2021 Code Review - Third consultation phase

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PURPOSE, SCOPE AND ORGANIZATION OF THE WORLD ANTIDOPING PROGRAM AND THE CODE (12)

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

World Rugby welcome the majority of changes proposed in the second draft Code. We have chosen not to comment on articles where we are in general agreement or where our comments made in previous rounds of consultation have been addressed. However we wish to re-iterate our point made in the first Code review process related to the possibility of suspending a proportion of an ADRV sanction for athletes who agree to support the ADO with a contractually agreed education role. This is a potentially key facet of education that we recognise is not without risk for WADA and signatories, but which could potentially provide an invaluable opportunity for deterrence, athlete rehabilitation and for credibility of messaging. We note valid concerns around this issue with regards to athletes who may try to ‘play the system’ and avail of a reduction with no intention of genuinely repenting their mistakes, however we consider that a discretionary reduction proportional to the length of sanction of (for example) not more than 1/8th would allow for a suitable balance of (i) a meaningful reduction for the athlete and (ii) the retention of overall sanction deterrence. Furthermore, we consider it unlikely that an athlete would gain reputationally from any attempt to ‘play the system’, and would in fact face further reputational damage if linked again with publicity around their ADRV towards the end of their sanction. We also would not consider such athletes to present a risk to clean athletes (such as facilitating or glamourising doping) for as long as such activities remained under the supervision of the ADO.

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

According to WADA’s Summary of Major Proposed Changes, moving “health” to the top of the list was intended to emphasize health as a key rationale underpinning anti-doping regulation.

While we see no adverse consequence to re-ordering this list, we are unconvinced that this amendment would place any greater emphasis on health. To truly emphasize health would mean a major re-think of the Code, for example by revisiting the sanctioning regime to ensure that effects on health are considered.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

1. The draft document does not contain provisions on the procedure for the entry into force of the amendments to the WADA Code and the existence of their retroactive force. Amendments to the WADA Code should not be retroactive and be applied to pending investigations or other matters on which decisions should be made based on the provisions of the WADA Code. The text repeatedly contains documents that are not currently published and are being developed at various levels. We believe it is incorrect to refer to the documents that do not currently exist. A similar remark exists on the whole text of the changes, since such references are found repeatedly (see subsection 3 of these remarks).

2. We suggest to add the wording to the section: WADA publishes the text of the World Anti-Doping Code and International Standards which are an integral part of it, as well as relevant changes in the six official languages of UNESCO (English, Arabic, Spanish, Chinese, Russian and French)». On-point translation into the six official languages is crucial, as it provides clear and accurate communication and the correct interpretation of the basic documents in the field of anti-doping in sport.
3. It is necessary to supplement Comment 2 with the wording: “The change in standards should take place in strict accordance with the established procedure for issuing such documents and amending them, and subject to appropriate discussion with the countries of the nature and text of such changes.” The Anti-Doping Charter of Athletes’ Rights is currently being developed by WADA and not adopted. We believe that the link to the document, which does not currently exist and is under development, is incorrect.

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

Health

In line with the EU’s objectives of ensuring a high level of human health protection in the definition and implementation of all EU policies and activities1 and of protecting the physical integrity of sportsmen and sportswomen2, especially the youngest sportsmen and sportswomen, the EU and its Member States welcome the insertion of health at the top of the list in the Code’s Rationale section.

Technical documents at level 2

The need for the technical documents to be obligatory similar as the standards and the Code is accepted. But the technical documents then should be subject to the same consultation process as the standards.

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

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

"To protect the Athletes’ fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide, and
To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping."

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

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

Fundamental rationale for the World Anti-Doping Code

ADNO appreciate that health of the athletes as a rationale of the anti-doping work and the Code is given more emphasis.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO
We take a critical view of the inclusion of technical documents as Level 2 documents. Please insert a comment in the Code to explain this step and make clear the ratio and the goals behind this fundamental decision.

Drug Free Sport New Zealand  
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)  
NADO - NADO

Fundamental Rationale for the World Anti-Doping Code

DFSNZ supports the rationale for the Code, including the change regarding health.

The focus of the Code should be on deterring and detecting the use of substances that are BOTH harmful to health and aimed at enhancing sport performance. While health is fundamental as a rationale, it must be applied in tandem with performance enhancement in sport.

Technical Documents Reference

Under the World Anti-Doping Programme reference is made to "International Standards and Technical Documents". However, there appears to be an oversight in that the following description of what they are makes no mention of technical documents and whether they are mandatory or not.

Japan Anti-Doping Agency  
YaYa Yamamoto, Senior Manager (Japan)  
NADO - NADO

The comment herein only suggests around the education programme and athlete rights matter. Other comments on Draft3 have been submitted by Akira Kataoka of JADA.

Fundamental Rationale

-“clean sport environment”, “sport integrity” used in the ISE and Article 18.1 in terms of objectives of education, should be reflected in the Code Preamble or Fundamental Rationale.

UK Anti-Doping  
Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

General: Please can WADA confirm that it considers that the new Code draft is consistent with the UNESCO Convention and the Council of Europe Convention.

CHINADA  
Yao Cheng, Result Management (China)  
NADO - NADO

International Standards

“International Standards for different technical and operational areas within the anti-doping program have been and will be developed in consultation with the Signatories and governments and approved by WADA”. “Adherence to the International Standards is mandatory for compliance with the Code”. At present, the international standards are constantly being revised, and new international standards will be issued. In order the signatories to have accurate understanding of and strict compliance with international standards, we
recommend that the Code should make clearer provisions for the development, revision and interpretation of the international standards and a more transparent procedure should be in place.

my own personal initiative
Jan Mašek, lawyer (Czech Republic)
Other - Other (ex. Media, University, etc.)

Purpose, scope and organization of the World Anti-Doping Program and the Code

Current version:

"The Code

The Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented. The Code has been drafted giving consideration to the principles of proportionality and human rights."

New version:

"The Code

The Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented. The Code has been drafted giving consideration to the principles of proportionality and human rights. The application of the principles of proportionality and human rights in respective cases in practice, if needed due to the individual circumstances, is not affected." 

Rationale:

The current wording is in breach with other Code’s provision, i.e. "(…) These sport-specific rules and procedures, aimed at enforcing anti-doping rules in a global and harmonized way, are distinct in nature from criminal and civil proceedings. 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. (…)" – see the Introduction, Page 12.

The wording in question prima facie implies that it is not possible to take into account the principles of proportionality and human rights because they have already been sufficiently considered and included. But a meaning of the second provision makes it undoubtedly clear that the Code’s rules are intended to be applied indeed in a manner which respects the principles of proportionality and human rights. One must therefore say that there is a discrepancy between these two provisions at stake and such a situation is at least undesirable or rather even illegal. My comment aims at ensuring compliance between the aforementioned Code’s provisions. The Code’s provisions must be well comprehensible and undisputed. Furthermore the application of the principles of proportionality and human rights could not be potentially excluded while deciding individual cases because of their character as internationally recognized general principles of law. These principles are respected worldwide and they are binding for national and international courts all around the world, even for the Court of Arbitration for Sport.

INTRODUCTION (9)

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Under the Fundamental Rationale for the World Anti-Doping Code

The USOC remains supportive of placing an increased emphasized on the health of athletes.

The USOC also remains supportive of the Anti-Doping Charter of Athletes’ Rights (the “Charter”) but reiterates its concern about adding an anti-doping rule violation for violations of specific provisions of the Charter, as contemplated in the drafting note on the current draft, for the following reasons. First, it’s unclear which provisions of the Charter could be subject to a violation and without knowing such pivotal information, it’s impossible to ascertain whether it would serve any purpose for an independent violation. It’s also not clear who could be subject to a violation, or which hearing body would adjudicate the claims (e.g. first instance hearing panels or CAS). Additionally, since the rights are drafted quite generally, it’s unclear what type of parameters would be utilized for a violation. The rights appear more akin to guiding principles, which do not set forth enough specifics to tie to an anti-doping rule violation. Lastly, and to echo the USOC’s previous comment, it’s problematic that the Charter could be amended from time to time outside of the Code review by an external group. All anti-doping rule violations should be specifically set forth in the Code.

Norwegian Ministry of Culture
Eva Cathinka Bruusgaard, Senior adviser (Norway)
Public Authorities - Government


Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

1. WADA CODE_SECOND DRAFT says: Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. Athletes, Athlete Support Personnel or other Persons (including directors, officers, employees and volunteers of Signatories) accept these rules as a condition of participation or involvement in sport and shall be bound by these rules.

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

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

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.

AEPSAD
In this occasion, AEPSAD is submitting only General Comments to the draft and Comments to Some Concrete Points.

1. GENERAL COMMENTS

As we already established in our comments to the first draft, the CODE must be as simple and understandable as possible, not only in its wording, but in its basis, fundamentals, and purposes, is with that objective in mind that we submit these General Comments.

We are also stressing some articles and points where this General Comments find a place.

With that mission as our bearing compass, we would want to stress 3 very necessary, important and fundamental concepts:

1. WADA AS ANTIDOPING ORGANIZATION AND CODE SIGNATORY. 2, MINORS, 3; WADA AS A SANCTIONING AUTHORITY, 4 EDUCATION

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

ADCH supports the changes proposed for the new WADA Code 2021. The proposal is that there is a greater flexibility in sanctioning recreational athletes and minors. Although ADCH does not oppose these proposals, in general, there should be less flexibility in sanctions. Flexibility should only be possible for a few explicit situations (e.g. involving minors or recreational athletes). A wide gap between minimum and maximum sanction for a certain code violation opens the door for unfair leniency by some sporting organisations.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We would welcome the inclusion, as proposed by the Council of Europe (CoE) during the second round of consultation, of a further addition to reinforce and make clear the ultimate aim of the anti-doping system.

We propose the following text (as originally proposed by the CoE):

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

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The ability of all ADOs, but especially small NADOs to not only comply with but effectively and reliably implement the complete range of requirements of the Code is unrealistic. It is acknowledged that at this phase of the process it will not be possible to fundamentally alter the requirements of all ADOs but a rethink of expectations for the future is necessary. ADOs should be able to contract in service providers who are more expert and better resourced to conduct some elements of code compliance including testing and result management and are themselves required to be compliant. This would better reflect both capacity and expertise and allow for more expert and effective implementation of the Code. It would mean that ADOs do not have to set up sham capabilities which, when tested, are likely to lead them in to trouble.
In relation to the last paragraph, it is proposed that the term "Person" be changed with "third parties". Although, under the Code, the literal definition of Person could theoretically encompass service providers, we would use a more generic (non-defined) term such as "third parties" or “service providers”. The term Person is used across the Code to refer, for instance, to the spectrum of individuals (other than athletes) that could potentially be subject to an ADRV. The use of the same term in a completely different connotation could possibly generate confusion. The term “third parties” or “service providers” are somewhat already used in the Code and Standards in a similar spirit (see for example Art. 7.1.3 and Art. 20 of the 2021 Code draft, definition of SCA in the ISTI, definition of Approved Third Party in the ISCCS, Articles 7.2.4, 9.4.3.2 of the ISCCS, etc.).

At the very least, the terminology used in the Introduction (“Person”) and the one used in the beginning of Art. 20 (“service provider”) shall be consistent insofar as they convey the same concept.

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

Examples need to be given in the comments sections of articles 2.3 and 2.5 in order to give more clarity to the definitions of “refusal”, “evasion” and “tampering”. Their current form leaves room for interpretation and as such it can potentially make these articles’ implementation difficult.

2) Recreational athletes

It is welcomed the new definition proposed, which gives more flexibility for ADOs to identify the persons eligible to the application of the most flexible regime of sanctions. However, as for “protected persons”, it is incomprehensible why this regime is only applicable in case of presence, use or possession of a prohibited substance. In our view, such a modification of the length of the ban should also be applicable, at least, for evading, refusing or failing to submit to sample collection (Article 2.3).

-> The recommendation:

The range of sanctions proposed for “Recreational athletes” goes from reprimand to 2 years in case of a violation of articles 2.1, 2.2, 2.3 and 2.6 at least.

The definitions of "Athletes" and “Recreational Athletes”, read in conjunction with comment #127, now confirm that countries can operate an anti-doping system targeting only persons that engage in fitness activities at a non-competitive level, as is the case in Denmark, under which the sanctioning regime slightly differ from that in the WADC.

