

# 2027 Code & International Standard Update Process : Stakeholder Engagement Phase - International Standard for Code Compliance by Signatories (ISCCS)

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## Comments / Suggestions (13)

### World Rugby

SUBMITTED

David Ho, Senior Manager Anti-Doping Operations (Ireland)  
Sport - IF – Summer Olympic

We consider that the compliance standard could benefit from the introduction of field audits for doping control personnel and educators included as part of the compliance review process. Currently these two areas (particularly DCOs) are one of the weakest points in the entire anti-doping industry, and some means is needed to raise standards. Education, though a new area for compliance, would seem to also benefit from similar scrutiny given how important education is for athletes in avoiding ADRVs.

### National Olympic Committee and Sports Confederation of Denmark

SUBMITTED

Mikkel Bendix Bergmann, Legal Advisor (Denmark)  
Sport - National Olympic Committee

#### Feedback on the International Standard for Code Compliance by Signatories (ISCCS):

Several concerns have been identified in the current ISCCS, specifically exemplified by situations where sanctions against organizations like RUSADA have expired, yet they remain non-compliant. It is imperative to address this loophole in the new ISCCS. One potential solution is to reconsider the categorization of sanctions for continued non-compliance. Instead of leaving the decision to impose sanctions as optional, subject to the CAS panel's discretion, there should be a shift towards automatic conditional sanctions that are triggered once certain specified conditions are met.

Another critical issue pertains to the timelines outlined in the ISCCS, which should acknowledge the diverse legal structures of International Federations (IFs) and National Anti-Doping Organizations (NADOs). NADOs often lack the legal authority to independently enact the required changes for Code compliance. It would be beneficial if the ISCCS took into account these variations and provided mechanisms that accommodate the legal constraints faced by NADOs, ensuring a fair and realistic approach to compliance timelines.

### Council of Europe

SUBMITTED

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

#### Comment #1

It is necessary to prevent a situation like the one where the sanction given to RUSADA had run out, but they remained non-compliant. So far there was no agreement on the best solution in this matter, but willingness to continue discussion and find a compromise.

#### Comment #2

The timelines in the ISCCS should take into account, that IF's and NADO's have completely different structures.

Usually NADOs does not have the legal power themselves to make the changes that are needed to become Code-compliant, yet the ISCCS does not take this into account.

### Comment #3

Article 9.5.2 ISCCS states that “Signatories shall ensure that they have due authority under their statutes, rules and regulations to comply with this requirement in a timely manner.”

NADOs often do not have this authority and cannot just claim such authority in their rules or statutes. This issue should also be addressed in the Code.

### Comment #4

Add “martial law” to the term “Event of Force Majeure”.

The concept of "war" used in the term "Event of Force Majeure" does not exactly correspond to the real state of affairs in Ukraine, namely the concept of "martial law" introduced on the territory of Ukraine.

#### **Organizacion Nacional Antidopaje de Uruguay**

José Veloso Fernandez, Jefe de control Dopaje (Uruguay)  
NADO - NADO

SUBMITTED

No comments. In accordance.

#### **ONAD Communauté française**

Julien Magotteaux, juriste (Belgique)  
NADO - NADO

SUBMITTED

#### **International Standard for Code Compliance by Signatories:**

Regarding this Standard and consistent with our general remarks, we support the following 3 principles:

1) In Annex A, point A.1, a) must be reworded in order to limit the responsibility of NADOs to what falls within their responsibility. Many NADOs do not in fact have the competence to adopt regulations or legislation. One proposal would be to limit their liability to draft compliant rules. The adoption of compliant rules, however, very often goes beyond the sphere of competence of NADOs.

2) The deadline for adopting compliant rules/legislation is too short (currently 13 months) and should at least be extended to 18 months.

3) No sanction for a NADO or for the athletes for any question in link with the adoption of legislation or regulations.

In conjunction and consistent with an adaptation of the ISCCS in this sense, the wording of Article 20.5.2 of the Code must also be reviewed in order to no longer include the adoption of compliant rules among the responsibilities of NADOs.

In relation to the revision envisaged for the 2025-2027 period:

- as explained above, we support an update of the activities in the categories of non-compliance (Annex A) to reflect changes made in the Code and other International Standards. In particular and as explained above, we are in favor of limiting the liability of NADOs in terms of adopting regulations or compliant legislation. This responsibility should be limited to draft compliant rules. Another possibility would be to modify the wording to provide a more flexible formula such as, for example, "shall make every effort to achieve the adoption of compliant rules".

