doping Organizations must also provide all Persons with a meaningful incentive to report doping behaviour, including the fair application of the Substantial Assistance provisions in the Code.

Article 12 – Right to education

To receive Anti-Doping Education from Anti-Doping Organizations that satisfy the principles and requirements indicated in Article 18 of the Code.

Article 13 – Right to participate

To participate in the creation and modification of the Anti-Doping Rules to which they must comply through the relevant representative(s) of the Athlete Committee(s) that represent their interests. Representatives of such Athlete Committees shall also have the right to participate in the governance of the Anti-Doping Organizations that have authority over them.

Article 15 – Mutual respect of rights

To the extent not already explicitly provided, to have the rights described in this Charter respected by their fellow Athletes, Participants, Anti-Doping Organizations, or any other Person.

Article 16 – Right to an effective remedy

To have any breach of this Charter resolved through an impartial and expeditious grievance mechanism provided under the Anti-Doping or Disciplinary Rules of the relevant Anti-Doping Organization, which must also provide an effective remedy where the rights described in this Charter have not been protected or respected.

Versus Law Corporation

SUBMITTED

Josh Vander Vies, Lawyer (Canada)

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

1. After careful deliberation, I am convinced it is not hyperbole to submit that the purported "Limited Scope of Review" of the 2021 Code Review process is preposterous. As a lawyer, and retired Paralympic medalist, I want to believe that those involved in anti-doping are acting in good faith. Regrettably, the Orwellian paragraph, stating, among other things, "...the current 2015 Code has been very well received by all Stakeholders and is highly regarded as being a fair and effective document to advance the anti-doping effort in sport" is uncontroversially false, and the opposite is true.

2. Beyond this Orwellian use of doublespeak, the fact that this consultation is happening on a tight timeline within the Olympic, Paralympic, and Commonwealth Games periods, calls its legitimacy into critical question. It seems extremely likely that the submissions made in this consultation will simply be ignored. I make my submissions in good faith nonetheless

3. Limiting the review of the WADA Code is likely ultra vires the statutes of the World Anti-Doping Agency. Object 6 of the statutes say "The object of the Foundation is to... 6. to promote harmonized rules, disciplinary procedures, sanctions and other means of combating doping in sport, and contribute to the unification thereof, taking into account the rights of the athletes." This suggests that unlike object 3 "to establish, adapt, modify and update... the list of substances and methods prohibited," WADA can only promote harmonized rules, disciplinary procedures and sanctions adopted by the other entities involved in elite sport. I submit this means that instead of the WADA-friendly review team selected by WADA, a representative team of experts selected by athletes, coaches, sports, and national governments must be used to review the decentralized drafting of the Code. The direct role of WADA, as expressed in its statutes, is to take "into account the rights of the athletes." This would best be accomplished by allowing athletes of the world to independently select professional representation.

4. The work of NADOs should be internationalized and harmonized. It is obscene to talk about "harmonization" of sanctions, enforcement, prohibited list etc., when testing and enforcement is drastically different across countries.

5. The Code should vastly improve their recognition of dramatic differences between "doping" and "non-doping" sports. The RTP concept and specified/non-specified substances are a partial recognition of this. For example, it is now relatively uncontroversial that a "doping" sport like athletics, weightlifting or cross-country skiing requires such a dramatically different anti-doping regime than a "non-doping" sport like synchronized swimming, diving or curling, that I believe it is increasingly difficult to justify even requiring Code compliance by "non-doping" sports at all. IFs should have the opportunity to bargain inclusion in the WADA system, as well as tailor their own Prohibited Lists and sanctions.

6. The Prohibited List requires extensive reform. I submit that all substances and methods currently prohibited in-competition only and any substance or method ever granted as a TUE to any athlete should be removed from the Prohibited List, unless there is a compelling, publicly

and transparently articulated and scientifically justified athlete safety concern. Performance enhancement alone is not sufficient. This is an initial tactic to identify areas to remove from the Prohibited List, which, as demonstrated by high rates of inadvertent doping, is *prima facie* too large.

7. Removing the “spirit of sport” criterion and all methods and substances included on the Prohibited List as a result of it should be done as soon as possible. The “spirit of sport” criterion is utterly unjustifiable and acts to allow a virtually arbitrary population of the Prohibited List. This criterion is a fundamental weakness of the anti-doping system and puts its entire credibility in extreme jeopardy. The problematic nature of this criterion cannot be overstated.

8. As a retired athlete, current lawyer and sport leader, I have almost no faith in the Prohibited List or how it is populated. Meldonium brought this extreme deficiency into the popular media, but athletes have been dealing with it for years in absolutely unnecessary proceedings involving substances like marijuana, cocaine, caffeine, nicotine, pseudo-ephedrine etc. I believe that a complete re-write and public and transparent consultation on the Prohibited List is the only way forward.

9. Only those sports (or perhaps athletes/countries) who are absolutely most at-risk for doping should be subjected to the extremely invasive practice of whereabouts. For a strong majority of sports and athletes in elite sport, whereabouts are absolutely unnecessary and harmful, because they invade privacy and waste resources for no demonstrated reason.

10. Non-serious doping methods and substances should absolutely be identified, beyond the specified/non-specified distinction, and these methods and substances should result in sanctions such as mandatory education, or in the case of recreational drugs, mandatory counselling. Publication of these sanctions should not be necessary.

11. I submit financial incentives or no sanction in the case of an ADRV can be appropriate in cases of useful assistance. I note with extreme caution that I have always believed that if, as an athlete I had made the moral decision to cheat, that I would have done so by contaminating my opponent. I suggest extreme vigilance for this sort of behaviour in areas such as whistleblowing, tip lines or cooperation.

Institute of National Anti-Doping Organisations

SUBMITTED

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

The comments contained below and in the foregoing specific responses to the questions asked are those of the CEO of iNADO. There has not been a full consultation of all members on these comments and so they can not be read to represent any consensus view of all iNADO members.

The Code, while being predominantly a good document, retains elements which treat athletes unfairly. These elements are broadly recognised throughout the athlete and sporting community and need to be eliminated or at least moderated if the Code is to be regarded as an evolving and responsive document which is concerned with the needs of athletes. Some of the problems arise more directly out of the applicable International Standards nevertheless it is the Code which must ensure fairness prevails.

The following examples and broad solutions are offered:

1/ Penalising with unnecessary harshness athletes who have neither set out to cheat nor have achieved any real advantage. This is common with respect to supplement use where athletes may have ingested tiny quantities of (in particular) stimulants such that the impact can not have been much more than "a cup of coffee". It is a regular occurrence.

It can also happen with respect to medications for example in relation to inhalation of salbutamol. There have been a number of cases I have seen where by far the most plausible explanation for a salbutamol positive has been unwitting over dosing (puffing) to relieve severe symptoms. Nevertheless the current approach requires an almost impossible task for the athlete to replicate the circumstances and demonstrate that it was due to inhalation. Given the sparse evidence that any individual high intake of inhaled salbutamol can benefit performance an alternative approach would be better including follow up in competition tests. The danger of "innocent" athletes being unfairly punished in this case is much worse than someone who has deliberately overdosed slipping through. (The fear is that the current furore over Froome will make any new leniency in this area difficult.)

Solutions:

- Eliminate from the Prohibited List substances which are on the margin of performance enhancement and health detriment.
- Raise the thresholds of those substances so that tiny doses need not be reported.
- Continue to report low doses informing the athlete of the problem and warning them of future transgressions - possibly imposing an automatic but token penalty (2 week stand down etc).
- Be more sport specific so that abuse limited to particular sports can be contained while sensible use elsewhere is not proscribed. (The Code has moved past the need for one size fits all.)

2/ Penalising athletes who suffer from habitual or addictive problems unrelated to sporting performance.