3) Substances prohibited only during in-competition period.

Considering that currently the anti-doping laboratories have the most modern equipment capable of detecting these substances in meager concentrations that are not capable of actually providing any improvement in athletic performance, it is advisable to establish threshold concentrations for such substances.

3) Minors ->“Protected persons”(also submitted under APPENDIX 1 Definitions)

Although the introduction of a new notion and the definition of the “protected person”, in replacement to the first suggested definition of a “minor”, is generally welcome, there are several points which still need to be
discussed.

- The new definition of “protected persons” that aims to solve the issue of arranging more flexibility in the sanctioning regime for minors, without being too lenient with minors from 16 to 18 competing at a high level, raises a difficulty in the new wording of Article 14.3.6.

The drafting team proposes that the mandatory public disclosure of ADRVVs shall not be required where the athlete or other person who has been found to have committed an ADRV is a “protected person”. The exception in the public disclosure disappears for minors who do not fall within the definition of “protected persons”. That is incompatible with our current national legislation and will certainly be a major issue if the draft does not evolve.

-> Recommendation:

Public disclosure shall not be requested for all minors, irrespective of the fact that they fall or not under the definition of “protected persons.”

- The change in the definitions and the new range of sanctions proposed for “protected persons”, from reprimand to 2 years as a maximum ban, is welcomed.

However, it’s incomprehensible why this regime remains applicable in the sole cases of presence, use or possession of a prohibited substance. Such a modification of the length of the ban should also be applicable to other ADRVVs, and at least, in case of evasion, refusal or failure to submit to sample collection (Article 2.3).

Indeed, a “protected person” might, in good faith, feel uncomfortable when submitted to a first doping control and refuse, for example, to be supervised during the collection of the sample. In this case, we think that the ban should not exceed 2 years. Otherwise, the new regime could lead to unfair differences in the sanctioning regime between a 15-year-old athlete sanctioned for 2 years for the use of anabolic steroids and another one sanctioned for 4 years because he felt uncomfortable having to submit to a first doping control.

-> Recommendation:

The range of sanctions proposed for “protected persons” goes from reprimand to 2 years in case of a violation of articles 2.1, 2.2, 2.3 and 2.6 at least.

The Drafting Team explained the goal of the new definition of “Protected Persons”. Due to contributions from athletes and the IPC the Drafting team decided to review the definition of persons, who should benefit from lighter sanctions. Not only age but also (educational) experience as elite athlete in sports should be taken into account for the decision whether or not, a 17-year old (high level) swimmer could be treated like an adult or a like a minor in the context of a potential ADRV. In the new International Standard for Education an “Education Pool” for athletes will be installed. Athletes, who participate in that “Pool” are regularly educated and informed about Anti-Doping rules, their responsibilities and obligations.

“Protected Person” is defined as: Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in the open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.

The further comment explains: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic athlete with a documented lack of legal capacity due to an intellectual impairment.

The Council of Europe fears that this definition might raise a conflict with the Art. 2 of the UN Convention on the Rights of the Child (UNCRC). Age, as an indicator of a “status” of a child could constitute a discrimination.

In this light the Council of Europe regards a legal expert’s opinion concerning that question as necessary. Maybe Judge Jean-Paul Costa, former President of the European Court of Human Rights, could be asked for his expertise in this matter.
Anti-Doping Norway
Anne Cappelen, Director Systems and Results Management (Norway)
NADO - NADO

Article 2 Anti-Doping Rule Violation
ADNO is concerned of the lack of detailed specification of degree of fault related to the paragraphs in article 2 (art. 2.2.2, art. 2.3, art. 2.4, art. 2.5, art 2.6.2, art 2.7 and art. 2.8). It is, as an example, not clear if it is a requirement of intent related to trafficking or if negligence is sufficient to determine if a rule violation has been committed or not.

Example: An athlete has imported a package with prohibited substance without checking the content. The police concluded negligent conduct. Is this prohibited and against the Code? And if so, what would the sanction be?

We note that this is defined in the comments to article 10.6.2. We strongly suggest that the requirements is defined under each of the relevant articles, allowing the athletes and other persons to understand the degree of fault for the different violations.

Korea Anti-Doping Agency
yujin Hong, manager (Republic of Korea)
NADO - NADO

We have seen a few cases that the prohibited substances for the In-Competition only which were taken during the Out-of-Competition caused AAF in the next In-Competition period, which was even after a few months. Since no one can predict the AAF from the beginning, TUEC might reject the previous TUE application with the comment that the TUE is not needed. Then what if it causes AAF later on? If the athlete should be responsible although he once submitted the TUE application form but was rejected for the above reason, we believe it is not a morally right decision. Considering all the possibilities, we would like WADA to create the safetynet to protect those athletes by raising the bar on the threshold or by adding more solutions with similar examples in the CODE.

2.1.2 (3)

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

We would propose removing the phrase “for good cause” as this may create interpretational issues since ISL 5.3.1.6 sets forth clear guidance for the situations in which splitting one of the Samples may be appropriate.

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

Article 2.1.2

We refer to our last submission on this Article and are pleased to see the suggested clarification.
UK Anti-Doping
UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)
Other - Other (ex. Media, University, etc.)

Lab: I think that requiring that "opening the bottle should be photographed" needs to be more clearly expressed. Does this mean a video or one or more still photographs?

2.1.4 (2)

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

SUBMITTED

Article 2.1.4. Expansion of Laboratory Reports for Atypical Findings Beyond Endogenous Substances

The USOC supports this direction to account for trace amounts of certain substances to be triggered as Atypical for an ADO to conduct an investigation into (e.g. clenbuterol meat contamination). However, whereas WADA’s “Summary of major changes” document clearly outlines what 2.1.4 contemplates, the actual language within 2.1.4 is still ambiguous. Within the language of 2.1.4, multiple documents are listed as to where this information could be found (with no guidance as to which document) and those documents “may” establish “special criteria” (with no guidance as to what criteria is) for “certain” Prohibited Substances (with no guidance as to which prohibited substances). Clarity is recommended in the language. WADA could include commentary with some of the language they include on the “Summary of major changes” documents applicable to this provision. Further, the USOC recommends clarification as to what substances will be included and whether threshold limits would apply here.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

SUBMITTED

The proposed new wording to 2.1.4 is supported.

2.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or Other Person (9)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

SUBMITTED

Many of the 'Tampering' cases that have been prosecuted under the existing Code have centred around the falsification of documents and/or the procuring of false testimony from witnesses during the results management process and we consider that these two examples are probably better placed in the Definition of Tampering in the Code than in the comments to the Definition (see footnote 178). The generic language in the Definition of "committing a fraudulent act upon the Anti-Doping Organisation or hearing body" seems open to interpretation and may conceivably have different meanings under different laws.

There is also confusion in the new draft about the applicable sanction in a Tampering case where the act of Tampering is committed in connection with another violation. On the one hand, the definition of "Aggravating Circumstances" includes as an example if "the Athlete or other Person engaged in Tampering" which would appear to suggest that Tampering during the results management or hearing process can only result in an uplift of 0-2 years' sanction on the otherwise applicable period of ineligibility. The new article 10.9.3.3 on the other hand suggests that the Tampering violation would be treated as a separate first violation for which a separate sanction (of 4 years) would run consecutively to any sanction imposed for the underlying violation.
Of these two approaches, the AIU would support the latter one and suggests in any event that the definition of "Aggravating Circumstances" and article 10.9.3.3 be re-visited to avoid any scope for confusion.

**US Olympic Committee**
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Article 2.5. Tampering

The violation for Tampering is extremely broad as it encompasses any part of Doping Control, and relatively vague with wide-ranging examples. Further, the USOC remains concerned about the lack of clear distinctions between Tampering and Aggravating Circumstances. For example, both cover fraudulent conduct during results management. It could be problematic that an athlete can receive an additional period of ineligibility (aggravating circumstances) for the same underlying violation (tampering).

**Council of the European Union**
Lucian Constantin Mircescu, Chairman Working Party on Sport (Romania)
Public Authorities

Examples need to be given in the comments sections of articles 2.3 and 2.5 in order to give more clarity to the definitions of “refusal”, “evasion” and “tampering”. Their current form leaves room for interpretation and as such it can potentially make these articles’ implementation difficult.

**Ministry of sport of Russia**
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

**NADO Flanders**
Jurgen Secember, Legal Adviser (België)
NADO - NADO

With the addition of "other persons" it is made clear that any sort of cooperation with the athlete to tamper is also an individual act of tampering. This can also be the fact when tampering during results management. The sanction for tampering is 4 years of ineligibility.

There is however still the possibility to have complicity to tampering (article 2.9), for which the sanction is 2 years of ineligibility.

It remains unclear whether tampering during results management, which can also be considered an aggravating circumstance in the athlete’s case, should always be pursued as an act of tampering, or complicity to the tampering of the athlete.

This could be clarified in a comment, or by adding article 2.5 under: ..., where such conduct does not otherwise constitute a violation of article 2.5 or 2.8.

**Conseil supérieur des sports**
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Condamnable par la loi

**Kamber-Consulting**
Matthias Kamber, Independent Expert (Switzerland)
It should be made clear here that an athlete is responsible for his or her entourage. In my experience, there had been cases where family or family members threatened DCOs when they tried to take a sample out-of-competition at home. The same experience was with some coaches after a competition who threatened and insulted DCOs to take samples.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The alteration and addition of 10.3.3 are supported.

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

The IPC Anti-Doping Committee suggests that a new ADRV of “offensive conduct” (not just to be covered in “other rules”) be added.

2.10 Prohibited Association by an Athlete or Other Person (5)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU supports the changes to the violation of Prohibited Association as set out in article 2.10 of the new draft. However, it is not clear why the violation of Prohibited Association is limited to the association by an athlete or other person with an athlete support person who is ineligible; why is it not also a violation for an athlete support person to associate with an athlete or other person who is ineligible? This seems inconsistent.

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Article 2.10. Prohibited Association

The USOC favored the advance notice requirement to athletes to protect the innocent or unknowing athlete as the original intent of this provision is not to trap athletes with a violation. However, to prevent any discrete prohibited association, the USOC understands the rationale to eliminate this requirement and instead place the burden on the ADO to establish that the athlete knew, or should have known, of the disqualifying status. This could help prevent the sanctioned athlete secretly becoming a coach, a problem our Weightlifting Federation has noticed, has concerns with, and desires to protect against. The USOC supports restrictions against actions that subvert the integrity of sport.

Without distracting from that effort, but to ensure that ADOs do not abuse this provision, and to protect the innocent or unknowing athlete as the original intent of this provision is not to trap athletes with a violation. However, to prevent any discrete prohibited association, the USOC understands the rationale to eliminate this requirement and instead place the burden on the ADO to establish that the athlete knew, or should have known, of the disqualifying status. This could help prevent the sanctioned athlete secretly becoming a coach, a problem our Weightlifting Federation has noticed, has concerns with, and desires to protect against. The USOC supports restrictions against actions that subvert the integrity of sport.

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Without distracting from that effort, but to ensure that ADOs do not abuse this provision, and to protect the innocent or unknowing athlete as the original intent of this provision is not to trap athletes with a violation. However, to prevent any discrete prohibited association, the USOC understands the rationale to eliminate this requirement and instead place the burden on the ADO to establish that the athlete knew, or should have known, of the disqualifying status. This could help prevent the sanctioned athlete secretly becoming a coach, a problem our Weightlifting Federation has noticed, has concerns with, and desires to protect against. The USOC supports restrictions against actions that subvert the integrity of sport.
Lastly, under 2.10.1.2, the suggestion that an athlete could be subject to a violation for associating with an individual not subject to the Code but engaged in conduct in other forums “which would have constituted a violation of anti-doping rules if Code-compliant rules had been applicable to such Person” (emphasis added), is easier said than applied. Anti-doping rule violations are not always clear cut as to what “would” be a violation, as cases are fact specific and turn on various circumstances. It places to high of a burden on the athlete to ascertain the disqualifying status of an individual when that individual has not been sanctioned through WADA. The qualification of 6 years may also be difficult to determine. Nothing herein distracts from the USOC’s support of the concept of prohibiting this association, but in this instance, the athlete simply must be given advance notice with an opportunity to know that such an individual “would” have a disqualifying status.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

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

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

Article 2.9

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

1. 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.