In the manner explained above regarding the Code concept about the uncorrectable non-conformities, we could agree with addressing issues of historical or non-correctable non compliance if such aspects become effective in the Code.

## Sport Integrity Australia

Chris Butler, Director, Anti-Doping Policy and International Engagement (Australia)  
NADO - NADO

SUBMITTED

Recent cases and CAS decisions regarding compliance have shown that further strengthening or clarification of the Standard may be required to ensure decisions (such of those of CAS) are not able to cause confusion or undermine the intent of the Standard. For example:

- Drafting that prevents the possibility for situations whereby ADOs remain non-compliant however no consequences are in place.
- Drafting that ensures sanctions imposed are appropriate to the seriousness of the offence. It is clear the outcome in the RUSADA case (decision of CAS) was not the desired outcome of WADA, and not considered appropriate by most of the anti-doping community. If the 2-year ban was the longest sanction available for what was the largest scale doping scheme seen in the history of the Code – then changes are needed (including to the standard) to ensure WADA is able to appropriately respond in these cases.

## Anti-Doping Norway

Martin Holmlund Lauesen, Director - International Relations and Medical (Norge)  
NADO - NADO

SUBMITTED

In the latest adjustment of the ISCCS, a number of issues were not addressed, and we suggest addressing the following:

- We support the views expressed by WADA's NADO EAG
- Furthermore, we would encourage longer timelines in advance of audits to allow Signatories to better prepare and possibly identify and address non-conformities on their own initiative before an audit.

## Dopingautoriteit

Robert Ficker, Compliance Officer (Netherlands)  
NADO - NADO

SUBMITTED

### 1. Introduction

WADA has previously stated that there is no need to fully review this Standard, because it already launched stakeholder consultation very recently.<sup>[1]</sup> At the meeting of WADA's ExCo on 16 November 2023, the revised ISCCS was adopted (although the adoption of Annex B.4 was postponed). Despite this recent revision and adoption of the ISCCS, several important issues should be looked at.

### 2. The RUSADA situation

2.1. To be clear: this point is not about Russia or RUSADA and is not meant to re-hash the discussions on the subject of RUSADA's non-compliance.

2.2. What this point is about is that the prolonged situation where RUSADA was neither Code-compliant nor serving sanctions for its non-compliance (after the CAS-imposed sanctions expired), suggests that how the ISCCS deals with continued non-compliance could be improved.

2.3. One way of dealing with a continued non-compliance, without serving any sanctions, could be to make the sanctions for *continued* non-compliance conditional from the outset, instead of placing them under the discretion of the CAS panel to decide upon.

By changing the sanctions for continued non-compliance from *optional* (and for the CAS panel to decide upon), to *automatic*

conditional sanctions in the ISCCS that become applicable once the conditions for reinstatement have not been met, situations like with RUSADA can be avoided.

2.4. The downside of such an approach, i.e. automatic consequences when the conditions for reinstatement are not met after a specified period, is that the circumstances surrounding the continued non-compliance cannot be taken into account. This could mean that the automatic consequences are disproportionate. However, this could be addressed by clarifying which type of non-conformities can lead to automatic sanctions (e.g. critical non-conformities) and which type cannot to automatic sanctions (e.g. high priority, general non-conformities).

2.5. An approach where Signatory consequences for *continued non-compliance* would be determined by CAS is not feasible due to the fact that CAS-proceedings

### 3. Differences between IFs and NADOs

3.1. The ISCCS is designed to treat Code Signatories equally. This seems no more than fair and logical. However, it does not take into account that IFs and NADOs are completely different legal entities, acting within completely different legal structures and contexts.

3.2. Whereas IFs are legally more or less their own boss, NADOs usually have to deal with national legislation, a challenging legal framework and various domestic stakeholders (e.g. National Olympic Committees, National Federations, the relevant Ministry).

3.3. NADOs may, as a consequence, very well not have the legal power to themselves make the changes that are needed to become Code compliant, yet the ISCCS does not take this into account. Also, changes in legal structures on the national level usually take much more time than the ISCCS allows for, especially when legislation is involved, with non-compliance looming for NADOs although they themselves are not in a position to do anything about it. The timelines in the ISCCS do not take this into account. This is like dealing with apples and oranges, but treating them (i.e. NADOs and IFs) like they are identical and the same. This should be remedied.