Solutions:

It is time to consider again how we deal with recreational substances. It is not good enough to say the debate has been had and decided - that implies that experience and more information can not alter opinion. It also ignores that previous decisions have not taken into account the input of Player Associations which have considerable interest, experience and expertise in dealing with these issues - and speak for a huge number of athletes impacted by the Code.

To shoehorn these substances in with those being used to cheat and simply apply the only tool the Code currently has -punishment-reflects lazy, ignorant and unsympathetic thinking from those who purport to be concerned with the health of athletes.

3/ Penalising athletes below national level who a/ are being properly treated medically and b/ have no idea of the specific and demanding requirements of the Code. For example a masters athlete diagnosed by his doctor with asthma and prescribed terbutaline is unlikely, in the event of an AAF, to meet the requirements for a retrospective TUE. he will not have trialled and found wanting other beta 2 agonists. If he were using epo it is reasonable that he be punished but in a circumstance such as this it is not reasonable.

Solution

More flexibility is necessary in how non-national level athletes are dealt with by the Code which will still enable (require) cheats to be punished but will recognise the low levels of education and awareness inevitable at that level.

Specifically in the example above - for specified substances a documented reasonable diagnosis and appropriate administration regime should be sufficient.

4/ The Code does not enshrine the rights of athletes but emphasises their responsibilities. This needs to be balanced better.

Solution:

An appropriate and reasonable "Athlete Charter" such as a fine tuned version of that presented at the WADA symposium needs to be incorporated into the Code.

GM Arthur Sports Representation

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

SUBMITTED

LAST EDITED BY ADMIN

ARTICLE 10.6.2

Article 10.6.2: A small number of cases have looked at the issue of whether or not an Athlete who cooperates with an investigation, and admits a violation to an Anti-Doping Organisation before any notification under Code Article 7.7, has made an admission that falls within Article 10.6.2.

The conclusion has been that it does, because that admission then forms part of the basis upon which any notification is made. In other words, until the Athlete cooperated with the investigation, no notification could be brought. This could usefully be added to the Commentary to Article 10.6.2 as it would provide an obvious incentive for cooperation with investigations.

VIOLATIONS**Article 2.4: Whereabouts Violations**

Article 2.3 is unique in that it by definition does not involve any doping. If an Athlete is suspected of abusing whereabouts requirements to avoid being tested, that Athlete will be charged with evasion. Athletes who commit an Article 2.3 violation are not 'dopers'. That being so, the sanction to be applied should be based solely on their fault. Experienced athletes with comprehensive support staff have less of an excuse than inexperienced athletes in minority sports.

In addition, an Article 2.4 violation should not 'count' as a first violation under Article 10.7.3. Second offences are punished more severely because it is assumed that genuine 'dopers' have not changed their ways.

VIOLATIONS**Article 2.7: Trafficking/ Article 2.8: Administration****Article 2.9: Complicity**

Administration is a narrow violation, and is for practical purposes covered by Article 2.7. It is more or less impossible to administer without 'trafficking'. Administration might best be referred to as a sub-set of Trafficking, 'freeing up' Article 2.8.

There is a potential problem with the definition of 'Complicity', in that it covers conduct that might also be covered by the more serious violations in Articles 2.7 and 2.8. Providing an Athlete with a steroid is 'Trafficking', but if it is provided so that athlete can cheat, it is also an Article 2.9 violation. But the sanctions are different: Article 2.7 starts at 4 years, but Article 2.9 is capped at 4 years. This does not work. If there is an overlap the lesser sanction must apply. Is this consistent with sanction policy?

SANCTIONS**Article 10.2.1**

The policy objectives and practical implications of Article 10.2.1 require review and consideration as part of the Code Review process. Four-year bans were introduced to reflect the consensus

view that two-year bans provided both an insufficient punishment and inadequate deterrent to 'real cheats', that is, persons who chose to break the anti-doping rules for their personal advantage. The important feature of this is that four-year bans were introduced to punish 'intent'. 'Intent' is a subjective factor – it is the motivation to act in a certain way to get an unfair advantage on the field of play.

A formulation was introduced in the 2015 Code that results in mandatory four-year bans being imposed in Article 2.1 cases that involve Non-Specified Substances. To avoid the imposition of a four-year ban, an Athlete has to show that when the Non-Specified Substance (NSS) was used, that the Athlete –

i) Did not know that the NSS was a banned substance; AND

ii) Did not know that by using the NSS there was a significant risk of committing an anti-doping rule violation;

OR

i) Did not know that the NSS was a banned substance; BUT

ii) Knew that using the NSS created a significant risk of committing a violation, BUT did not 'manifestly disregard' that risk.

There are plenty of situations that involve an Athlete acting with significant fault, but do not though involve 'cheating' or looking to get some personal sporting advantage from the behaviour. The facts of CAS/2016/A/4512 are a good example of this blurring. A football player used clomiphene to improve his chances of conceiving a child. He had requested, but been declined, a TUE. He used clomiphene anyway. He received a four-year ban because he knew that clomiphene was banned.

As a matter of policy, the player should have received a four-year ban if he was using clomiphene to get an advantage when he played football. That is the 'intent' that the four-year ban is intended to punish. But what we have in this case is a four-year ban because the player intended to break the rules. That is not the same as cheating. This is the policy issue that needs to be ventilated and discussed. Should four-year bans be dispensed not just to 'cheats', but to persons who break the rules on purpose, even if the purpose is not to cheat? Should minor-league/amateur rugby players who use certain supplements to improve their physique for cosmetic reasons be banned from every sport for four years, even if their use had nothing to do with their field of play performances? These Athletes should receive significant sanctions – but making every Athlete subject to the same inflexible sanction risks creating avoidable issues.

SANCTIONS

Article 10.3.1: Tampering Sanction/Evasion Sanction

The sanction for a Tampering violation is a four-year ban.

This is anomalous, in that the sanction cannot be reduced for Fault related reasons. Tampering involves intent, precluding the application of Article 10.5.2. In practice this means that the sanction is an inflexible four-year ban.

This is disproportionate to some of the offences that fall within the definition. It goes without saying that a doper who manipulates a Sample to avoid detection should receive a heavy sanction. But a large number of offences that fall within the definition are relatively minor and do not involve cheating. For example, an athlete who behaves obnoxiously for 45 minutes with a Doping Control Officer, and then indicates a willingness to provide a Sample, has probably committed Tampering if the Doping Control Officer is not in a position to collect the Sample. It is impossible to say that this warrants a four-year ban. That sort of ban ends careers.

The sanction for Tampering should therefore be at the discretion of a hearing panel, within a set range of (say) one-four years.

The same observations and reasoning apply to evasion, refusal and failure to comply. For example –

a) An Athlete might evade to avoid detection as a doper; or might evade to avoid being identified as a ‘ringer’, or simply to avoid the tedium and inconvenience of Doping Control. Evasion is not excusable but a mandatory four-year ban whatever the circumstances is not fair.

b) An Athlete might refuse to participate in Doping Control, or fail to comply, for legitimate reasons that fall the wrong side of what might be deemed to be Compelling Justification. For example, an Athlete might have pressing work, social or personal commitments that (especially for lower-level Athletes) are very important. Four year sanctions are not suitable in every case.

There is a further problem with these sanctions in that a mature Anti-Doping Organisation may choose not to take action in such cases because it believes that the sanction will be disproportionate. This is not desirable: the rules should be enforced, but with a proportionate sanction built into them.

SANCTIONS

Substances of Abuse

The 2015 Code nearly incorporated progressive provisions concerning the sanctions that might be applied to violations arising from the use of ‘substances of abuse’, which in broad terms meant substances that an Athlete was using for non-sport related reasons.

The most obvious types of substance are ‘recreational’ substances, used for their stimulant/euphoric/relaxant properties, in social settings.