2. 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).

Article 2.10

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

*For uniformity of application of this article, it will be sufficient to indicate this in the Comments on the article.*

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

Article 2.10
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Taking into account the risks that disqualified athletes, who are not officially registered as coaches (as it is prohibited pursuant to paragraph 10.12) can render professional services to current athletes, and the current athletes will not bear any responsibility for this, it is expedient to extend (and to directly state this in the Code) as follows: "Association is prohibited by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Person who."

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

2.10.1 (2)

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

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

For uniformity of application of this article, it will be sufficient to indicate this in the Comments on the article.

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

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Prohibited association.

2.10.1.1 (1)

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Ineligibility

2.10.1.2 (2)

FIBA

SUBMITTED
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

We are concerned that the language “or found in a criminal, disciplinary or professional proceeding to have engaged in conduct which would have constituted a violation of anti-doping rules if Code-compliant rules had been applicable to such Person” goes too far, would be difficult to enforce, and could lead to interpretational debates. Moreover, it appears questionable to attach any consequences (even if indirect) to conduct that was WADC-licit at the time.

We would recommend removing this portion of the violation and focusing on Association that has a closer tie to the goals of anti-doping regulation.

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Disqualifying status shall be in force for the longer of 6 years.

2.10.1.3 (1)

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

See 2.10.1.1 and 2.10.1.2

2.10.2 (5)

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

The proposed change of article 2.10 does not require the Anti-Doping Organization to notify the Athlete or other Person about the Athlete Support Person’s disqualifying status. It is just mentioned in the comment that such notice if provided would be important evidence to establish the Athlete or other Person knew about the disqualifying status of the Athlete Support Person.

However, in our opinion the purpose of the rule should not be to have many more ADRV cases, but rather to avoid and prevent athletes from associating with ineligible support personnel.
Out of fairness to the athletes, we therefore propose that the current wording of article 2.10 is upheld, whereby in order for this provision to apply, it is necessary that the Athlete or other Person has previously been advised in writing by an Anti-Doping Organization with jurisdiction over the Athlete or other Person, or by WADA, of the Athlete Support Person’s disqualifying status and the potential Consequence of prohibited association and that the Athlete or other Person can reasonably avoid the association.

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO

This Article should be clarified to explain what occurs if the association could not reasonably have been avoided (presumably it is a complete defence to an alleged Article 2.10 violation).

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZYpVX2Kyljh3ELHZRWcFaZvkFtUCiuMVYTvlJa36GbKLjC6e... 15/157
Such association could not have been reasonably avoid.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The wording of 10.2.2 is supported.

Law Offices of Howard L. Jacobs
Howard Jacobs, Attorney (U.S.A.)
Other - Other (ex. Media, University, etc.)

Under the 2015 WADA Code, there existed a requirement that an Athlete or other Person have been previously advised in writing of the Athlete Support Person’s disqualifying status and the potential Consequence of prohibited association, so that the Athlete or other Person can reasonably avoid the association. This requirement has been removed, and replaced with the requirement that “an Anti-Doping Organization must establish the Athlete or other Person knew, or should have known, of the Athlete Support Person’s disqualifying status.” Under the 2015 Code, it was clear that the goal was to keep athletes from working with individuals who are under sanction. The amendment sends the message that sanctions are more important than preventing athletes from working with individuals who are under sanction. Athletes have a difficult enough time keeping track of what substances are prohibited. Adding the requirement that they also keep track of who is and is not under sanction is unnecessary and impractical. This amendment will serve to unnecessarily punish athletes who had no such actual knowledge. Even worse, it will potentially increase the length of time that an athlete unknowingly works with someone who is under sanction: ADO’s will no longer have any obligation or incentive to notify athletes that they are working with coaches who are under sanction; and it is a virtual certainty that certain ADO’s will withhold such notification while they build or strengthen their cases for a potential violation of Art. 2.10.

2.11 Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting (9)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU supports the inclusion of the two new violations of acts to discourage or retaliate against reporting. The AIU would also suggest however that, under the same heading "Other Anti-Doping Rule Violations", consideration be given to including a further violation, namely that of failing to report any of the anti-doping rule violations set out in Article 2.

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

We support the additional language added to clarify the acts that retaliation, etc. would include. That said, as currently drafted we remain concerned that the violation would capture conduct that does not deserve a lengthy period of Ineligibility.

We would also note that “discouraging reporting” could fall under intentionally covering up a violation in art. 2.9, and much of the conduct could also conceivably be considered Tampering, creating conceptual complexity.

FIBA recommends that this violation is removed. At a minimum, more guidance on the meaning of key aspects of the violation that are open for interpretation (i.e. "just cause" "disproportionate response"), and...
Department of Health - National Integrity of Sport Unit  
Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

Australia opposes the introduction of new Article 2.11. With amendments to Article 2.5 (Tampering), the same outcomes can be achieved without the addition of a new violation. It is also not clear whether the new Article 2.11 can be enforced by governments.

Governments are bound by the UNESCO Convention against Doping in Sport, not the Code. Anti-Doping Rule Violations are defined in the UNESCO Convention by specifying each violation individually.

Amending the UNESCO Convention to reflect the addition of a new violation is not feasible as the full Convention would need to be re-ratified by all governments. Where needed, State Parties can agree to a particular interpretation of the articles in the UNESCO Convention that aligns with the Code. In 2015, the Australian Government moved a motion that ensured an agreed interpretation that the prohibited association violation was included in the anti-doping rule violations specified under Article 2(3) of the UNESCO Convention. However, this provides no certainty new Code Article 2.11 is enforceable under the UNESCO Convention.

If Article 2.11 is retained, it needs to capture those people who provide information related to an alleged ADRV but are not reporting an alleged ADRV – change to “the good-faith reporting of, or providing information in relation to, an alleged anti-doping rule violation or alleged non-compliance with the Code”.

An example is a pharmacy who was served a disclosure notice to produce documents regarding the dispensing of prohibited substances was threatened by the athlete with legal action if the pharmacy released personal medical information. The pharmacy hasn’t reported an ADRV but has provided information about the ADRV – they too should be protected.

Ministry of sport of Russia  
Veronika Loginova, Head of Antidoping Department (Russia)  
Public Authorities - Government

1. Article 2.11 introduces new types of violations (Acts to Discourage or Retaliate Against Reporting).

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

NADA  
Regine Reiser, Result Management (Deutschland)  
Public Authorities - Government
The legal scope of Art. 2.11 appears to be difficult. Is there any scientific, criminological or empirical evidence to extend the scope of Art. 2.11 by implementing another ADRV.

CHINADA
Yao Cheng, Result Management (China)
NADO - NADO

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

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

agree with this new rule

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

2.11.1 The minimum period of two years can be supported in cases where the person may immediately take steps to recognise and apologise for the relevant acts (these situations can be charged) however there should be a note that the default starting position is 4 years. This does not adequately deal with ”offensive conduct” and the Code should deal with this given the failure of ADOs to otherwise make provision.

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

The IPC Anti-Doping Committee supports a new ADRV for the protection of individuals reporting violations, but believes this form of misconduct which undermines and corrupts anti-doping should be subject to a minimum sanction of four years

2.11.1 (2)

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 2.11 Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting

Article 2.11.1:

We refer to our last submission on this Article and are pleased to see the amended Article.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO
Currently this Article seems to require two mental elements to be proved – that an act was done seeking to intimidate and with the intent of discouraging reporting. It may be cleaner to state that the breach occurs where a threatening or intimidating act is done with the intention of discouraging reporting. It would also be helpful to include a footnote explaining whether the act needs to be subjectively or objectively threatening or intimidating, or both. We would suggest both.

2.11.3 (2)

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

The USOC appreciates and supports the inclusion of 2.11.3 which clarifies and seeks to define retaliation, a comment that the USOC requested in the second consultation phase.

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

In Article 2.11.3, CCES does not understand how retaliation, threats and intimidation can ever have a “good faith basis.” We suggest removing that phrasing and rewording the article as follows: “For purposes of Article 2.11, retaliation, threatening and intimidation include an act taken against such Person without just cause or in a disproportionate fashion.

3.2.1 (7)

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

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

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

Article 3 Burden of Proof

The burden of proof is left to the athlete for the athlete to prove that the action was not intentional relating to non-specified substance. ADNO believe that the burden of proof should always be left to the ADO. This also include that the ADO is obligated to document issues both in favour and disfavour of the athlete.

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO

Article 3.2.1. At WADA's request, the CAS must appoint an appropriate scientific expert to assist the panel. Is it intended that this part of the Article is limited to the CAS and does not cover, for example, national hearing panels etc?
Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others
Any Athlete or other Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall

Gambit Law
Aynur Nuriev, Partner (Russia)
Other - Other (ex. Media, University, etc.)
It is of particular concern for us the construction of Art. 3.2.2 and Comment to Art. 3.2.2 in connection to Art. 3.1
First, the Code formally introduces a new standard of proof - «somewhat lower standard of proof - could have reasonable caused» - and places it in the Comment to Art 3.2.2, thus giving to such a fundamental update somewhat lesser degree of importance. Notwithstanding with it, the Code had previously stated in Art. 3.1 «…..or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability». That is it explicitly mentioned the exceptions of applicability of the balance of probabilities to cases in Art. 3.2.2 & 3.2.3, and NOT in Comment to Art. 3.2.
That being said, it seems reasonable either to transfer the introduction of the «lower standard of proof…» from the Comment to Art. 3.2.2 to the body of Art. 3.2.2 itself, or to revise the Art. 3.1 as to the following: «…except as provided in Articles 3.2.2 and 3.2.3, Comment to Art. 3.2.2, …»

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)
With respect to decision limits it is proposed that these will be raised in some cases in order to achieve a greater degree of "fairness". Such decision limits will inevitably have a degree of (considered) "arbitrariness". The exact level decided may be difficult to justify in purely scientific terms. On that basis and to preserve WADAs ability to introduce rules aimed at "fairness" those decision limits should not be challengeable.

International Testing Agency
International Testing Agency, Legal Affairs Manager (Switzerland)
Other - Other (ex. Media, University, etc.)
Consider enshrining the principle that WADA shall not only have the right to be notified of the challenge, but shall also have the obligation (or at least make reasonable efforts) to support the ADO in rebutting such challenge - in instances where WADA elects not to intervene as a party.

3.2.3 (3)
UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO
In our view the first sentence to Article 3.2.3, which has been deleted, should be retained. Its contents and effect have not been adequately replaced by new comment 28. As drafted with the first sentence deleted, Article 3.2.3 leaves open the question of how a tribunal should treat departures from an IS, rule or policy that do not cause an AAF or ADRV (and which are not within comment 28). If the deleted sentence was retained, it would mean spurious arguments about this would more easily be defeated.

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others
Applying the burden-shifting of Art. 3.2.3 to Athlete Notification for Whereabouts Failures is contrary to the requirement of Art. I.4.3(c) of the International Standard for testing and Investigations ("ISTI") that the DCO must do what was reasonable under the circumstances to locate the athlete during the specified 60-minute time slot. This is the DCO’s requirement to prove, it is not the athlete's burden to disprove. Applying the burden shifting of Art. 3.2.3 is therefore contrary to the ISTI requirements that are placed on the DCO in the first place. Furthermore, shifting the burden back to the ADO to prove that the “departure” did not cause the Whereabouts Failure makes no sense: if the athlete were required to prove and did prove that the DCO did not do what was reasonable under the circumstances to locate the athlete during the specified 60-minute time slot, then there is no point in permitting the ADO to prove that such departure did not cause the Whereabouts Failure; because by definition the failure of the DCO to follow the ISTI requirement would be the cause of the Whereabouts Failure.

4.2.2 Specified Substances or Specified Methods (6)

Regarding the classification of ‘specified’, FIBA supports the extension to some methods but why aren't all in-competition prohibited substances also ‘specified’? It seems obvious that all in-competition prohibited substances have the potential to be inadvertent. WADA needs to make a strong statement and commitment, alongside the Code review, to address the issue of decision levels being more aligned to laboratory capability than actual pharmacological effect. This needs to be driven by the WADA Science Department with support from the expert committees such as the LiEG as referred to in the recent review preamble.