### 4. Recognition and Enforcement by Other Signatories

Article 9.5.2 ISCCS states that “Signatories shall ensure that they have due authority under their statutes, rules and regulations to comply with this requirement in a timely manner.” However, NADOs often do not have this authority and cannot just claim such authority in their rules or statutes.

[1] In June 2022 and June 2023.

## USADA

Allison Wagner, Director of Athlete and International Relations (USA)  
NADO - NADO

SUBMITTED

### Concerns regarding recent redlined version of ISCCS:

- B.4: Revoking PA representatives' ability to sit on WADA bodies if their NADO is dealing with compliance issues is concerning. Conflating NADO and government penalties does not communicate a consistent message regarding independence of the NADO from the government.
- 7.4.2 – How will the data be anonymized sufficiently? Concerning specifically as it regards larger NADOs and the amount of data that could come from them, i.e. any aggregated data will still make it obvious that the data is coming from large NADOs.
- 7.4.3 (ADRVs of board members, athletes, etc.) – a NADO doesn't control the athletes' behavior or the consequences they're subject to (since the Code outlines the consequences). How can it be justified that a NADO be classified for a potential compliance action if there is an uptick in ADRVs?
- 7.6.1 – There is no requirement that WADA needs to provide a reasoning for shortening or lengthening the deadline which is inappropriate.

- 7.8 – Will the Signatory be notified or aware that WADA has chosen to do program area monitoring?
- 8.2.1 – Concerns about the language “in a manner acceptable to WADA.”
- 8.2.4 – The role of the ExCo regarding appeals to CRC by signatories is unclear.
- 8.6 – We note that the pandemic is not listed under Force Majeure’s definition. Concerned about lack of due process ... “WADA’s determination as to whether to delay and/or suspend the procedure or waive the Non-Conformities is not subject to challenge, whether by way of appeal or otherwise.”
- 9.3.1.1 – Cost concerns relevant in 11.2.1.4. “subject, where appropriate, to certain conditions, e.g., that the Signatory pays the costs incurred by WADA in relation to the non-compliance.”
- 9.3.2 – Similar to 8.6 – concern around lack of due process.
- 9.4.1 – same concern as 9.3.2 re: appeals (and concern around lack of due process).
- 9.4.3 – Cost concerns again – WADA made this program, shouldn’t they financially support it? Many NADOs and IFs certainly do not have the resources for this.
- B.3.1(b)(1) and (2), B.3.2 Overreach on consequences (similar to first point B.4)

## CHINADA

MUQING LIU, Coordinator of Legal Affair Department (CHINA)  
NADO - NADO

SUBMITTED

### Comment on Uncorrectable Non-Conformities

We highly recognize WADA’s efforts in maintaining the World Anti-Doping Program, in particular the consistency of its rules. However, we believe that the fight against doping cannot rely solely on ADOs and sports organizations; it also requires the support of governments, other social organizations and the public. The significance of anti-doping legislation lies not only in authorizing and supporting the work of NADOs, but more importantly, it is for governments to coordinate and mobilize resources from all sides, to strengthen the source control of doping, to combat smuggling, illegal manufacturing and trafficking of prohibited substances, and to prevent the availability of doping to the athlete community and athlete support personnel. Due to the differences in legal systems, social structures and cultural traditions, it is impossible for all the countries to adopt the same model in their anti-doping legislation. The Code requires that ADO’s operation and decision-making be independent of the government, while also requiring the ADO to influence the government to modify legislation. These two goals may conflict with each other. It would be unfair to determine a NADO non-compliant with the Code just because of some potential conflicts between anti-doping legislation and the Code, as they may have very limited influence over the government or legislatures. Besides, if the review criteria set by WADA for anti-doping legislation are too strict, it could inadvertently pressure the government to reduce anti-doping legislation or prompt ADOs to hinder the enactment of such legislation, which would be detrimental to the government actively getting involved in the fight against doping. Without the active support of the government, it would be impossible to achieve success in the fight against doping in sports.

## Anti Doping Danmark

Silje Rubæk, Legal Manager (Danmark)  
NADO - NADO

SUBMITTED

Several concerns have been identified in the current ISCCS, specifically exemplified by situations where sanctions against organizations like RUSADA have expired, yet they remain non-compliant. It is important to address this loophole in the new ISCCS. One potential solution is to reconsider the categorization of sanctions for continued non-compliance. Instead of leaving the decision to impose sanctions as optional, subject to the CAS panel's discretion, there should be a shift towards automatic conditional sanctions that are triggered once certain specified conditions are met.