Although the amendment to the reporting threshold for cannabis had the welcome effect of reducing the number of cannabis cases that Anti-Doping Organisations have to handle, this is not the case with other recreational substances, such as cocaine.

Cocaine remains a problem. Cocaine cases are a drain on Anti-Doping Organisations’ resources, and from a doping/clean sport perspective, a waste of time. Cocaine users do not use cocaine to cheat.

Given this, the sanctions applied in such cases are routinely high. Progressive and forward-thinking Anti-Doping Organisations such as USADA do not insist on severe sanctions, but this is not an approach shared by other Anti-Doping Organisations. Some – bizarrely – insist that a four-year sanction is appropriate. It is most unfortunate that the sanctioning approach taken by CAS in CAS 2016_A_4416 *IAAF vs CONMEBOL & Brian Fernandez* has not been widely adopted.

One solution to ameliorate the disproportionate effects of cocaine cases on both Athletes and Anti-Doping Organisations might be to introduce a threshold limit for the metabolites of cocaine. Excretion studies for cocaine have ethical complications, but it should be possible to arrive at a limit that effectively excludes social users of cocaine from the full rigours of the Code. Athletes within a certain range could, for example, be subject to a mandatory short-term exclusion from sport whilst they received counsel from their sport. Failing that, cocaine sanctions remain vulnerable to a proportionality challenge.

In any event, the inconsistency in sanctioning policy identified in the *Brian Fernandez* decision would benefit from examination. The ‘social drug’ provisions in the Code are scattered across a number of provisions, and there is little logical reason why the provisions specific to cannabis are located in the Commentary to the definition of No Significant Fault, nor why those substances have their own bespoke ‘carve-out’.

SANCTIONS

Article 10.6.1

Practitioners have identified a number of operational issues with Article 10.6.1, some of which are an unavoidable function of the policy issues that underpin Article 10.6.1. These include –

a) There is no potential for a genuine ‘bargain’, that is, ‘trading’ a part suspension of sanction for information. This is because the value of information cannot be gauged until it is acted upon. For example, if A provided information to the effect that B was doping, A would only be credited if and when B tested positive. A may not feel that is a good enough incentive to share information.

b) A person providing information has no recourse if the Anti-Doping Organisation to which the information is provided mishandles the information.

c) An Anti-Doping Organisation is under no obligation to act on any information provided to it. This is fair. But equally a person providing information will be aggrieved if there is a legitimate expectation that information would be acted on.

d) The appeal rights available to a person providing information to an Anti-Doping Organization are not clear. Can the length of suspension be appealed? Can the failure to act on information properly be appealed?

Some solutions to these issues could be –

a) There is scope for ‘provisional deals’ to be struck. Substantial assistance suspensions will take effect sometime into a ban, which means there is plenty of time for it to become apparent that information is useful or not. A bargain along the lines of ‘if you provide information that results in a doper being caught, we will suspend 50% of your ban, but if nothing comes of it you serve your full ban’ are perfectly manageable.

b) A person should be able to complain to WADA in this situation and obtain some recourse. A competent Anti-Doping Organisation will be able to explain how it assessed information and what action it took: only if WADA finds that the Anti-Doping Organisation has mismanaged information will it intervene. But that intervention must result in meaningful outcomes, for example censure pursuant to the processes set in the ISCCS.

c) Anti-Doping Organisations have to act in good faith: if they do not act on information, the person providing the information is entitled to an explanation.

d) Appeal rights should be clear from the outset: there is no intrinsic right to appeal, but the existence or absence of an appeal right needs to be obvious. Any decision made by WADA should not be subject to any further appeal.

SANCTIONS

Article 10.6.3

Article 10.6.3 was designed to establish a means by which certain anti-doping rule violation actions that carry a potential four-year ban can be ‘settled’ if the person charged admits the violation. It has not worked and is one of the few provisions in the Code in respect of which the drafters have to simply acknowledge that it needs to change or be scrapped. There is a minor and major flaw in the text.

The 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.

The major flaw is that any reduction of sanction is based 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'. 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. The Athlete acted with a very, very high level of Fault. Article 10.6.3 gives virtually no possibility of a reduction and there is more or less zero incentive to admit.

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.

Court of Arbitration for Sport

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

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"Unless Fairness Requires Otherwise"

A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses

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³ See Lewis & Taylor, *Sport: Law and Practice*, 3rd Ed., Bloomsbury Professional Ltd., Croydon, 2014, p. 545, sec. C2.168 (noting that the purpose of an imposition of a period of ineligibility is to "*punish the transgressor, to prevent him re-offending during the period of the ban, to deter him and others from cheating (or indeed from failing in their responsibility to do everything in their power to keep themselves clean of prohibited substances and methods, and to maintain public confidence in the integrity of sports and in the readiness, willingness and ability of its governing bodies to keep sport clean.*") (internal citations omitted).

⁴ Art. 2.1.1 of the WADC provides: "*It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*"

I. INTRODUCTION

Retroactive disqualification of competitive results is a vital part of a credible anti-doping regime for various reasons. It has a deterrent effect on doping, particularly when combined with increased use of Athlete Biological Passports ("ABP") and re-testing of samples. Moreover, from the clean athletes' point of view, retroactive re-rankings and re-allocation of medals may have intangible

significance and considerable economic effects as successful athletes are awarded substantial amounts of monetary compensation based on their results.

This article focuses on the most common legal challenges relating to the retroactive disqualification of an individual athlete's competitive results under Article 10.8 of the World Anti-Doping Code (2015) (the "WADC"). In particular, this article provides an overview of the requirements for the disqualification of results affected by an anti-doping rule violation ("ADRV"), and further examines the grounds for exceptionally upholding an athlete's results under certain factual scenarios.

II. DISQUALIFICATION OF COMPETITIVE RESULTS

A Panel's determination of the consequences of an ADRV may be broken down into two distinct considerations. First, a Panel must decide on the imposition of a period of ineligibility. The consideration (i.e. the "ban") is the principle sanction for an ADRV and is rigid in its application. It is aimed at *inter alia* punishing the offending athlete and deterring other athletes from cheating.³ Second, a Panel must decide on the disqualification of an athlete's competitive results. This consideration, while maintaining the automatic disqualification of results in accordance with Article 9 of the WADC⁴, provides for discretion when the ADRV affects an athlete's results over a certain period of time. As set forth below, it is this discretion which makes way for varying applications in CAS jurisprudence.²

A. Mandatory Disqualification

Any assessment of the disqualification of results begins with Art. 9 of the WADC, which provides as follows:

Article 9 Automatic Disqualification of Individual Results

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.

The consequence of this rule is automatic and applies whenever there is a "presence" violation of Art. 2.1 of the WADC in connection with an in-competition test. There is no room for any discretion or alternative explanation.⁵ Indeed, an athlete's intent or degree of fault in the commission of the ADRV is of no importance in this evaluation.⁶ Moreover, Panels have routinely held that it is not relevant whether the prohibited substance in question enhanced the athlete's sporting performance in the competition that produced the positive sample.⁷ Instead, a Panel is simply tasked with correcting the results of the competition in question to ensure that the record reflects a clean and fair sporting event.⁸

⁵ *Misha Aloyan v. IOC*, CAS 2017/A/4927, para. 71 (stating clearly that "Article 9 of the IOC ADR leaves no room for any form of discretion to verify whether a finding of an anti-doping rule violation should not trigger the 'Automatic Disqualification of Individual Results'").