The USOC appreciates and supports the inclusion of “Specified Methods," a comment that the USOC requested in the second consultation phase.

Regarding specified methods, DFSNZ would support a lifetime ban for gene doping.
Some outputs of doping (like genetic doping viruses, or genetic doping let as rubbish in public places and contaminating other people, or gene doping affecting gametes and the genetics of future generations) can be a strong threat to the Public Health in a close future. Also another types or biological doping in the future cloud also represent a danger for the Public Health. The Code must contemplate these possibilities.

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

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

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Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

All Prohibited Substances shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. The category of Specified Substances shall not include Prohibited Methods.

4.2.3 Substances of Abuse (14)

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

World Rugby support the introduction of this new Class on the Prohibited List in concert with the 10.2.4 sanctioning regime.

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Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 4.2.3 Substances of abuse

In our previous submission we addressed the following; When moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such proposed changes have been made. Instead, the decision to move health to the top of the list has accentuated the lack of logic between the Code, the list and subsequent consequences.

WADA’s new proposal will contribute to solve the problem, raised by many stakeholders, with positive tests from substances that are only prohibited in competition, but clearly taken out of competition. However, the proposal will not solve the fundamental lack of logic referred to above, and we are concerned that this could be detrimental to the legitimacy of the anti-doping rules.

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Rugby Football League
Emma Rosewarne, Welfare Director (United Kingdom)
Sport - Other

1 The RFL welcomes the proposed amendment on Substances of Abuse. It believes that the current rules tend to prevent athletes from admitting that they have an addictive disorder and seeking rehabilitation so the emphasis on rehabilitation is important.

2 However the proposed reduction to a one month period of ineligibility may not be a long enough period of time for an effective rehabilitation programme to take place. A better solution may be to make the three month ineligibility period conditional on the athlete completing a rehabilitation programme.

3 Whilst the RFL would prefer an amendment based on 2 above it would support the amendment proposed in the 2021 Code Review as an improvement to the current position.

UEFA
Rebecca Lee, Anti-Doping Coordinator (Switzerland)

We hope that ‘substance of abuse’ will include cocaine. Indeed cocaine is currently considered as a “non-specified substance” and therefore submitted to harsher sanctioning regime. Due to its nature of being a “social drug” and being used by athlete having some psychological problems and therefore totally unrelated to sport, it seems unfair to treat athletes taking cocaine at the same level as “hard” dopers. A longer suspension could contribute in destroying not only their career but also their mental health. We do hope therefore that cocaine is classified in the “substance of abuse” in the WADA Prohibited List.

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)

Australia supports the aim of this article, but not the proposed approach. The proposed provision adds complexity to the Code, requires anti-doping organisations to make judgements on appropriate rehabilitation programs, relies on the WADA List Committee to define a ‘substance of abuse’, and risks creating a framework that may treat inadvertent consumption of performance enhancing substances (for example, in a contaminated sports supplement) more harshly than illicit drug use.

A preferable approach is to introduce threshold limits for prohibited substances. Testing is now accurate enough to detect substances at levels below those considered to be performance enhancing. We understand there is already data available that would assist in establishing the required thresholds – if not, subject to the availability of funds and competing priorities, WADA could commission the research needed to set thresholds.

Athlete welfare issues can also be addressed by encouraging sporting organisations to adopt an illicit drugs policy. A number of national sporting organisations in Australia already have illicit drugs policies in place and this has proven an effective tool in dealing with this issue.

ministère chargé des sports, direction des sports
Michel LAFON, Chef de bureau (France)

(comment for articles 4.2.3 and 10.2.4)

Creating the new category of “substances of abuse” is useful for NADOs and IFs to deal with cases implying drugs more simply and faster. Using this kind of drugs must be prohibited in sport and sanctioned by the antidoping law.

Nonetheless, if the ingestion is out of competition and is unrelated to sport performance, then we can wonder if such a use enhanced this sport performance. If this cannot be proved, then it is not related to sport and to doping, and then antidoping law shouldn’t deal with these cases. Antidoping law shouldn’t be like moral and doesn’t have to deal with cases that are not related to sport and sport performance. It is the role of national criminal law to prohibit or not the use of recreational drugs unrelated to sport. Moreover, this new category is not clear: is it a new category beside specified and non-specified substances? Are these substances...
prohibited in competition only or in and out of competition? If they are prohibited only in competition, then why sanctioning the residual presence of the substance that has been used out of competition and is unrelated to sport performance? On the contrary, if the substances of abuse are prohibited in and out of competition, then some substances like cannabinoids that are not prohibited out of competition at the present time will be with this new provision; then this provision can be seen as more severe than the current law.

Furthermore, we wonder whether a single period of ineligibility is relevant according to the classification of drugs themselves (for example between hard drugs and soft drugs). Can the recreational use of hard drug like cocaine be punished with the same period of ineligibility than the use of soft drug like marijuana, when this specific use of marijuana is not forbidden by criminal law in some states?

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

The Council of Europe will provide WADA a number of different positions regarding the substances of abuse in a separate communication. The consensus position on this new concept was not before the deadline to submit comments. The States Parties to the Anti-Doping Convention will submit their opinions individually,

Antidoping Centre
Simeon Todorov, Chief Expert (Bulgaria)
NADO - NADO

Bulgaria expresses its strong appreciation towards the proposed amendments to the World Anti-Doping Code. Overall, the amendments bring clarity to the texts and we expect them to facilitate the implementation of the Code.

Athletes’ health is a key priority for Bulgaria and we support moving the section of the Code devoted to this topic at the very beginning of the Code’s rationale. We see athletes’ health as the most important responsibility of all signatories.

However, we see a contradiction between the athletes’ health as a priority of the Code and the obvious indulgence towards the use of prohibited substances In-Competition, such as narcotics, stimulants and cannabinoids. These substances cause proven and undeniable health damage and their use, possession and trafficking qualify as criminal offenses according to the Criminal Codes of most European countries. Their use may lead not only to addiction but also to physical and mental health damage. Therefore, Bulgaria believes their use is not related to medical evidence and should not have threshold concentrations.

According to 2017 data from the World Anti-Doping Agency the number of positive cocaine samples in the world is 69. According to 2018 data from the Bulgarian Anti-Doping Centre in 5 out of the 16 positive doping cases the athletes were tested positive for amphetamine and cocaine. We believe that the reported data is more than worrying and requires enhanced countermeasures. We support the prohibition of these classes of substances at any time, as well as believe that the sanctions on such abuses should not be reduced.

It should be kept in mind that athletes are often idols and role models for young people and even the minimal tolerance of drug use, stimulants and cannabinoids poses a risk to the health of society as a whole. Bulgaria strongly believe that sport is a social phenomenon and that the problem of using drugs by athletes can not be seen as a "social problem" outside of the sport.

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

Article 4.2.3 – Substance of Abuse

ADNO support the new paragraph covering substance of abuse. We suggest that a clear definition is defined.
NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Art. 4.2.3 / Art 10.2.4.
Germany (especially German Athletes as well as the Athlete’s representatives) has great concerns regarding Art. 4.2.3 and the new sanctions for substance of abuse
1. The substances mentioned are drugs in the strict sense. Drugs should be strictly prohibited in sports. Athletes are role models and want to be role models. They not only stand for excellence, but also for health in sport. In the Russian doping scandal in particular, the athletes have been campaigning for the care responsibility of the athletes. Even if you are allowed to use drugs according to our basic right and harm yourself, German athletes brought forward, that the use of cocaine is punishable (narcotics) and ethically not representable.

- The influence of "Social Drugs" on the Performance is not unimportant. so that punishment must be appropiate. The sanction of 2 or 3 months is - anyhow - far too less.

- From the athletes point of view it is not acceptable that an athlete should be punished more severely for buying a medicinal product than for taking cocaine.

- It is certainly also difficult for a prosecutor (in sports & criminal law) to understand whether the use is related to the competition or not. An unambiguous regulation in this case helps above all also the athletes.

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

We think the scope of this new category: substances of abuse must be clarified: ¿will it be a new category under the list? ¿how these substances will enter in the list complying with two of the three conditions listed on the code?

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

This is a comment shared by the other Belgian NADOs.
What is to be considered a recreational drug can very much vary throughout the world. Cannabis, cocaine and amphetamine are common substances of abuse, but other substances such as pain killers or other narcotics can be substances of abuse in some countries, but not in others.
If this concept is to remain in the Code, it should be made clear that a substance is classified as a specified or non specified substance, and can additionally be considered a substance of abuse. Substances of abuse are not a third category. If cocaine is to be a substance of abuse, it remains a non specified substance if used to enhance sporting performance.

ONAD Communauté française
Julien Magotteaux, juriste (Belgique)
NADO - NADO

Nous renvoyons à notre commentaire relatif à l'article 10.2.4

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others
Substances of Abuse shall include those Prohibited Substances which are frequently abused in society outside of the context of sport and are specifically identified as Substances of Abuse on the Prohibited List.

4.2.4 New Classes of Prohibited Substances or Prohibited Methods (1)

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

WADA’s Executive Committee shall determine whether any or all Prohibited Substances or Prohibited Methods within the new class of Prohibited Substances shall be considered Specified Substances or Specified Methods.

4.3.3 (4)

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

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

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

Article. 4.3.1.2

The handling, including the accidental handling, of outputs or residuals resulting from certain doping practices (i.e.: genetic doping viruses, or genetic doping rubbish in public places) can pose a threat to Public Health. Article 4.3.1.2 should reflect the need to appropriately manage such risks and consequently should read as follows (added text is in bold):

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

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

Denmark continues to believe that the Prohibited List criteria should be adapted to place a greater emphasis on the concept of performance enhancement and hence fair play.

We recommend that for a substance or method to be included on the List (except for diuretics and masking agents), it would firstly need to fulfill the performance enhancement criteria (Code Article 4.3.1.1) and then one of the following two criteria: represent an actual or potential health risk to athletes (Code Article 4.3.1.2); or that the use of the substance or method violates the spirit of sport (Code Article 4.3.1.3).

Placing greater emphasis on the concept of performance enhancement would initiate wider discussion among stakeholders about removing substances from the List which are not performance-enhancing, yet are detrimental to health and against the spirit of sport.

We think that these substances could be governed under the welfare rules of sports federations and that athletes should receive help to deal with and treated for their drug abuse rather sanctioning them from sport.

We understand that such changes cannot occur without first making changes to Article 4.3 of the World Anti-
Doping Code. As a result, we propose this change to the new WADA Code. In addition, we believe that the current rule that a substance or method has to fulfill two of the three criteria could be problematic. The reason is that one of the values described in the WADA Code as defining the spirit of sport is ‘health’. Therefore, a substance that represents a health risk to the athlete would by default also violate the spirit of sport and hence fulfill two of the three criteria. Finally, from our experience it is the perception of athletes and support personnel that only performance-enhancing substances should be placed on the list.

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

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, the classification of a substance or method as a Specified Substance, Specified Method or Substance of Abuse is final and shall not be subject to any challenge by an Athlete or other Person including, but not limited to, any challenge 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.

5.1.2 Investigations shall be undertaken (3)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

In light of the limited powers of investigation of many ADOs (notably IFs), the AIU suggests that consideration be given to expanding the ambit of the current article 5.8; so that ADOs also have the power to issue a written demand to an athlete or other person over whom they have jurisdiction to provide any information, record, article or thing in his or her possession that the ADO reasonably believes may evidence or lead to the discovery of evidence of an anti-doping rule violation (see for example, paragraph 5.10.5 of the IAAF Anti-Doping Rules). The AIU has used such a rule to good effect in investigating doping violations.

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

Article 5 – Testing and investigation

The requirement of an objective and thorough investigation should be made mandatory for all potential anti-doping rule violations, including an AAF

Article 5.1.2

This article refers to the Result Management standard. We suggest WADA also make reference to the ISTI chapter 11 and 12 covering intelligence and investigation. See also 5.8.2 and 5.8.3.

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Investigations shall be undertaken:(a) in relation to Atypical Findings and Adverse Passport Findings, in order to determine whether an anti-doping rule violation has occurred in relation to other indications of
potential anti-doping rule violations, in order to determine whether an anti-doping rule violation has occurred in relation to the enforcement of rules under Article 1

5.6 Athlete Whereabouts Information (11)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU considers that ADOs should be permitted (though not obligated) to impose whereabouts requirements on elite athletes over and above the requirements set out in the ISTI provided always that the ADO can justify the need for such additional information in order to be able to conduct testing efficiently and effectively.