Another issue is the timelines outlined in the ISCCS, which should acknowledge the diverse legal structures of International Federations and NADOs. NADOs often lack the legal authority to independently make the changes required for Code compliance. It would be beneficial if the ISCCS took this into account.

## UK Anti-Doping

UKAD Stakeholder Comments, Stakeholder Comments (United Kingdom)  
NADO - NADO

SUBMITTED

### ISCCS Article 8.2.1

We would advocate for more flexibility around the three (3) month timeframe for changes, or drafted changes to legislation. While the UK is not impacted directly by this, for many countries it has proved extremely difficult to make such changes in that timeframe. We consider that a more collaborative approach, with an understanding of legislative timescales, would help countries in their journey towards compliance.

Otherwise, in light of the impending ISCCS coming into force in 2024, we have no additional comments on the current version of the ISCCS.

## WADA NADO Expert Advisory Group

Martin Holmlund Lauesen, member (Norge)  
Other - Other (ex. Media, University, etc.)

SUBMITTED

We suggest addressing the following issues/proposals for a smoother compliance process:

- WADA should have access to apply additional/increased/new sanctions to Signatories who do not satisfy the reinstatement conditions by a set deadline, after that deadline has expired (as opposed to the added parenthesis in art. 10.2.9 in the ISCCS entering into force in 2024). Our understanding is that WADA's interpretation is that this requires a code change. If additional/increased/new sanctions are applied, the signatory should have the right to dispute this decision to CAS, but a mechanism to ensure that there will not be an interim period without consequences for non-compliant signatories should be ensured.
- WADA should have direct dialogue with Governments, where the non-conformity is identified in legislation and/or practices of the Government, including adequate financing, in order to allow for a faster reaction from the government and to increase the focus on creating a constructive and cooperative environment. Longer timelines than laid out in the ISCCS could be considered in light of the often-lengthy and comprehensive timelines of legislative processes.
- The practice of directing consequences to those entities responsible for the non-conformity should be codified (i.e. primarily consequences aimed at the government for issues related to legislation, and primarily aimed at NADOs for issues related to the practices or rules of the NADO). It would seem more appropriate to codify the practice and the intention. Furthermore, we have taken note, that WADA seems to face a communicative challenge in explaining this practice, which seems to often create unnecessary opposition to new initiatives, suggestions and/or consequences. Synergies with the International Convention Against Doping in Sports could be explored.

# 2027 Code & International Standard Update Process : Stakeholder Engagement Phase - International Standard for Code Compliance by Signatories (ISCCS)

Bram van Houten, Policy adviser, Ministry of Health, Welfare and Sport (Netherlands)  
Public Authorities - Government

SUBMITTED

## Comments / Suggestions

The Netherlands' Government would suggest taking into consideration five additional concepts, relevant for the update of the Code and all Standards. They are listed with our Code-submission in full, and in our opinion are relevant for the entire Code-update exercise. Two concepts appear specifically relevant for the ISCCS, and are mentioned below.

### Responsibility where it belongs

In WADA's current compliance monitoring parties are held responsible for actions for which they bear no responsibility. For example, the Executive Committee regularly decides on compliance in which the responsibility for adjusting national legislation is placed with national anti-doping organisations. This should be changed. All stakeholders should be held responsible for actions for which they actually bear responsibility. Part of that is also that stakeholders are accountable for their actions in the correct framework (and for public authorities, who have legislative authority, that framework is the Convention).

In addition, sanctions imposed by WADA often impact parties who have no part in the non-conformity for which the sanction was imposed: when a nado is sanctioned by WADA, oftentimes part of that sanction is that the country from which the nado hails can no longer host or bid for international level sporting events until the non-conformity has been satisfactorily addressed; that national from that country can no longer participate in certain sporting events, and that the national flag of that country cannot be flown at certain sporting events. These measures are imposed for their deterring effect (ref. art. 10.2.4 ISCCS). We think it is improper that parties are sanctioned for situations they have no part in. This, too, should be changed.

### Proportionality in sanctioning

The sanctions WADA can impose are generally severe, and sanctions put forward in case of a non-conformity are often disproportionate. The ISCCS has a provision that consequences of non-compliance with the Code should reflect the nature and seriousness of the non-compliance (art. 10.2.1 ISCCS). It also holds a provision that sanctions should deter further non-compliance (art. 10.2.4 ISCCS). The second consideration seems to have the upper hand, which should change. It should be more predictable what type of sanctions can be expected for what type of infringements, taking into account the need for more proportionate sanctions.