⁶ See *Id.* at para. 76 ("[T]he disqualification of the individual results obtained in the competition in connection with which an anti-doping rule violation was found to follow [is] an unavoidable consequence of that finding, without any scope for the hearing body to avoid its imposition, even in those exceptional cases where no sanction was inflicted, because the athlete bore no fault or negligence. It was underlined that when an athlete wins a medal with a prohibited substance in his or her system, this is held to be unfair to the other athletes in that competition, regardless of whether the medallist was at fault in any way."); See also *UCI v. Jack Burke and Canadian Cycling Association*, CAS 2013/A/3370, para. 184 (results in connection with an in-competition test disqualified despite the Panel's finding of no fault); *Filippo Volandri v. International Tennis*

Federation, CAS 2009/A/1782, para. 100 (results in connection with an in-competition test disqualified despite the Panel's issuance of a reprimand).

7 *Mariano Puerta v. ITF*, CAS 2006/A/1025, para. 11.7.16, pt. 3 (disqualifying individual results from the competition producing the positive sample regardless of whether the ingestion of the substance in question was "*negligible and had no performance-enhancing effect*"); *Alain Baxter v. IOC*, CAS 2002/A/376, para. 3.29 ("*[T]he disqualification of an athlete for the presence of a prohibited substance, whether or not the ingestion of that substance was intentional or negligent and whether or not the substance in fact had any competitive effect, has routinely been upheld by CAS panels.*").

8 See WADC (2009), Art. 9 Commentary ("*When an Athlete wins a gold medal with a Prohibited Substance in his or her system, that is unfair to the other Athletes in that Competition regardless of whether the gold medalist was at fault in any way. Only a "clean" Athlete should be allowed to benefit from his or her competitive results.*"); See also *Aloyan*, CAS 2017/A/4927 at para. 76 ("*[O]nly a clean athlete is allowed to benefit from his or her competitive results.*"); *Andreea Raducan v. IOC*, CAS OG 2000/11, para. 7.24 (supporting the strict consequence of an automatic disqualification of a gold medal winner as a matter of fairness to all other athletes); *IAAF v. ARAF & Ekaterina Sharmina*, CAS 2016/O/4464, para. 194; (one of the main purposes behind the disqualification of results is to remove any tainted performances); *Baxter*, CAS 2002/A/376, para. 3.29 (disqualification of result is required to ensure the integrity of the results); *Fritz Aanes v. Fédération Internationale de Lutttes Associées*, CAS 2001/A/317, pg. 17 (stating that the interests of a doped athlete gives way to the fundamental principle of sport that all competitors must have equal chances).

B. Discretionary Disqualification

Following the mandatory disqualification of results in a particular competition that produced the positive sample, further consideration must be given by a Panel as to whether (1) other results obtained during the event (i.e. results earned in competitions taking place at the same event before or after the ADRV occurred) (Art. 10.1 of the WADC) and (2) results obtained after the ADRV through the commencement of any 3

provisional suspension or period of ineligibility shall be disqualified (Art. 10.8 of the WADC). Each consideration is addressed in turn below.

1. Art. 10.1 of the WADC

Art. 10.1 of the WADC provides discretion as to whether disqualification of an athlete's results obtained in a "*Competition*"⁹ that occurred prior to and after an ADRV in a single "*Event*"¹⁰ is warranted. Article 10.1 of the WADC provides as follows:

9 Defined as a "*single race, match, game or singular sport contest.*" See WADC Appendix 1, Definitions.

10 Defined as a "*series of individual Competitions conducted together under one ruling body (e.g. the Olympic Games, FINA World Championships, or Pan-American Games).*" See WADC Appendix 1, Definitions.

11 See *Mads Glasner v. FINA*, CAS 2013/A/3274, para. 73.

12 *Id.*, para. 82.

10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual

results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

As an initial matter, it is noted that the wording of this provision is clear: Art. 10.1 of the WADC addresses all *Events* of a *Competition*. As such, the provision does not differentiate between *Events* prior to or after the ADRV. To the contrary, Art. 10.1 of the WADC explicitly refers to "*all of the Athlete's individual results obtained*" in the Competition during which an ADRV occurs.¹¹

When this happens, discretion is given (interestingly) to "*the ruling body of the Event*" – not to an independent hearing body or anti-doping organization – to decide what consequences, if any, should be given to the results earned on the front and back side of an ADRV in any given *Event*. In this regard, Article 10.1 of the WADC goes on to provide that "[f]actors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions." In other words, has the context of the ADRV "contaminated" all other results in the Competition?¹²

The two criteria for "contamination" (i.e. the seriousness of the ADRV and whether the athlete tested negative in other Events in the Competition) are considered in Art. 10.1.1 of the WADC as follows:

10.1.1 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

Therefore, an athlete's results in the other *Events* shall not be disqualified if the athlete bears no fault or negligence for the ADRV and the results in the other *Events* were not likely to be affected by the prohibited substance. Otherwise, the "ruling body" and/or Panel shall utilize its discretion in Art. 10.1 of the WADC in deciding whether to disqualify such other results within a *Competition*. 4

2. Art. 10.8 of the WADC

Art. 10.8 of the WADC provides an explicit rule regarding the retroactive disqualification of competitive results: all results from the ADRV until the commencement of the provisional suspension or ineligibility period shall be disqualified. There are no quantitative or temporal limitations to the disqualification.¹³ Therefore, in an individual case, the rule could invalidate a significant number of results covering a considerable period of time.

¹³ See *WADA v. ASADA, Australian Weightlifting Federation & Aleksan Karapetyn*, CAS 2007/A/1283, para. 55.

¹⁴ Article 10.8 of the Code substantively corresponds with its predecessors (i.e. the 2009 and 2003 versions of the WADC). Therefore, relevant legal praxis is not limited to cases adjudicated under the 2015 version. None of the versions contains comments that would be relevant for the purposes of this article.

¹⁵ See e.g., *UCI v. Alex Rasmussen & The National Olympic Committee and Sports Confederation of Denmark*, CAS 2011/A/2671, paras. 83-84; *Ryan Napoleon v. FINA*, CAS 2010/A/2216, para. 17; *Volandri*, CAS 2009/A/1782, paras. 55-56; and *Guillermo Cañas v. ATP Tour*, CAS 2005/A/951, paras. 9.8-9.9.

¹⁶ *IAAF v. ARAF & Tatyana Chernova*, CAS 2016/O/4469.

There is, however, one important exception to this rule, according to which the results may remain untouched if "*fairness requires otherwise*." As shown below, this discretionary exception has resulted in significant discussion and challenges for hearing panels.

Article 10.8 of the WADC reads as follows:

"10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement 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."*¹⁴ (Emphasis added.)

III. "UNLESS FAIRNESS REQUIRES OTHERWISE"

Art. 10.8 of the WADC does not stipulate from whose standpoint "fairness" should be evaluated. This, of course, has great significance on the outcome of the consideration – both from a public perception and burden of proof perspective.

The provision refers to "fairness" at a general level and gives rise to different interpretations. But this issue has not been addressed in detail in the arbitral awards of the CAS. The implied starting point seems to be that fairness should be primarily assessed from the point of view of the athlete having committed the ADRV.¹⁵ This is a well-established approach. The athlete is a party to the disciplinary proceedings and it is his or her achievements that are primarily at stake.

The viewpoint shall not, however, be categorically restricted to the athlete in question. Indeed, as noted by the Sole Arbitrator in *Chernova*¹⁶, "*not to disqualify results that have been 5*

achieved by using a prohibited substance or prohibited method cannot be considered as fair with regard to the other athletes" that competed against the sentenced athlete.¹⁷

¹⁷ *Id.* at para. 176; See also Marjolaine Viret, *Evidence in Anti-Doping at the Intersection of Science and Law*, T.M.C. ASSER PRESS, The Hague, 2016, p. 494 (noting that "*retroactive Disqualification is detrimental to fair competition since it creates an uncertainty for other Athletes as to the definitive rankings.*"); and *IAAF v. RUSAF & Anna Pyatykh*, CAS 2017/O/5039, para. 132.