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

Art 5.6 We would like to suggest exploring the possibility to implement the following changes: "...The International Federations and National Anti-Doping Organizations shall coordinate the identification of such Athletes and the collection of their whereabouts information, and shall coordinate to identify which Organization would be responsible for results management in case of an anti-doping rule violation of art 2.4 is asserted against an Athlete who has been included in both the International Federation and National Anti-Doping Organizations registered testing pool..." Furthermore: "...shall be used exclusively for purposes of planning, coordinating or conducting Doping Control Testing,..."

Council of the European Union
Lucian Constantin Mircescu, Chairman Working Party on Sport (Romania)
Public Authorities

With a view to ensuring EU Member States' compliance with any legal obligations deriving from EU legislation on Data Protection, the amendment proposed by WADA at the end of Article 5.6 on Athlete Whereabouts Information should read as follows (added text is in bold):

https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZYpVX2Kyjyh3ELHZRWcFaZvkFTUCiuMVtYItjJa36GbKLjiC6e...
Anti-Doping Organizations may, in accordance with the International Standard for Testing and Investigations, collect whereabouts information from Athletes who are not included within a Registered Testing Pool and impose appropriate Consequences under their own rules, if this is compatible with applicable data protection laws and regulations.

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

Article 5.6
The addition at the end of the article (“Anti-Doping Organizations may, in accordance with the International Standard for Testing and Investigations, collect whereabouts information from Athletes who are not included within a Registered Testing Pool and impose appropriate Consequences under their own rules”) raises a fundamental difficulty regarding national and European law related to data protection. Moreover, the purpose of this provision seems to infringe the very reason of the RTP.

“appropriate” -> fair under national law or regulation at national level. From the WADC point of view, when someone is positive, the consequences are important to handle, regardless of whether it is a pro or recreational athletes. Once a year even recreational athletes have to locate themselves but the sanctions are not as heavy.

With a view to ensuring EU Member States’ compliance with any legal obligations deriving from EU legislation on Data Protection, the amendment proposed by WADA at the end of Article 5.6 on Athlete Whereabouts Information should read as follows (added text is in bold):

Anti-Doping Organizations may, in accordance with the International Standard for Testing and Investigations, collect whereabouts information from Athletes who are not included within a Registered Testing Pool and impose appropriate Consequences under their own rules, if this is compatible with applicable data protection laws and regulations.

Anti-Doping Singapore
Say Po Yeo, General Manager (Singapore)
NADO - NADO

Below are suggested further revisions to Article 5.6:
“Athletes who have been included in a Registered Testing Pool by their International Federation and/or National Anti-Doping Organization shall provide whereabouts information in the manner specified in the International Standard for Testing and Investigations. Non-compliance with the requirements by an Athlete shall be deemed as a violation of Article 2.4 and shall be subject to Consequences as provided in Article 10.3.2.”

Article 2.4 does not provide for consequences but the violation.

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO

Article 5.6 Sport Ireland strongly opposes that each ADO shall use ADAMS. Sport Ireland would like to reiterate that the use of ADAMS is only practical if the data transfer issues are resolved. WADA must deliver on its commitment from previous years to provide an API, without this, the commitment to the mandatory use of ADAMS for all aspects of doping control is premature.
Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

Athlete Whereabouts Information
DFSNZ objects to the removal of "or another system approved by WADA" from this article.
Where an ADO uses a system that meets all the requirements for whereabouts under the Code and is tailored to suit an ADOs (and their athletes) specific needs, that ADO should be able to use an another system.
The current version of ADAMS does not met the needs of our athletes as well as our alternative system. Further to this, given the new updated ADAMS/Whereabouts system is still in development, DFSNZ considers this change is premature.
DFSNZ supports the provisions that give ADOs the ability to establish other testing pools (below the RTP) to suit their respective needs.

NADA
Regine Reiser, Result Management (Deutschland)
NADÖ - NADO

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."

Art. 5.6
Please specify "and impose appropriate Consequences under their own rules". Is it able to implement lower sanctions (like attendance of a prevention and education cause, a fine or "warning")?
NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

Reference should be made to the ISTI, where it is stipulated that whereabouts can be required from athletes in a general testing pool, where deemed proportionate. This should indeed be proportionate to the privacy of the athletes concerned.

This position is supported by all Belgian NADOs.

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

The International Federations and National Anti-Doping Organizations shall coordinate the identification of such Athletes and the collection of their whereabouts information

Athletes shall be notified before they are included in a Registered Testing Pool and when they are removed from that pool

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

The Indian NADO has whereabouts information updated to May 2018 on its web page. It is unlikely that they have made drastic changes to it since then though at least one athlete (Hima Das, the 400m runner) had been added to the list. Ten months since the last RTP was issued. No sign of any change. Presume NADA thinks they have to update it once in six months; may be even later. Today only a paper carried the news that our top wrestler Narsingh Yadav who was caught in 2016 and whose exoneration was set aside by CAS in Rio, was tested only nine times in five years! Should such a system be allowed to prosper?

5.8.4 (1)

Conseil supérieur des sports
Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

Investigate information that indicates a potential violation of a rule adopted.

6.6 Further Analysis of a Sample After it has been Reported as Negative Or After Results Management for an Article 2.1 Anti-Doping Rule Violation Has been Completed (6)

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

The UCI thinks that replacing the “ADO that initiated and directed sample collection” by the “Testing Authority” (as defined in the ISTI) and including the definition of Testing Authority in the WADC could make sense.

The UCI understands that "further analysis" includes "retesting". This could be clarified.

Adding article 10 of the ISTI in the WADC (or at least making reference to it) would clarify the question of ownership of these samples.
Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

- The right to request samples should remain only with WADA. Other anti-doping organizations, including foreign NADO should not participate in this issue and question the results of doping tests of other NADO. This paragraph is able to undermine the credibility of NADO, and also contradicts the principle of international law on noninterference in the internal affairs of the state, since it gives WADA the right to overcome disagreement of NADO.

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

SUBMITTED

Article 6.5

- Too much authority to the lab? If it is to get the result right, then move it to the ISO? And keep the second part; the last sentence specify to the type of ADO.

- For protection for labs to deal with the process of RM and testing.

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

SUBMITTED

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

CHINADA
Yao Cheng, Result Management (China)
NADO - NADO

SUBMITTED

Retroactivity of the Prohibited List and limit for further analysis

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

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

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

Is there any need to notify the athlete or the National Federation about a negative result if NADO is the testing authority? This may unnecessarily lead to complications i case the sample is tested again because of a doubt or because of an advisory from WADA or IF.

6.7 Split of A or B Sample for Good Cause (8)

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

Changes like this will inevitably result in arguments during proceedings over the purpose of a B sample in anti-doping. It may therefore be useful for WADA to consider issuing explanatory materials in that respect.

Regarding the question in the footnote 38, the UCI agrees that this should be addressed in the ISL. The opening could also be recorded via video. It may also be worth addressing the issue of photographing/filming in general (i.e. from the perspective of labs – who we understand may be doing this with and without athletes' knowledge – and athletes who regularly request this).

You will also find suggestions below to account for the fact that there might be other “good cause” situations which require an ADO to split a sample:

6.7 Split of A or B Sample for Good Cause

Where, for good cause, WADA, an Anti-Doping Organization with Results Management authority and/or a WADA accredited laboratory (with approval from WADA or the Anti-Doping Organization with Results Management authority) wishes to split an A or B Sample such as for using the first part of the split Sample for an A Sample analysis and the second part of the split Sample for confirmation, then the following procedures shall be followed as provided in the International Standard for Laboratories: (i) reasonable attempt to notify the Athlete that the opening of the Sample to be split will occur on a specified date and time, and advising the Athlete or other Person of the opportunity to observe the opening in the same manner as for a customary B Sample opening in accordance with the International Standard for Laboratories; (ii) in the event the Athlete (or the Athlete’s representative) is not present on the specified date and time, the opening shall be observed by an independent witness; (iii) after the Sample is split, the confirmation portion of the split Sample shall be securely sealed; and (iv) if the analysis of the first portion of the split Sample results in an Adverse Analytical Finding, the Athlete shall be notified of the opportunity to attend the opening and analysis of the confirmation portion of the split Sample in the same manner as for a B Sample under Article 7.38

Footnote 38 [International Standard for Laboratories drafting note to Article 6.7: The required wait time to open and analyze the confirmation portion of the split Sample should be shortened and made definite in order to avoid undue delay sometimes attributable to Athletes’ not responding or requesting additional time to accommodate their schedule. Questions: Should the International Standard for Laboratories address the issues of using an independent witness and photographing and filming the opening when Athlete is not present?]
FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

We would recommend removing the concept of “good cause” and instead refer to the situations set forth in the ISL 5.3.1.6 for splitting a Sample.

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

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

Article 6.7

- Follow on language that been used at the international labs on retesting samples. Need to clarify that under these circumstances it is permissible to split a sample.

Autoridade Brasileira de Controle de Dopagem
André Siqueira Rodrigues, Technical Director (Brazil)
NADO - NADO

We suggest that in the absense of the athlete or their representative during the opening of the sample, this process be observed by an independend witness and also be filmed or photographed.

"(ii) in the event the Athlete (or the Athlete's representative) is not present on the specified date and time, the opening shall be observed by an independent witness and shall be filmed or photographed;"

Also, if you understand that providing a more precise definition of "Independent witness" would bring no harm to the procedures, it would make the selection process more transparent so no one can question in afterwards.

NADA
Regine Reiser, Result Management (Deutschland)
### NADO - NADO

The requirements and the Definition of "good cause" is unclear and should be clarified. in that regard, we support the wish to specify the ISL terms like explained in note 38.

<table>
<thead>
<tr>
<th>International Testing Agency</th>
<th>SUBMITTED</th>
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</thead>
<tbody>
<tr>
<td>International Testing Agency, Legal Affairs Manager (Switzerland) Other - Other (ex. Media, University, etc.)</td>
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Consider removing "good cause" from Art. 6.7 and Art. 2.1.2. The scenario envisaged is only when volume in the A-sample is insufficient, thus the concept of good cause appears to be redundant and could possibly pave the way to challenges relating to the good cause of the reanalysis itself. The underlying rationale for linking such action to a rather subjective standard appears to be unclear.

### 6.8 WADA's Right to Take Possession of Samples. (7)

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<tr>
<th>Norwegian Olympic and Paralympic Committee and Confederation of Sports</th>
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<tr>
<td>Henriette Hillestad Thune, Head of Legal Department (Norway)</td>
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<td>Sport - National Olympic Committee</td>
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**Article 6.8**

We refer to our last submission on this Article and are pleased to see the amended Article.

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<tr>
<th>Council of the European Union</th>
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<tr>
<td>Lucian Constantin Mircescu, Chairman Working Party on Sport (Romania) Public Authorities</td>
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Under the new article 6.8, WADA gives itself the power to gain unrestricted access in a laboratory or Anti-Doping Organization, in order to collect “any sample and related analytical data”. WADA should clarify the circumstances in which such right is to be exercised.

Accordingly, article 6.8 should inform with regard to the specific adverse context that requires such actions from WADA.

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<tr>
<th>Department of Health - National Integrity of Sport Unit</th>
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<td>Luke Janeczko, Policy Officer (Australia) Public Authorities - Government</td>
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WADA's authority to take possession of samples should not be absolute. An appropriate check-and-balance, such as a report to the Executive Committee whenever this article is utilised, should be included in the text of this article to ensure authority is only used as necessary and as a last resort.

