Ensuring Accountability for All: The New International Standard for Code Compliance by Signatories

2018 Annual Symposium - 21 March 2018, Lausanne, Switzerland

Jonathan Taylor QC, Chair, WADA Compliance Review Committee
One Year Ago…

- 2017 Symposium participant poll rated ‘proper monitoring and enforcement of Signatories’ compliance with their World Anti-Doping Code obligations’ the number one priority for WADA.

- Confirmed WADA’s focus on ensuring proper quality of anti-doping programs in all countries and sports.
Two major elements of WADA’s focus on compliance:

1. Compliance monitoring program including Signatories’ self-assessment questionnaire, data and intelligence review and assessment, and audit program, launched in early 2017

2. Finding a way to address the weaknesses in the Code provisions and the uncertainty about the extent of parties’ legal rights and responsibilities exposed in particular in 2016 by the controversies around Russian participation in major games and events
   - November 2016: WADA Foundation Board had endorsed a graded sanctioning framework for Code Signatories’ non-compliance proposed by the independent Compliance Review Committee (CRC)
Today…

- Code amendments related to compliance and new International Standard for Code Compliance by Signatories (ISCCS)
  - initiated mid-May 2017
  - developed by a small team of experts under the oversight of the CRC
  - submitted to extensive stakeholder consultation (two rounds)
  - tested in numerous meetings and discussions with individual stakeholders
  - adopted by WADA’s Executive Committee and Foundation Board mid-November 2017

- Code amendments and ISCCS to come into force on 1 April 2018
# ISCCS and Code Consultation Timelines – 2017

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<thead>
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<th>2017</th>
<th>MAY</th>
<th>JUN</th>
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<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
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<td><strong>MAJOR MILESTONES</strong></td>
<td>17-18 Presentation of the suggested approach to the Executive Committee and Foundation Board for approval</td>
<td><strong>01</strong></td>
<td><strong>01-31</strong> Preparation of the second drafts to all stakeholders</td>
<td><strong>01</strong> Circulation of the second drafts to all stakeholders</td>
<td><strong>14-31</strong> Preparation of the third drafts</td>
<td><strong>31</strong> Circulation of the third and final drafts to the Executive Committee and Foundation Board</td>
<td><strong>15</strong> Presentation of the final drafts to the Executive Committee and Foundation Board for approval</td>
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<td><strong>CONSULTATION PHASES</strong></td>
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<td><strong>1st consultation phase</strong> 1 June to 31 July</td>
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<td><strong>2nd consultation phase</strong> 1 September to 14 October</td>
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**MEETINGS AND DISCUSSIONS WITH STAKEHOLDERS**
Why is the New Standard so Important?
Why is the New Standard so Important?

“ Athletes are expected to uphold a very high standard of compliance in relation to anti-doping. It is very important that all Signatories are held to the same standards within the Code.”

Beckie Scott, Chair, WADA Athlete Committee

Speedy delivery (six months) responded to strong call and support from athletes and other stakeholders for this Standard
Why is the New Standard so Important? (Cont’d)

- Enables WADA and the global anti-doping community to formalize:
  - The ways that WADA supports Signatories in achieving, maintaining or regaining Code compliance
  - A range of graded, predictable and proportionate sanctions in case of ultimate non-compliance
  - One single centralized and fair process for determining non-compliance and sanctions
Major Features of the New Standard
Major Features of the New Standard

- WADA’s focus is on supporting Signatories compliance; seeking sanctions for non-compliance is the last resort.
- The Standard mirrors, as much as possible, the process set out in the Code for ensuring Code compliance by athletes with sanctions applied when necessary.
- Transparency of the process further enhanced through mandatory public notifications (e.g. CRC recommendation, Executive Committee decision).
Major Features of the New Standard (Cont’d)

- Graded categories of non-compliance (Critical, High Priority, Other) with related consequences:
  - exclusion from holding any WADA position
  - special monitoring/supervision/takeover of anti-doping activities
  - ineligibility to host Olympic/Paralympic Games, World Championships and/or other International Events
  - exclusion of a country or a sport from participation in Major Events
  - withdrawal of funding and/or recognition by the Olympic Movement/Paralympic Movement
  - imposition of a fine (in cases of Critical non-compliance and Aggravating Factors)
Major Features of the New Standard (Cont’d)

- Consequences to depend on facts of particular case, including seriousness of non-compliance and degree of fault of Signatory concerned.

- ISCCS Art 11.2.5: ‘Above all else, the Signatory Consequences imposed should be sufficient to maintain the confidence of all athletes and other stakeholders, and of the public at large, in the commitment of WADA and its partners from the public authorities and from the sport movement to do what is necessary to defend the integrity of sport against the scourge of doping. This is the most important and fundamental objective, and overrides all others’
Major Features of the New Standard (Cont’d)

- CAS to rule on non-compliance if the Signatory does not accept an assertion of non-compliance and proposal of consequences by WADA’s Executive Committee; other interested parties can intervene and be heard in the proceedings, in particular as to consequences.

- If the Signatory accepts the Executive Committee’s assertion of non-compliance and proposed consequences, the parties that would have had the right to intervene if the matter had been disputed at CAS can appeal the outcome to CAS.

- One set of proceedings only, then all Signatories are required to recognize and enforce (give effect to) the final consequences within their own respective jurisdictions.
Major Features of the New Standard (Cont’d)

- ‘Policy for the Initial Application of the ISCCS by WADA’
- Developed following stakeholders’ feedback insisting during the ISCCS consultation that prioritization should be applied
- Adopted by WADA Executive Committee in November 2017 with the ISCCS
- Gives WADA the ability to prioritize its monitoring and enforcement efforts by focusing on “higher risk” categories of Signatories and the most serious types of non-compliance during the first two years
Legal Framework of the ISCCS Principles
Legal Framework of the ISCCS Principles

- Legal opinion provided by Judge Jean-Paul Costa, former President of the European Court of Human Rights

- Focusing on the compatibility of the Code amendments and the ISCCS with general principles of law (in particular, proportionality) and human rights

- Second draft:
  - “Overall the number and importance of provisions that are compatible with the international principles of law and human rights must be welcomed”
Third and final draft:

- “I am satisfied that the adopted Standard incorporated almost all suggestions I made.

One exception is the suggestion I made in relation to the standard of proof (balance of probabilities). I would have preferred that a jurisdiction such as CAS be given more freedom in choosing the standard of proof to apply.

However I acknowledge that such limitation by written law to the power of the judge does not hurt any major procedural or substantive principle.”
Conclusion

- The Code amendments and the ISCCS have the potential to become a game changer by enhancing Code Signatories’ accountability and performance.

- By working together, WADA and its stakeholders can ensure athletes’ expectations towards Signatories are met and the quality of anti-doping is enhanced in all sports and countries.
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