¹⁸ See *IAAF v. ARAF, Sergey Kirdyapkin & RUSADA*, CAS 2015/A/4005, para. 121; *Glasner*, CAS 2013/A/3274, para. 85 (citing *UCI v. Monika Schachl & ÖRV*, CAS 2008/A/1744).

¹⁹ CAS 2013/A/3274.

²⁰ *Id.*, para. 84.

²¹ *Id.*, para. 85 (citing *Schachl*, CAS 2008/A/1744, para. 74).

²² See *IAAF v. ARAF & Mariya Savinova-Farnosova*, CAS 2016/O/4481, para. 195 (the "*general principle of fairness must prevail in order to avoid disproportional sanctions*").

²³ Although, one could envisage a situation where a governing body may prefer that the results be maintained. In such a case, these arguments could assist the athlete in meeting his or her burden.

²⁴ See Lewis & Taylor, p. 542 (noting that "*And it is the athlete's burden to show (...) that 'fairness requires otherwise'.*"). *Contra*, Viret, p. 495 (noting that "*Until the burden of proof is explicitly placed on the Athlete, it is submitted that the burden of proof should stay on the ADO, consistent*

with the general statement in Article 3.1 of the WADC that the Code will 'place' the burden of proof upon the Athlete.").

A. Interpretation

When considering the application of "fairness", CAS Panels have undoubtedly taken a broad approach.¹⁸ This was quite clearly explained in *Glasner*¹⁹ where the respondent, the Fédération Internationale de Natation (FINA), argued for a narrow interpretation of the term and submitted that fairness required results obtained after the ADRV be maintained only in cases where disciplinary proceedings were delayed.²⁰

The Sole Arbitrator, however, rejected FINA's position and confirmed that the term "fairness" should be interpreted broadly and cover a variety of situations to justify the retention of otherwise disqualified results. In doing so, the Sole Arbitrator highlighted CAS jurisprudence interpreting this notion²¹ and noted that the systematic interpretation of the rules supports such a view. Put simply, it is clear that when approaching this exception, general principles of fairness must prevail.²²

B. Burden of Proof

The burden of establishing that "fairness requires otherwise" is on the athlete. Art. 10.8 of the WADC establishes that – as a principle matter – all results obtained from the date a positive sample was collected through the commencement of any Provisional Suspension or Ineligibility period shall be disqualified. This is, in essence, the rule (i.e. the disqualification).

To negate the rule (i.e. establish that fairness requires otherwise such that the results should be maintained), the party seeking to dislodge this rule (i.e. the athlete) should carry the burden to prove otherwise on the balance of probabilities. After all, it is in the athlete's interest to maintain the results which the rule otherwise requires be disqualified.²³ To interpret differently would, in essence, rewrite Art. 10.8 of the WADC to require the anti-doping authority to not only establish the ADRV but also establish that fairness requires the remaining results not be maintained. This would up-end the intent of the article.²⁴ 6

C. Assessing "Fairness": The Applicable Factors

It is often difficult to determine whether all results between an ADRV and a ban should be disqualified or whether fairness dictates a deviation from this principle (after all, the disqualification of all results is the main rule which Panels should follow). Each case must be judged on its own merits. Based on CAS jurisprudence, it is, however, possible to extrapolate several factors that hearing panels may take into consideration when assessing the principle of fairness. No one particular factor is determinative on the issue. Instead, Panels consider an overall evaluation of the evidence in support of "fairness."²⁵ These factors are discussed below.

²⁵ See e.g. *IAAF v. ARAF, Yuliya Zaripova & RUSADA*, CAS 2015/A/4006, para. 102; *Kirdyapkin*, CAS 2015/A/4005, para. 121; *IAAF v. ARAF, Sergey Bakulin & RUSADA*, CAS 2015/A/4007, para. 121.

²⁶ Lewis – Taylor, p. 542.

²⁷ See e.g. *IAAF v. ARAF & Kristina Ugarova*, CAS 2016/O/4463 (criticizing delays in results management such that fairness required a portion of the athlete's results to be retained by the athlete); *ASADA v. Daniel Nisbet*, A2/2009 (permitting athlete to maintain results earned prior to notification of ADRV, which was caused by the seizure of prohibited substance by government officials two months prior to such notification); *Volandri*, CAS 2009/A/1782.

²⁸ *Volandri*, CAS 2009/A/1782, para. 99.

29 See e.g. decision of Anti-Doping Hearing Panel of the IBU concerning Mr Alexander Loginov on 30 June 2015.

i. Delays in Results Management

Depending on the nature of the ADRV at issue, Art. 10.8 of the WADC could capture results achieved by an athlete over a lengthy period of time.²⁶ If the proceedings on the ADRV have taken a particularly (and, perhaps, unexplainably) long time to adjudicate and the delay is not attributable to the athlete, fairness may dictate that only some of the athlete's results be invalidated. This has been confirmed in various CAS awards,²⁷ including for example, in *Volandri*,²⁸ as follows:

"Although the ITF knew of the adverse analytical findings, it chose not to inform Mr Filippo Volandri and to let the latter take part in 19 tournaments before formally charging him with a doping offence. Such a long period is unacceptable and incompatible with the intention of the anti-doping regime that matters should be dealt with speedily. (...) Based on the above considerations, the Panel is of the opinion that fairness requires (...) that his individual result in respect of the 2008 Indian Wells tournament only is disqualified (...)."

It should be noted that the impact of a long delay in notifying an athlete of an ADRV or adjudicating an ADRV is particularly complex in cases involving retesting²⁹ and as addressed below, in ABP cases. In such cases, the delays may be significant and it may be debatable whether the anti-doping organisation in question could or should have operated quicker in commencing the disciplinary proceedings, considering that the athlete has obviously endeavoured to conceal the ADRV.

ii. Athlete's Degree of Fault

If the athlete's degree of fault is low and he or she is successful in obtaining a reduced period of ineligibility, fairness may require that only some results be disqualified. In *Cañas*, for example, the Panel ruled as follows: ⁷

9.9 Since the [CAS] Panel has found that Appellant bears No Significant Fault or Negligence, the [CAS] Panel deems that fairness dictates that other than with respect to the [Mexican] Tournament, none of Appellant's results shall be disqualified.³⁰

³⁰ *Cañas*, CAS 2005/A/951, paras. 9.8-9.9.

³¹ *Karapetyn*, CAS 2007/A/1283.

³² *Id.* at 31 & 55.

³³ Art. 13.8 of the Australian Weightlifting Federation's 2004 Anti-Doping Policy is the equivalent of Art. 10.8 of the WADC.

³⁴ *Volandri*, CAS 2009/A/1782 (finding that an athlete could maintain the results he obtained in 19 tournaments following the ADRV in question when the athlete was sanctioned with a reprimand and the results were earned before the athlete was charged with a doping offence).

³⁵ See *Sergei Tarnovschi v. International Canoe Federation*, CAS 2017/A/5017 (disqualifying all results from date of ADRV through provisional suspension as "no elements of "fairness" can be invoked given the Appellant's failure to disprove the legal presumption of intent.")

But such a finding is not absolute. In *Karapetyn*,³¹ the CAS Panel rejected the view that a finding of no (significant) fault or negligence is a necessary pre-condition for the exercise of its discretion to find fairness under Art. 10.8 of the WADC. In that case, WADA argued that an athlete's results must be disqualified unless the athlete shows exceptional circumstances (i.e. that he bore No Significant Fault or Negligence). Moreover, WADA further asserted that fairness required the

disqualification of the athlete's results because he negligently ingested the prohibited substance without reading the label of the product he ingested or conducting other due diligence prior to ingestion. The Panel, however, disagreed with WADA and maintained that the fairness provision³² "stands on its own" with no one specific condition as to a determination of fairness. So long as discretion is exercised in good faith, without bias, error, or undue influence, "Art. 13.833 extends to the decision-maker discretion to determine what fairness requires." In other words, an athlete's degree of fault is not a decisive factor, but an element to consider when assessing fairness and the disqualification of results.