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<th>Ministry of sport of Russia</th>
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<tr>
<td>Veronika Loginova, Head of Antidoping Department (Russia) Public Authorities - Government</td>
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- This paragraph needs to be revised since there is no mechanism for resolving organizational and technical issues related to the entry into physical possession of samples. In particular, organizational and technical issues may include the need for visas, permits for import / export of samples, as well as aspects related to the working day of laboratory staff and so on. In fact, no state is able to enforce this item without appropriate elaboration.
Article 6.8

- This provision needs to be framed; for example, the provision could add that WADA has this right when there is a suspicion of cheating or manipulation of samples or related data.
- ‘for good cause’ to be included.
- Compliance issue with NADO collaborating with WADA actively.
- Read together with article 22.8.
- Under the new article 6.8, WADA gives itself the power to gain unrestricted access in a laboratory or Anti-Doping Organization, in order to collect “any sample and related analytical data”. WADA should clarify the circumstances in which such right is to be exercised. Accordingly, article 6.8 should inform with regard to the specific adverse context that requires such actions from WADA.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

UKAD notes (and supports) WADA’s intention to add in a requirement that it must show “good cause” before taking possession of a sample and analytical data. UKAD is not against the principle of allowing WADA to take possession of a sample that UKAD owns, as long as it is a sample that UKAD owns, and so has the legal right to pass it to WADA. As currently drafted this Article could be read as requiring a NADO to give WADA samples that the NADO does not own (e.g., samples collected as part of a contracted test, which are owned by a sports body). UKAD would like the Article amended to make it clear that this is not the case. UKAD would also like clarity about the legal basis for WADA to be granted access to a laboratory to take possession of a sample. If this Article is supposed to operate by requiring ADOs to compel laboratories to grant this access, then UKAD is against it. There needs to be a direct legal relationship between WADA and the laboratory for this Article to be effective in granting WADA access to a lab on demand. This should not be done via an ADO. Finally, UKAD would like clarity in respect of which organization will pay for Results Management to be conducted, where WADA orders an ADO to conduct it. Will WADA reimburse this cost? If not, how will fairness be ensured so that a NADO is not obliged to take on a very costly case?

7.1 Responsibility for Conducting Results Management (4)
Article 7. Results Management: Responsibility, Initial Review, Notice And Provisional Suspensions

The USOC recognizes the importance of uniformity in results management as fundamental to the harmonization of the Code world-wide and welcomes the new International Standard for Results Management to heighten the standards to all ADOs. Comments will be included in that section.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

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

Article 7.1.

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

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

- There must be a clear definition and structure as to the implementation of RM by Ifs and NADOs

- Art 4.1.2.3 confirms that IF can delegate RM and human process to NF. It would not be operational independence internationally.

- 7.1.4 – all events or only international?

- 7.1.5 – provide some concrete written statements to WADA:

- Should the procedure be split between national and international federations?

- Fundamental principle for CoE is access to justice.

Anti-Doping Norway
Anne Cappelen, Director Systems and Results Management (Norway)
NADO - NADO
**Article 7 Result Management**

The different starting and ending points of the result management processes should be identified, allowing for a clear distinction between the reporting body and the sanctioning body (re. CoE Antidoping Convention Article 7.2,d,i). This should be clearly divided in the Code.

Dividing the reporting body from the sanctioning body is a clear consequence of the separation of power principle.

7.1.1 (3)

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

Article 7.1. Not every Anti-Doping organization has sufficient significant resources (human, scientific and financial resources) for conducting results management, hearings and appeals on technically complex cases. However, taking into account that this article assumes the possibility of stating that an Anti-Doping Organization is non-compliant, because of refusing to conduct result management procedure or reimburse the costs to the other Anti-Doping Organization, obviously, every effort will be made to reimburse such costs. It is necessary to take into account that funds for reimbursing such costs, will be taken from the most sensitive part of the budget of an Anti-Doping Organization – testing, which will, naturally, reduce the quantitative and will deteriorate the qualitative indicators of testing, which also might result in recognizing an organization as non-compliant. Thus, anti-doping organizations risk to find themselves in a dead end situation, when any of the actions they choose, will affect their compliant status.

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

**UK Anti-Doping**
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Where a NADO (1) initiates and directs sample collection of a non-national Athlete (for example an Athlete visiting NADO (1)'s country to compete in a one-off event), if the Athlete's national NADO (2) will not agree to assume results management responsibility in the event of an asserted ADRV, we propose that NADO (2) should be required to provide reasonable assistance to the NADO (1) conducting results management upon request.

For example, NADO (2) could assist with locating the Athlete in his / her home country for the service of documents or facilitation of an interview, or with the translation of documents, or the explanation of the results management procedure to the Athlete.

**Institute of National Anti-Doping Organisations**
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The wording of 7.1.1 is supported.

7.1.4 (1)

**Union Cycliste Internationale**

The document does not provide the specific text for this section.
The UCI believes the Code should treat Major Event Organizations similarly to all other Signatories (e.g. NADOs which are already allowed to sanction beyond the scope of their country). Therefore, they should not be allowed to limit the effects of their decisions to the scope of their Event. They should also conduct full results management of their cases (including the consequences to be imposed beyond the scope of their event). This being said, the IFs should retain a right to intervene into the proceedings.

7.1.5 (4)

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

1. WADA CODE SECOND DRAFT says: «WADA may direct an Anti-Doping Organization with results management authority to conduct results management in a particular case. If that Anti-Doping Organization refuses to conduct results management within a reasonable deadline set by WADA, WADA may direct another Anti-Doping Organization, that is willing to do so, to take results management responsibility in place of the refusing Anti-Doping Organization. In such case, the refusing Anti-Doping Organization shall reimburse the costs and attorney's fees of conducting results management to the other Anti-Doping Organization designated by WADA. Failure to conduct results management as directed or failure to reimburse costs and attorney's fees shall be considered an act of noncompliance».

- Not every Anti-Doping organization has sufficient significant resources (human, scientific and financial resources) for conducting results management, hearings and appeals on technically complex cases. However, taking into account that this article assumes the possibility of stating that an Anti-Doping Organization is non-compliant, because of refusing to conduct result management procedure or reimburse the costs to the other Anti-Doping Organization, obviously, every effort will be made to reimburse such costs. It is necessary to take into account that funds for reimbursing such costs, will be taken from the most sensitive part of the budget of an Anti-Doping Organization – testing, which will, naturally, reduce the quantitative and will deteriorate the qualitative indicators of testing, which also might results in recognizing an organization as non-compliant. Thus, anti-doping organizations risk to find themselves in a dead end situation, when any of the actions they choose, will affect their compliant status. In connection with the above, it is expedient either to remove the proposed rule or to replace it with an alternative – establishing a Working Group of several anti-doping organizations which have the jurisdiction over the case, with WADA acting as Chair, with the purpose of distribution of powers on results management, exchange of experience, technical, scientific and legal capabilities for working with every particular case, and for dividing the financial obligations on the case.

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

Article 7.1.5

ADNO support the principle that WADA might direct an ADO with Result Management authority to conduct result management. However, this principle should open-up for a split between the reporting authority and the sanctioning authority. We believe that several ADOs has reporting authority, but no sanctioning authority because it is related to another legal entity.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO
The responsibility for the Results Management and the role of WADA in Art. 7.1.5. remain unclear. Please define concrete examples for roles and responsibilities as well as the scope of application of Art. 7.1.5.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

RM can only be directed to an NADO if there is sufficient basis for jurisdiction. A public NADO, like NADOF working under the Flemish legislation can only take up results management if there is grounds to do so in the Antidoping Decree. This should be directed as a request to the NADO, but there can be no act of non-compliance if the NADO does not have jurisdiction over the case and is therefore not able to perform RM. A similar comment has been made for the ISRM.

7.1.6 (2)

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

Art 7.1.6 We would like to suggest exploring the possibility to require ADOs (IFs and NADOs) to agree beforehand about which Organization is responsible for results management of whereabouts failures. We would propose the following: "...7.1.6 Results management in relation to a potential Whereabouts Failure (a filing failure or a missed test) shall be administered by the International Federation or the National Anti-Doping Organization as agreed by the relevant ADOs which have included the concerned Athlete in their respective Registered Testing Pool with whom the Athlete in question files his or her whereabouts information, as provided in the International Standard for Testing and Investigations..."

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO

Sport Ireland strongly opposes that each ADO shall use ADAMS. Sport Ireland would like to re-iterate that the use of ADAMS is only practical if the data transfer issues are resolved. WADA must deliver on its commitment from previous years to provide an API, without this, the commitment to the mandatory use of ADAMS for all aspects of doping control is premature.
7.2 Review and Notification Regarding Potential Anti-Doping Rule Violations (1)

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

It is not a good principle to refer to a not yet existing IS for Result Management and to delete the former articles 7.2 to 7.7. This is like "buying a cat in a bag".

7.4 Principles Applicable to Provisional Suspensions (2)

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

The UCI believes that a Provisional Suspension should only be applicable once the ABP experts have reviewed the athlete’s explanations and confirmed their previous opinion. The UCI does not think that a provisional suspension should be applicable as soon as an APF is declared, as it has been consistently held in CAS cases that – due to the nature of the ABP – the athlete’s explanation is fundamental in the assessment of the likelihood that the atypical results are caused by doping (whereas for presence the test is simply positive for the relevant substance).

Regarding the voluntary provisional suspension, the UCI believes there should not be any deadline for the athlete to accept it. An Athlete who realizes later on during the proceedings that his case will not be resolved as fast as expected should still be allowed to provisionally suspend himself. However the Code should address the situation where an athlete attempts to abuse the provision (e.g. accepting only once important event over, or in off season). Moreover, athletes who lift their voluntary provisional suspension should be entitled to a credit if the strict application of the rule would be manifestly unfair (i.e. if the athlete did not try to abuse the provision for his own benefit). We would therefore suggest adding the following:

*The athlete may nevertheless be granted the entire or part of the credit where the strict application of that rule would be manifestly unfair.*

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

7.4.4 Voluntary acceptance of the provision - include something about providing notice by the athlete (like in article 5.7.2)

Repeating: “Failure to conduct results management as directed or failure to reimburse costs and attorney’s fees shall be considered an act of non-compliance.”

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

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

7.4.1 (2)
We would recommend that no mandatory Provisional Suspension be imposed for Substances of Abuse – any mandatory Provisional Suspension risks extending beyond the (current) 1- to 3-month range set forth in art. 10.2.4.

**Sport Ireland**  
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)  
NADO - NADO

Article 7.4.1. It provides that a mandatory Provisional Suspension can be eliminated if the violation involves a Substance of Abuse and the Athlete can show that the ingestion occurred Out-of-Competition and was unrelated to sport performance (Article 10.2.4). In other words, a Provisional Suspension for cocaine will be mandatory but an Athlete can appeal it and we suspect, in the vast majority of cases, the Provisional Suspension will be eliminated. This would appear not to be an effective and constructive use of time and resources. It is our very strong view that Substances of Abuse should come within the optional Provisional Suspension category.

**7.4.2 (1)**

**FIBA**  
FIBA Legal, Anti-Doping Manager (Switzerland)  
Sport - IF – Summer Olympic

We are concerned that with the removal of art. 7.7 not enough guidance is given to ADOs as to what point in an investigation a Provisional Suspension should be imposed. As is well-established in case law, imposing a Provisional Suspension too early risks transforming what should be an “emergency” measure into a disciplinary measure taken without sufficient legal basis.

**7.4.3 (1)**

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

Article 7.4.3 Opportunity for Hearing or Appeal  
The draft uses the term “provisional hearing”. It is not evident who should carry out the provisional hearing. ADNO suggest it is clarified whether this is a hearing for a hearing panel (sanctioning body) or a right to give an explanation to the reporting body.

**7.4.4 (3)**

**FIBA**  
FIBA Legal, Anti-Doping Manager (Switzerland)  
Sport - IF – Summer Olympic

FIBA would recommend removing the 10-day deadline for accepting a voluntary Provisional Suspension. This appears too short of a time period to expect an Athlete to make an informed decision about whether to accept a Provisional Suspension, especially since most are unlikely to be represented in this time period. It seems fairer for Athletes to be able to accept a voluntary Provisional Suspension at any time before a final hearing decision, with the consequence that a shorter period would be deducted from any potential period of Ineligibility that may be imposed.
US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Article 7.4.4. Voluntary Acceptance of Provisional Suspension

Limiting the window of time for an athlete to voluntarily accept a Provisional Suspension within 10 days is too restrictive. Athletes should be allowed to voluntarily agree to a Provisional Suspension at any time they desire and ADOs should welcome the ability of athletes to withdraw from competing, at any stage. Potentially, an added incentive could be given if a Provisional Suspension is agreed to within 10 days, but to limit it to that timeframe could potentially lead to the unfortunate circumstance of an unclean athlete competing because there’s no longer an incentive for them to refrain from competition.