Moreover, it is worth noting that while Art. 10.8 of the WADC provides that all results shall be disqualified between the ADRV and the commencement of the provisional suspension or ineligibility period, an argument naturally follows that results should not be disqualified at all if no period of ineligibility is finally imposed on an athlete. This has been confirmed in the case of *Volandri* in which the Panel sanctioned the athlete with a reprimand and only disqualified the athlete's results in respect of the tournament in which he had given a positive sample.³⁴

On the contrary, to the extent the ADRV is intentional or the athlete's degree of fault is high, it is arguable that the disqualification of all results - even over a fairly long period of time - is justified.³⁵ This said, the longer the period of time under scrutiny, the harsher the disqualification of all results could be, in which case Panels may find that fairness requires some of the results be upheld.

iii. (Un)affected Sporting Results

To the extent an athlete is able to establish that the results obtained between the ADRV and the conclusion of his/her ban and/or period of provisional suspension were not affected by the prior administration of the prohibited substance, fairness may require that such results should be retained by the athlete. This abides by the principle of fair play and 8

is indeed expressly recognised as a potential factor to be included in the consideration of whether to disqualify results in multi-competition events.³⁶

³⁶ See Article 10.1 of the WADC.

³⁷ See *Rasmussen*, CAS 2011/A/2671, para. 84; *Volandri*, CAS 2009/A/1782, para. 98; *UCI v. Valjavec v. Olympic Committee of Slovenia*, CAS 2010/A/2235, para. 117; *WADA v. UCI & Valverde*, CAS 2007/A/1396 & 1402, para. 19.14; *Karapetyan*, CAS 2007/A/1283, para. 54.

³⁸ See *Rasmussen*, CAS 2011/A/2671, para. 84.

³⁹ *Sharmina* CAS 2016/O/4464, para. 190 (disqualifying results achieved during the entire period during which the athlete used prohibited substances as demonstrated through the athlete's biological passport and noting that "*the application of a fairness exception will strike a balance of proportionality between the legitimate aims of deterrence and the fight against doping and the means used for such purpose*").

⁴⁰ *Chernova*, CAS 2016/O/4469, para. 176 (disqualifying results achieved during the entire period during which the athlete used prohibited substances as demonstrated through the athlete's biological passport and noting while "*the fact that such period of disqualification, seen only from the perspective of the sanction of disqualification of the results, must be deemed excessive in terms of proportionality*", "*not to disqualify results that have been achieved by using a prohibited substance or prohibited method cannot be considered as fair with regard to other athletes that competed against the Athlete during this period*").

⁴¹ See *I. v. Fédération Internationale de l'Automobile (FIA)*, CAS 2010/A/2268 at para. 141, *Puerta*, CAS 2006/A/1025, and *Giorgia Squizzato v. FINA*, CAS 2005/A/830 (all affirming that excessive sanctions are prohibited).

42 In Lance Armstrong's case, the disqualification period was even longer. All his results were disqualified from 1 August 1998 onwards because he was shown to have used prohibited substances at least from 1998 to 2005. See USADA Press Release dated 24 August 2012.

A negative doping control analysed between the test leading to the ADRV and the commencement of the ineligibility period is an indication that the use of a prohibited substance has not affected the results. This factor has been accepted by various CAS Panels.³⁷ For example, in *Rasmussen*, the Panel noted as follows:

"(...) the Panel finds it important to emphasize the circumstance that, as conceded by the UCI at the hearing, the First Respondent's competitive results after 28 April 2011 had not been affected by any doping practice, and were fairly obtained by Rasmussen. Therefore, the Panel sees no reason to disqualify them."³⁸

Although this particular part of the fairness test appears rather straightforward at first glance, the issue can be complex. Indeed, depending on the substance and other circumstances of the case, it could be persuasively argued that the past administration of a banned substance has indirectly affected the results in the form of the athlete's enhanced ability to practice harder or recover faster.

On the other hand, it is obvious that continuous use of a prohibited substance or a prohibited method during the infringement period should lead to the disqualification of all results. For example, in the cases of *Sharmina*³⁹ and *Chernova*⁴⁰ the athlete's continued use of prohibited substances, as evidenced through the biological passport program, resulted in complete disqualification of results earned during the entire period of blood doping practices. In these cases, Panels indicated that while the disqualification may be excessive⁴¹ in terms of proportionality, the fairness to the other athletes and the removal of tainted performances from the record supersedes such a principle.⁴²

iv. Significant Consequences of the Disqualification of the Results

Significant negative financial or competitive consequences resulting from the disqualification of results may support the view that no or only a limited annulment of results should be imposed. In the case of *Schachl*, the Panel took into account that ⁹

disqualifying the athlete's results following the ADRV would have included the disqualification of results achieved in the Olympic Games.⁴³ Similarly, in the case of *Napoleon*, the Panel noted that by disqualifying all the results between the ADRV and the commencement of the ineligibility period, the athlete would have lost the opportunity to participate in the Commonwealth Games.⁴⁴ Therefore, the panel disqualified results over two separate periods:

43 *Schachl*, CAS 2008/A/1744 paras. 76-78 (maintaining results earned after ADRV when there was no suggestion or evidence to indicate that the athlete has ever ingested performance-enhancing substances, or that her results at the Olympic Games were affected in any way by her ADRV).

44 *Napoleon*, CAS 2010/A/2216.

45 *Id.*, paras. 7.9-7.10.

46 *Tarnovschi*, CAS 2017/A/5017.

47 *Id.*, paras. 71-72.

48 *Id.* (noting that significant delays attributed to Panel's decision to allow the athlete to maintain results).

49 *Kirdyapkin*, CAS 2015/A/4005, para. 121.

*"These periods of disqualification equate to the ban imposed by FINA but take account of the undue delay which would have otherwise precluded the Appellant from fair participation in future competitions."*⁴⁵

But not all Panels are as forgiving. In *Tarnovschi*,⁴⁶ the athlete committed an ADRV on 8 July 2016. Both WADA and the International Canoe Federation were notified of the ADRV on 4 August 2016. The athlete alleged that he was not notified of the ADRV until 18 August 2016. The athlete proceeded to compete in the Rio Olympics where he finished in third place and was subsequently tested following the event. The results of his test were clean. Nevertheless, despite these clean results, the Panel found that no elements of "fairness" could be invoked as the athlete failed to disprove the legal presumption of intent as to the ADRV in question (committed over month before the Olympics).⁴⁷ As a result, the Panel disqualified the athlete's bronze medal – the only medal won by his home country of Moldova at the Olympics that year.

On its face, considerations of results for "major" events could raise significant objection by other athletes on the basis of proportionality. In other words, why are one athlete's results more important than another athlete's results? Notwithstanding the foregoing jurisprudence, it should be reemphasized that the significance of a competition is not the sole consideration when determining fairness.⁴⁸ An overall evaluation of all such factors is absolutely necessary⁴⁹ and Panels should not be merely swayed by sympathy due to the significance of an event.

v. "Gaps" in a Blood Doping Scheme

The literal reading of Art. 10.8 of the WADC requires the disqualification of competitive results as from the moment a positive sample is collected. Determining this "start date" is, of course, easy when the ADRV is a result of an in- or out-of-competition doping control on a specific date. But complications arise when an ADRV is established on the basis of an ABP, which is not determined based on a specific doping control but instead on a series of doping controls taking place over a certain time period.