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

Article 7.4.4 Voluntary Acceptance of Provisional Suspension

The deadline for response should be 15 days and not 10, allowing the athlete adequate time to respond.

7.5 Results Management Decisions (2)

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

As mentioned at 7.4.1, the UCI believes the Code should treat Major Event Organizations similarly to all other Signatories. Therefore, they should not be allowed to limit the effects of their decisions to the scope of their Event. They should also conduct full results management of their cases (including determining the consequences to be imposed beyond the scope of their event), This being said, the relevant IF should retain a right to intervene into the proceedings.

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

Article 7.5 Results Management Decision

A decision taken by a Major Event Organisation (MEO) should not be limited in its scope for a specific period. A decision by the MEO should address whether an anti-doping rule violation was committed and include all consequences flowing from that decision as for all ADOs. Otherwise, athletes sanctioned for doping by a MEO might still compete at international events under the authority of the IF. This will create a chaotic situation and unnecessary reduce the credibility of the anti-doping program. We should keep in mind that it could also be re-analysing samples from previous MEO’s. If an ADO or the athlete disagree with the MEO decision, it could be appealed to CAS.

ADNO suggest that a two-step process is introduced whereby the MEO carry out an expedited process to ensure that the athlete stop competing. A second step would require a further handling of the case in
8 RESULTS MANAGEMENT: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISION

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Affording athletes with a timely, fair and impartial hearing is central to and conducive to the success of anti-doping programs, and the basic principle of fundamental fairness needs to be implemented across all nations. The USOC supports world-wide consistency in the minimum standards for the application of the hearing process, as established with the International Standard for Results Management. Comments will be included in that section.

Norwegian Ministry of Culture
Eva Cathinka Bruusgaard, Senior adviser (Norway)
Public Authorities - Government

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

1. Article 8.1

Overall, the Norwegian Ministry of Culture is supportive of the introduction of the new International Standard for Results Management. We support that appeal panels shall be independent as stated in WADC article 13.2.2.

However, and with reference to our previous submissions in phase one and phase two of the Code revision, regarding Article 8.1, we would like to underline that first instance hearing panels should also be independent as is required for appeal panels. Thus the Norwegian Ministry of Culture reiterates and urges the drafting code to specifically set down the general principle of fair and independent first instance hearing panels within the World Anti-Doping Code article 8.1 itself.

We believe that the principles of fair and independent hearing panels and their importance in relation to Article 6 of the European Convention on Human Rights and the UN Declaration on Human rights art. 10, justifies them to be included and codified in the Code itself.

Our proposal for WADC art 8.1 is as follows:

"For any Person who is asserted to have committed an anti-doping rule violation, each Anti-Doping Organization with responsibility for Results Management shall provide, at a minimum, a fair hearing within a reasonable time by an independent and impartial hearing panel in compliance with the WADA International Standard for Results Management. A timely reasoned decision specifically including an explanation of the reason(s) for any period of ineligibility and Disqualification of results under article 10.10 shall be Publicly Disclosed as provided in Article 14.3.

Council of Europe
Council of Europe, Sport Convention Division (France)
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)
1) Article 8 in the WADC should define principle requirements of both the hearing and the appeal panel, including:

- That both hearing and appeal panels should be operationally independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation, with no interference from these actors on decisions made by the hearing or appeal panel and on the conduct of the hearing proceedings, including complete discretion regarding the admissibility and appreciation of the evidence, depending on the circumstances of the case.

- The hearing and appeal panels should be composed of at least a chair and two members with a minimum of competence, including that the chair should have a legal background and experience of practising law. The other members of the hearing panel should provide a collective expertise in relevant fields, such as medicine and sport.

- All hearings should be public unless otherwise decided by the hearing or appeal panel in order to ensure that the athletes rights are adhered to and that the hearings are following the important principles defined in Charter and the Code.

2) The article is not compliant with the article 6 ECHR. This needs to fit with the relevant human rights legislation;

The case law on art 6 of ECHR is that at higher level if there is independence (CAS) then this is fine even if lower levels are not fully independent.

The difficulty is to ensure that this article in the Code is sustained and not challenged. Right now the independence of the CAS is frequently challenged. In order to ensure the system is solid and on challengeable, there is insistence on ensuring independence of the hearing process.

the hearing and appeal process should be operationally independent from the anti-doping authority… etc. the standard should outline and provide details on how independence is achieved and the relations with the reporting body and the hearing panel and specify what conflicts of interest would ensue and specifically rules against any board or NADO acting as an appeal or hearing body.

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

There is already an ADRV that covers manipulation, which is any attempt to Interfere with the drug testing process. This new rule is intended primarily to address fraudulent conduct in hearings and the results management process, where false statements or witnesses may be presented. The current relevant ADRVs are "

Reject or fail without a convincing justification to send to the sample
Collection after notification as authorized by applicable anti-doping, rules, or otherwise evading collection of samples.

Manipulate or attempt to manipulate any part of the doping control. Any
Attempting to interfere with the drug testing process can lead to sanctions.
This new rule only covers the next step, but probably in part it could cover out of this as well.

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

Article 8 and 13 Results Management

ADNO strongly suggest that first instance hearing panels also should be independent as is required for appeal panels re. WADC article 13.2.2.

We support that RM is described in a new standard. Article 8 in the WADC itself (and this should not be left to the RM Standard) should define requirements in terms of principles of both the hearing and the appeal panel, including:

- That both hearing and appeal panels should be independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation, with no interference from these bodies on decisions made by the hearing or appeal panel and on the conduct of the hearing proceedings

- The hearing and appeal panels should be composed of at least a chair and two members with specified competence, including that the chair should have legal background and experience of practising law. The other members of the hearing panel should possess expertise in relevant fields, such as medicine and sport.

- All hearings should be public unless otherwise decided by the hearing or appeal panel in order to ensure that the athletes rights are adhered to and that the hearings are following the important principles defined in Athletes Charter

- The principles of fair trial described in The International Standard for Results Management (ISRM) 8.7 d should be moved from the standard to the WADC.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Article 8.1 (also take comment to Art. 23.2.2 WADC into account)
ARTICLE 8 RIGHT TO A FAIR TRIAL
8.1 Fair Hearing
For any Person who is asserted to have committed an anti-doping rule violation, each Anti-Doping Organization with responsibility for results management shall provide, at a minimum, a fair hearing within a reasonable time by a fair, impartial and independent (in accordance with Art. 6 ECHR[1]) hearing panel. A timely reasoned decision specifically including an explanation of the reason(s) for any period of Ineligibility shall be Publicly Disclosed as provided in Article 14.3.

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

a) Composition of the hearing panel (body) and impartiality of its members[3]

b) Right of access to a hearing[4]

c) Right to effective defence and equality of arms[5]

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

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

8.5 Right to appeal - Single Hearing Before CAS
Anti-doping rule violations asserted against International-Level Athletes or National-Level Athletes may, with the consent of the Athlete, the Anti-Doping Organization with results management responsibility, WADA, and any other Anti-Doping Organization that would have had a right to appeal a first instance hearing decision to CAS, be heard directly at CAS, with no requirement for a prior hearing, operationally independent from the Government, national federations, the National Olympic Committee, National
Paralympic Committee and the National Anti-Doping Organisation. There should be no interference from these actors on decisions made by the hearing panel (body) and on the conduct of the hearing proceedings.”

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

[3] COMMENT: Insert as Comment: The hearing panel (body) should be composed of at least a chair and two members. The chair should have a legal background and experience of practising law, but in all cases at least one member of the hearing panel (body) should be a person with a legal background. The other members of the hearing panel should provide a collective expertise in relevant fields, such as science, medicine or sport. [They should be appointed for at least a renewable 4-years terms of office.] Members of the hearing panel (body) should have no direct or indirect relation, both personally and professionally, with the parties to the proceedings or any organisations of which the parties are members. They also should have no prior involvement in the case. The athlete or other person who is asserted to have committed an anti-doping rule violation should be authorised to request the replacement of a member of the hearing panel (body) in case of doubts on his/her impartiality.

[4] COMMENT: Each athlete or other person who is asserted to have committed an anti-doping rule violation should have an effective access to a hearing panel (body) to present his/her case, in person or in writing. Procedural fees should not prevent a person from accessing to the hearing. When necessary, States Parties should consider establishing a legal aid mechanism in order to ensure this access.

[5] COMMENT: Effective defence and equality of arms (i) Each athlete or other person who is asserted to have committed an anti-doping rule violation should have a right to defend him/herself and to present his/her arguments. The athlete or other person shall have a right to be represented by a legal advisor and assisted by an interpreter. (ii) The athlete should have the right to request for witnesses or experts. The hearing panel (body) shall have complete discretion regarding the admissibility and appreciation of the evidence, depending on the circumstances of the case. (iii) Sanctions should be imposed in a proportionate manner depending on the circumstances of the anti-doping rule violation and in accordance with international anti-doping rules, such as the World Anti-Doping Code. (iv) All parties to the hearing should have access to the relevant documents and evidences.

8.1 Fair Hearings (3)

Norwegian Olympic and Paralympic Committee and Confederation of Sports

En cohérence avec notre commentaire relatif à l'article 20.5.7 du Code, relatif à l'indépendance des ONADs par rapport aux instances d'auditions, nous préféérerions grandement ne pas associer le droit du sportif, prévu à cet article 8 du Code, avec une quelconque responsabilité d'une OAD.

En ce sens nous proposerions de reformuler l'article 8 comme suit :

"Each person who is asserted to have committed an anti-doping rule violation has the right to a fair hearing within a reasonable time by a fair, impartial and independent (in accordance with Art. 6 ECHR 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.

Le sportif a droit à une audience par une instance indépendante et impartiale mais ce droit ne doit pas être de la responsabilité de l'OAD. Sinon, l'indépendance entre l'instance d'audition et l'OAD est de facto et par nature, remise en cause..."
Article 8.1 Fair Hearings

In our two last submissions we underlined that the Code and the Standards are increasingly becoming more extended and complex with detailed wording. This complexity itself requires further emphasis on the legal rights of persons being accused of an ADRV. This might be mitigated by WADA implementing more detailed requirements on the hearing process and other means to guarantee due process.

We believe this would safeguard and further strengthen the efforts of protecting fair play and clean sport, and we commend WADA for establishing ISRM. This is line with the concerns and suggestions presented in our two submissions, and we are pleased that WADA has proposed to include several of our proposals in the new standard. Please confer our submission to the ISRM.

We have previously recommended that the Code uses the accurate phrasing found in the ECHR Article 6.1, cf. “…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal…”

All hearing panels should be subject to the same requirements for independence and transparency. Both requirements are crucial to provide legitimacy to the judicial procedures. We suggest once more 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 either in the Code or in ISRM.

Furthermore, we repeat the suggestion that the Code or ISRM should require that dissenting opinions within a hearing panel or arbitration panel should be recognized and notified.

For further comments to the procedural rules, please confer our submission to the ISRM.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

The RMA can only be held accountable for reassuring access to an impartial and independent hearing panel. It can provide framework, but cannot be held accountable for the decisions the panel issues, since this is the cornerstone of the independence of the hearing panels. (reference to comment on 20.5.7 and ISRM)

ONAD Communauté française
Julien Magotteaux, juriste (Belgique)
NADO - NADO

Voir notre commentaire relatif à l'article 8.

Notre proposition de reformulation vise, de manière plus précise l'article 8.1

8.3 Waiver of Hearing (1)

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

We repeat our comment from the previous hearing phase about the 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."

10.2.4 (24)

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

World Rugby are supportive of the proposed standard sanctioning for violations involving of "Substances of Abuse" which we believe provides a mechanism more in line with the emphasis of Health as a Rationale for the Code.

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

For substances of abuse, the UCI would suggest a maximum sanction of 3 months, with a possibility to go down to a reprimand, in particular if rehab is available and the athlete does rehab. The UCI thinks this would simplify the current suggestion while at the same time addressing the rationale.

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

In a sport such as equestrian sport, the use of Substances of Abuse give rise not only to health concerns for the Athlete using the Substance of Abuse but also wider safety concerns.