Complications further rise when, during this time period, there are "gaps" in the ABP where there is no evidence of doping use or methods. In this regard, Panels must decide whether it is appropriate to disqualify (a) all results obtained during the entire period of 10

the ABP; or (b) only the results earned in the period where a scheme of doping is confirmed (i.e. the "doping scheme");⁵⁰ or (c) only those results directly impacted by evidence of doping.⁵¹

⁵⁰ See e.g., *Savinova-Farnosova*, CAS 2016/O/4481; *Sharmina*, CAS 2016/O/4464; *IAAF v. ARAF & Petr Trofimov*, CAS 2016/O/4883; *Chernova*, CAS 2016/O/4469; *WADA v. Vladislav Lukanin & IWF*, CAS 2014/A/3734.

⁵¹ See e.g., *IAAF v. RUSAF & Svetlana Vasilyeva*, CAS 2017/O/4980.

⁵² See e.g. CAS 2014/A/3614 & 3561 *IAAF & WADA v. Real Federación Española de Atletismo & Marta Domínguez Azpeleta* (disqualifying all results as from the collection of Sample 1 (5 August 2009) through to the commencement of her provisional suspension (8 July 2013)); *Kirdyapkin*, CAS 2015/A/4005; *IAAF v. ARAF, Yuliya Zaripova & RUSADA*, CAS 2015/A/4006; *IAAF v. ARAF, Sergey Bakulin & RUSADA*, CAS 2015/A/4007; *IAAF v. ARAF, Olga Kaniskina & RUSADA*, CAS 2015/A/4008; *IAAF v. ARAF, Valeriy Borkin & RUSADA*, CAS 2015/A/4009; *IAAF v. ARAF, Vladimir Kanaikin & RUSADA*, CAS 2015/A/4010.

⁵³ CAS 2016/O/4481.

⁵⁴ A total of 28 Samples were collected over a period from 15 August 2009 to 22 March 2015.

⁵⁵ CAS 2016/O/4481, para. 197.

56 It is noted that the athlete's results earned during the 2012 Olympic Games fell within this period and were therefore disqualified.

Historically, Panels have applied a literal application of Art. 10.8 of the WADC when considering the disqualification of results. In other words, all results earned from the inception of the ABP through the provisional suspension or period of ineligibility were disqualified. This can be seen in varying CAS jurisprudence.⁵²

Recently, however, some Panels have taken a "selective approach" and looked more closely within the ABP when deciding whether all, or some, of an athlete's results should be disqualified. For example, in *Savinova-Farnosova*,⁵³ the IAAF sought the disqualification of the athlete's results as from 15 August 2009 (i.e. Sample 1 on her ABP) through 24 August 2015 (i.e. the date of her provisional suspension).⁵⁴ The athlete, however, argued that there was no evidence of doping in Sample 1 and using such date as the "start date" for the disqualification of results would be unfair. She also argued that her blood values during the 2012 Olympic Games (i.e. Sample 13 on her ABP) fell within her normal range and therefore disqualifying such results would also be unfair.

In consideration of the ABP, the Sole Arbitrator determined that the athlete's blood values confirmed the use of prohibited substances as from 26 July 2010 (i.e. Sample 3 – the eve of the European Championship), not Sample 1 as requested by the IAAF. Based on a literal reading of Rule 40.8 of the IAAF Rules (which are synonymous with Article 10.8 of the WADC), therefore, all results earned by the athlete as from Sample 3 through the date of the provisional suspension would have to be disqualified despite there being no evidence of doping use by the athlete after Sample 21 on the ABP (i.e. 19 August 2013).

In consideration of the fairness exception, however, the Sole Arbitrator found it unfair to disqualify the athlete's results between Sample 21 (i.e. 19 August 2013) and the date of the provisional suspension (i.e. 24 August 2015) considering that the ABP did not evidence doping use or methods during this "gap" period and moreover, that the athlete could not be blamed for the delay in the results management process (which only started long after the relevant ABP samples became known to the IAAF).⁵⁵ As a result, only those results earned by the athlete within the "doping scheme" (Sample 3 to Sample 21) were disqualified on the basis of fairness.⁵⁶ 11

The case of *Savinova-Farnosova* does not stand alone. Several other cases also share the position that disqualifying all results earned by an athlete during the entire period of the ABP is disproportionate and unfair.⁵⁷ Indeed, such is the case even when the athlete, by using a sophisticated plan and scheme in order to hide the use of prohibited substances, is responsible for the disproportionality of the disqualification.⁵⁸ In such cases, only the results earned within the actual doping scheme are disqualified and the results earned in the "gaps" before or after the scheme are maintained.

57 CAS 2016/O/4464, paras. 189-190 and CAS 2016/O/4883, para. 66.

58 See CAS 2016/O/4464, para. 190 (*"Even considering that the Athlete herself, by using a sophisticated plan, scheme, and tactics in order to hide the use of a prohibited substance or prohibited method, was responsible for this disadvantage as to the application of [Art. 10.8 of the WADC], the Sole Arbitrator, nevertheless, holds that only the application of a fairness exception will strike a balance of proportionality between the legitimate aims of deterrence and the fight against doping and the means used for such purpose."*)

59 *Vasilyeva*, CAS 2017/O/4980.

60 *Id.*, para. 93.

61 *Id.*, para. 96.

62 *Id.*, para. 97.

63 See Viret, p. 491 (noting that *"Article 10.8 of the WADC retains its importance where a Provisional Suspension is non-mandatory, e.g. for Specified Substances and for non-analytical violations, where the discovery (and thus the possibility of investigating the case) may occur a long time after the commission of a doping offence."*), See also Paul David, *A Guide to the World Anti-Doping Code, The Fight for the Spirit of Sport*, CAMBRIDGE UNIVERSITY PRESS, Cambridge, 2013, p. 312.

This said, in at least one case a Sole Arbitrator permitted an athlete to maintain her results earned in the "gaps" within a doping scheme. In *Vasilyeva*,⁵⁹ the Sole Arbitrator determined that the athlete took part in a repetitive and sophisticated blood doping scheme from 2011 to 2016. As a result, the IAAF submitted that all results obtained by the athlete between the collection of Sample 2 (i.e. 18 October 2011) to the starting date of the provisional suspension (i.e. 13 December 2016) be disqualified.⁶⁰ In other words, like the case of *Savinova-Farnosova*, the IAAF asserted that all results earned within the actual doping scheme be disqualified and that any results earned before the scheme (i.e. Sample 1) or after the scheme be maintained.

The Sole Arbitrator, however, disagreed in part with the IAAF. While it was found that the athlete engaged in *"continuous, intentional, and several violations of the anti-doping regulations"* with an *"aim to gain advantage of her unlawful practice,"* the athlete's ABP only showed abnormalities indicating that the athlete engaged in blood doping cycles in 2011, 2012, 2013, and 2016.⁶¹ There was no proof that the athlete used prohibited substances or methods in 2014 and 2015. As a result, despite considering the years 2014 and 2015 for the establishment of the overall doping scheme, the results earned during these two specific years were not disqualified.⁶² So, contrary to *Savinova-Farnosova*, the Sole Arbitrator did not disqualify all results earned within the scheme, but instead looked at the results within the scheme to determine whether they were affected by the athlete's doping practices. And as a result, the Sole Arbitrator permitted the athlete to maintain the results earned in the "gaps" within the doping scheme.

vi. Re-Testing and Non-Analytical Violations

Re-testing cases and ADRVs based on non-analytical evidence may cover a considerable period of time between the commission of an ADRV and the imposition of a provisional suspension or an ineligibility period.⁶³ In such cases, a strict application of the main rule of Art. 10.8 may lead to an unjust result.¹²

In *Pyatykh*⁶⁴, the athlete provided a sample on 31 August 2007. It was re-tested in December 2016 (i.e. nine years and three months later) and then found positive for a prohibited substance. In addition, the athlete had committed another ADRV in 2013, evidenced by non-analytical evidence. The Panel did not consider it fair to disqualify any of the athlete's results between 1 September 2007 and 5 July 2013 because there was no proof that the athlete used prohibited substances or methods during this period. The athlete's results, however, were disqualified between 6 July 2013 and the commencement of the provisional suspension on 15 December 2016 (i.e. not from the first ADRV onwards). The disqualification period did not equal the length of the ban (here four years) either, which appears to have been the philosophy in at least some of the IAAF re-test cases.⁶⁵ The logic behind such approach is that had the athlete immediately been found to have committed an ADRV, he or she would not have been eligible to obtain the disqualified results.⁶⁶

64 CAS 2017/O/5039.

65 See *Ugarova*, CAS 2016/O/4463, para. 138, according to which *"the policy of the IAAF in retesting cases is that the disqualification is for such period as the disqualification would have been if the sanction would have been pronounced at the time of the anti-doping rule violation, the rationale being that the athlete would not have been able to achieve these results had the result management process started immediately"*. See also IAAF news *"Revision of Results Following Sanctions of Tsikhan and Ostapchuk"* 27 April 2014.

66 See David, p. 312.

67 Decision of the Anti-Doping Hearing Panel of the IBU concerning Mr Alexander Loginov on 30 June 2015.

68 See David, p. 312-313 (referring to *Agence Mondiale Antidopage (AMA) c. ASBL Royale Ligue Vélocipédique Belge (RLVB) & Iljo Keisse*, CAS 2009/A/2014, without analysing the case).

69 *WADA v. FILA & Mohamed Ibrahim Abdelfattah*, CAS 2008/A/1470.

The period between the sample collection and the re-test was significantly shorter in *Loginov*, a case adjudicated by the IBU Anti-Doping Hearing Panel.⁶⁷ The sample was re-analysed after 11 months' storage. The Panel acknowledged that the rule enshrined in Art. 10.8 may, together with the imposition of the ban, *de facto* considerably extend the period of ineligibility. However, the Panel observed that refraining from disqualifying the results in the circumstances of the case would run against the rationale of re-testing stored samples, including disqualifying the results of cheating athletes.

vii. Additional Ineligibility Period in the Second Instance

One of the special situations in which Panels must carefully consider the fairness exception is a scenario in which an athlete has fully served an ineligibility period imposed by the first instance, has regained eligibility and then is subjected to a longer ban at the appellate level.⁶⁸

A review of CAS case law shows that the Panels have applied divergent interpretations in these situations. In *Abdelfattah*,⁶⁹ the athlete refused to submit to sample collection, which led to a six-month ineligibility period imposed by the FILA Federal Appeal Commission. WADA appealed to the CAS four days after the athlete's initial ineligibility period lapsed. The Panel ordered an additional ban of eighteen months and disqualified all results achieved by the athlete during a period of five months between the date when the six-month sanction expired and the date from which the remaining part of the ineligibility was served. It seems that when assessing fairness, the Panel gave significant weight to the nature of the athlete's ADRV and the relatively short duration of the disqualification period.¹³

Other Panels have emphasized, in particular, the responsibility of the first-instance tribunal as the culprit of the gap between two bans. In *Keisse*,⁷⁰ the athlete was subjected to a provisional suspension in December 2008. 11 months later, the athlete was acquitted of an ADRV by the first-instance tribunal. At the same time, the provisional suspension became void. WADA took the matter to the CAS. The Panel upheld the appeal and imposed the standard two-year ineligibility period. However, the Panel deemed that it would have been unfair to disqualify the athlete's results because he was able to compete due to the erroneous decision by the first-instance tribunal.⁷¹

⁷⁰ *Keisse*, CAS 2009/A/2014.

⁷¹ *Id.*, para. 159.

⁷² *WADA v. International Weightlifting Federation and Yenny Fernanda Alvarez Caicedo*, CAS 2016/A/4377.

⁷³ *Id.*, para. 70-71.

The anti-doping organisation's responsibility was highlighted in *Alvarez*⁷² as well. In addition to the athlete's legal right to compete, the Panel paid attention to the language of Art. 10.8 by noting that it entitles disqualifying results "*through the commencement of any Provisional Suspension or Ineligibility period*". According to the Panel, it was ambiguous whether the language of Art. 10.8 contemplates the gap in the athlete's suspension. The Panel added that disqualifying results "*would work an injustice, effectively increasing the four years effect of her suspension in a manner not expressly contemplated*" in the applicable rules and left the results undisturbed.⁷³

IV. CONCLUDING REMARKS

The disqualification of the results deserves careful consideration by a Panel. After all, such disqualification not only affects the athlete in question, but aims to rectify the record books for the benefit of all athletes. Decisions on disqualification should be made through the lens of fairness, having regard to the various factors applicable to each case. It is clear, however, that although the prerequisites for upholding, in exceptional cases, the results between the ADRV and a ban have been clarified by the CAS, the application of Article 10.8 of the WADC remains a challenging task.

UK Anti-Doping

SUBMITTED

UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

Sanctions:

- Should harsher sanctions be imposed for intentional cheating? Consider ways in which appropriate sanctions can be imposed on the people and organisations who have facilitated and directed anti-doping violations by athletes. In particular, consideration should be given to the use of financial penalties to help finance anti-doping.
- Could set sanctions apply for illegal “social” or “recreational” drugs, along with mandatory rehabilitation? In addition, bans in such cases should not apply to training, unless the ADRV is trafficking.
- There is no article giving stronger sanctions for multiple substances or deliberate falsehoods. A longer ban should be handed out for the most serious breaches or misleading the NADO, NGB or IF.
- There have been recent examples of athletes banned for doping by the IOC being allowed to compete at world cup events. There needs to be more clarity on how international federations interpret bans. It is unacceptable that an International Federation can allow such athletes to compete.
- Would WADA consider greater sanctions for 2nd offences? 4 years for intentional doping and a guarantee missing an Olympics. On 2nd offence the suspension term should be extended to 2 Olympic cycles, i.e. 8 years. It is appreciated that life bans for athletes are very difficult to uphold in CAS. However, 8 year suspension terms would provide a stronger enough deterrent and are what many clean athletes would like to see implemented.
- Will WADA consider implanting a longer ban from 4 to 8 years for a serious doping offence? This would mean an athlete would miss two Olympic/Paralympic cycles, which could be a major deterrent.
- Due to recent revelations with Russia, would WADA also consider setting out clear consequences for whole countries that violate the WADA code?

TUE:

- Improve availability of information about TUE process on the WADA website - for everyone, not just interested athletes. Fans as well as participants in sport need to be confident that such processes are effective.
- Consider how to make the granting of TUEs more verifiably independent, eg with review of submitted anonymised documentation (ie with all identifiable information removed, as with an anti-doping test) by medics from a different NADO than the athlete's, notwithstanding that this would add a lot of time to the TUE application process.

- We would support a review of the Therapeutic Use Exemption (TUE) policy in light of the recent scrutiny of athletes applying for TUEs.
- There needs to be a clear stand on whether the use of TUEs with an intention to performance enhance, regardless as to the procedural legality of the procurement, should be considered an ADRV.
- The TUE process should as far as possible be consistent across NADOs and subject to the same scrutiny and checks to ensure TUEs are only granted in appropriate cases.

Other:

- Clarification of how to treat refusals to provide a sample in certain circumstances - for example, if someone declines giving a blood sample as a result of religious beliefs or a needle phobia.
- Could clarity be provided as to the length of the “prohibited association” that would amount to an ADRV?
- In- / Out- of Competition periods should be more standardised between International Federations and WADA to avoid athlete confusion as to when the in-competition period starts.
- We propose mandatory team sanctions for multiple violations i.e where two players on the same team fail and then the team is deducted 5 points from the league, removed from the next event or do not progress to the next round of a knockout competition as applicable.
- Anonymity should be offered for those providing substantial assistance.
- Clarify the responsibilities in the anti-doping community and, as part of this work, strengthen the independence of those people and organisations taking decisions.
- Can CAS be made more accountable and consistent? If so, how?