The risks to the Athlete himself/herself, to his/her horse and to the general public (e.g. spectators, officials) of an Athlete competing with a substance such as cocaine or cannabis still in his/her system can be significant. Controlling a powerful animal like a high performance horse requires good judgement and that the Athlete to be of a clear mind i.e. not still under the influence of "social drugs". The FEI submits that a fixed 3 month penalty would not have a sufficient deterrent effect and requests that, even if it can be shown that the Use occurred Out-of-Competition and was unrelated to sport performance, ADOs have the discretion to either (i) not apply the new 10.2.4 based on reasonable safety concerns or (ii) apply a higher minimum sanction.

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

The recognition that illicit substances used for recreational purposes is supported. To be better aligned with government legal strategies for the management of this issue, the Code should not have a minimum sanction period of 1 month. In basketball there are professional leagues that have parallel illicit substance policies and rules, as do other sports. Yet the WADA Code makes no reference to these symbiotic codes. This is a serious oversight and overlooks a key stakeholder group that have significant experience of this type of drug abuse.
Instead, we would propose that a range of 0 to 3 months is included, with reductions available for either lack of Fault or for the completion of a Substance Abuse Program.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**  
Henriette Hillestad Thune, Head of Legal Department (Norway)  
Sport - National Olympic Committee

**Article 10.2.4**

Please confer our comments to Article 4.2.3., which is repeated below:

“In our previous submission we addressed the following: When moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such proposed changes have been made. Instead, the decision to move health to the top of the list has accentuated the lack of logic between the Code, the list and subsequent consequences.

WADA’s new proposal will contribute to solve the problem, raised by many stakeholders, with positive tests from substances that are only prohibited in competition, but clearly taken out of competition. However, the proposal will not solve the fundamental lack of logic referred to above, and we are concerned that this could be detrimental to the legitimacy of the anti-doping rules.”

**US Olympic Committee**  
Sara Pflipsen, Senior Legal Counsel (United States)  
Sport - National Olympic Committee

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

The change in the commentary from “unlikely in the extreme” to “highly unlikely” regarding the ability of an athlete to prove they acted unintentionally without establishing the source is welcomed. However, to reiterate, providing examples of some factors that ADOs and Hearing Bodies should take into consideration when faced with that situation could prove helpful and useful in establishing harmonized sanctions, proportionate to the violation.

**Article 10.2.4. Substance of Abuse**

The USOC is very supportive of the creation of the Substance of Abuse category. The violation is easy to assess, implement and standardize, which will not only harmonize sanctions but also greatly reduce the amount of time and money ADOs spend during results management. The recognition to separate out the issue and underlying cause of why people engage in using these substances for social purposes and not for performance enhancement reasons allows more resources to be utilized and focused on anti-doping efforts. In the effort to support this and ensure that its intent is captured accurately in the Code, the USOC encourages WADA to define “Substance of Abuse” directly in the Code (or within the commentary). The actual substances can be established in technical documents, but the concept needs to be articulated in the Code.

To comment further on the practicality of this provision, the USOC believes it is critical to know exactly which substances fall into this category as WADA has not yet distributed such information. Additionally, it should be clarified whether they are attached to a threshold level.

Lastly, the USOC would support affording athletes with the right to argue for a further reduction under No Fault in the rare circumstance in which it could apply. Thus, this section could clarify whether an athlete can...
still utilize 10.5 (No Fault).

UEFA
Rebecca Lee, Anti-Doping Coordinator (Switzerland)
Sport - Other

For “substances of abuse”, the athlete may be sanctioned for 3 months in some cases and even reduced to one month provided the athlete “verifies satisfactory completion of a substance abuse programme approved by the ADO”. It is not clear how this should work in practice and when this should be done. Does it mean the player has to send to the hearing panel the proof of his enrolment in such a programme to get a one month suspension? Is it still possible to do it after a final decision? Would this necessitate a new decision?

With the current system, the minimum sanction was a warning and it would be better to keep it as such depending on the circumstances of the cases. The warning is has a sufficient punitive effect for substances of abuse.

The idea of encouraging athletes tested positive for substance of abuse to undergo a special programme is not a bad idea but it should be done on a case by case basis. If the athlete is not an addict it is not necessarily essential for him to undergo such programme and should not be the only way of reducing the sanction. Furthermore, a warning is sufficiently punitive.

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

Substances of abuse – Article 10.2.4

The Government of Canada supports the addition of Article 10.2.4 that an ADRV involving a substance of abuse that is taken out of competition and is unrelated to sport performance be subject to a standard period of three months ineligibility. Also, while the Government of Canada understands the intent to incur rehabilitation programs where appropriate, this should not be part of an Anti-Doping Organization’s responsibilities. It would be very difficult for Anti-Doping Organizations to accurately determine which individual cases require rehabilitation and appropriate treatment programs and such functions lie outside their scope and mandate. There also needs to be more clarity on what constitutes “Substances of Abuse”. As such we look forward to the Prohibited List Committee’s recommendations on the matter.

ministère chargé des sports, direction des sports
Michel LAFON, Chef de bureau (France)
Public Authorities - Government

(comment for articles 4.2.3 and 10.2.4)

Creating the new category of “substances of abuse” is useful for NADOs and IFs to deal with cases implying drugs more simply and faster. Using this kind of drugs must be prohibited in sport and sanctioned by the antidoping law.

Nonetheless, if the ingestion is out of competition and is unrelated to sport performance, then we can wonder if such a use enhanced this sport performance. If this cannot be proved, then it is not related to sport and to doping, and then antidoping law shouldn’t deal with these cases. Antidoping law shouldn’t be like moral and doesn’t have to deal with cases that are not related to sport and sport performance. It is the role of national criminal law to prohibit or not the use of recreational drugs unrelated to sport. Moreover, this new category is not clear: is it a new category beside specified and non-specified substance? Are these substances prohibited in competition only or in and out of competition? If they are prohibited only in competition, then why sanctioning the residual presence of the substance that has been used out of competition and is unrelated to sport performance? On the contrary, if the substances of abuse are prohibited in and out of
competition, then some substances like cannabinoids that are not prohibited out of competition at the present
time will be with this new provision; then this provision can be seen as more severe than the current law.

Furthermore, we wonder whether a single period of ineligibility is relevant according to the classification of
drugs themselves (for example between hard drugs and soft drugs). Can the recreational use of hard drug
like cocaine be punished with the same period of ineligibility than the use of soft drug like marijuana, when
this specific use of marijuana is not forbidden by criminal law in some states?

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

**Article 10.2.2.**

For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which
render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying
as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited
substance entered the system. As an alternative, if there is a minor possibility for an athlete to apply for
reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular
circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to
establish the source of entering the prohibited substance his/her system, or to specify which particular
circumstances should not be interpreted as the basis for reducing the sanction period within the framework of
this article (this principle was applied and is successfully implemented in article 10.4).

**Article 10.2.4.**

While some substances can only be recognized as substances of abuse that cannot improve athletic
performance (for example, cannabinoids), other substances that are proposed for inclusion in this definition
(for example, cocaine) are inherently powerful stimulants and can significantly improve athletic performance
when using in the competition period. The introduction of such stimulants in the definition of "Substances of
Abuse" and the imposing for their detection in any concentration of minimal term of ineligibility lasting 3
months can cause a significant increase in the use of cocaine and other similar substances to improve
athletic performance - the temptation will be high among speed-power and team sports athletes to use this
type of stimulants before the start (even if the sample is positive, the sanction will be minimal).

In connection with the above, we consider the inclusion of cocaine in the class of substances of abuse
absolutely unacceptable. At least, it should be established a detection threshold for these types of stimulants,
based on their real ability to improve athletic performance at a specific concentration, above which the
detection of cocaine in a sample should be punished by the standard sanction for non-specified substances.

**Anti Doping Denmark**  
Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO

We appreciate in principle the introduction of a simplified sanctions regime for substances of abuse.

However, the new article 10.2.4 should be followed up by a removal of marijuana/hash from the prohibited list
as proposed previously by ADD.

Furthermore, we take it that the scope and content of the "substance abuse program approved by the Anti-
Doping Organization with Results Management responsibility" referred to in the proposed article is left by
WADA to the ADO to decide upon. Such a program could be national or sports specific. If this should not be the
case, further clarification from WADA's side will be needed.

**NADO Flanders**  
Jurgen Secember, Legal Adviser (België)
The concept of substance of abuse is not preferred by Belgian NADOs. It is not sure that a system of flat rate sanctioning will save costs, since there is a discussion possible on the recreational or non-recreational use of the substances. Furthermore, some recreational drugs are worse for health than others. Applying a flat rate for all recreational drugs will put them on the same basis. NADOF and all Belgian NADOs are in favour of keeping a status quo in the sanctioning. This means with the distinction between specified and non specified substances. With the changed sanctioning for recreational athletes, lower sanctions remain possible. For international and national level athletes, there should still be a strict policy, since the non specified substances can form a health risk, and athletes should have an exemplary behaviour towards the general public. We would suggest that certain thresholds could be in place to have a better indication of which substances are taking outside competition. There is a threshold in place for cannabis, possibility is for a science based threshold to indicate whether there is recent use or clear use out of competition.

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

Article 10.2.4
ADNO support the substance abuse program and the option of alternative sanctioning based on an abuse program (re. 4.2.3).

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

As suggested in the second round consultation ADCH welcomes the introduction of specific sanctions for street drugs. However, the possibility to reduce the sanction from an already low 3 months to one months by completing a rehabilitation program seems a very light sanction. An idea is to increase the standard sanction to 6 months and reduce it to 3 in case of rehab.

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO

Article 10.2.4. The certainty provided by a fixed ban of 3 months for Substances of Abuse is very welcome.

However, as regards the reduction to a ban of 1 month for completion of a satisfactory substance abuse programme, we believe this is entirely unnecessary and would in fact cause significant unfairness.

In our view, a ban of 3 months is appropriate in cases of Substances of Abuse. There is no need for a further reduction to 1 month. While Anti-Doping Organisations should encourage Athletes to seek help and undergo such programmes, it should not be part of the Code.

Firstly, the reduction would be unrelated to intent, Fault or the seriousness of the violation. Secondly, from a practical perspective, a substance abuse programme can often take a number of months to complete (unless it is a full-time residential programme), thereby rendering the reduction redundant. Thirdly, in Ireland and presumably many other countries, such programmes are very often not immediately available and have lengthy waiting lists, again by which time the reduction may be redundant. Finally and perhaps most importantly, such programmes can be very costly indeed and so there would not be a level playing field for Athletes that do not have significant resources. For example, take two Athletes who to compete in the World Championships in eight weeks' time. They both test positive for cocaine – one can undergo a programme because his family / sponsors / team have significant resources, while the other cannot.
It is not clear the extent to which a hearing panel would be involved in Substance of Abuse cases. If an Athlete does not admit the ARDV, he / she, presumably, is entitled to a hearing before the Panel. If he / she admits the ADRV, it may make no sense to incur the cost of convening a hearing panel if there is no discretion as regards the ban.

A further question is whether a Substance of Abuse period of Ineligibility (3 months), can be further reduced and / or backdated to the date of Sample collection under Article 10.8.2?

**Autoridade Brasileira de Controle de Dopagem**  
André Siqueira Rodrigues, Technical Director (Brazil)  
NADO - NADO

We suggest the WADA Prohibited List Committee defines which substances are to be considered Substances of Abuse as per the Prohibited List. We understand this article means to protect the athletes’ health above all and encourage those suffering from a chemical dependency to get treatment and return to sport as clean and healthy athletes. In order for this to happen and for all these cases to be taken seriously we have to make sure no athletes testing positive for diuretics or anabolic steroids are going to claim substance abuse just so they get a shorter period of ineligibility. Most cases related to substance abuse involve Stimulants, Narcotics and Cannabinoids, all prohibited only In-Competition, and if they are the ones WADA refers to when bringing up “Substances of Abuse“ it should be made absolutely clear.

**NADA**  
Regine Reiser, Result Management (Deutschland)  
NADO - NADO

Art.10.2
For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system.

As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

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

While some substances can only be recognized as substances of abuse that cannot improve athletic performance (for example, cannabinoids), other substances that are proposed for inclusion in this definition (for example, cocaine) are inherently powerful stimulants and can significantly improve athletic performance when using in the competition period. The introduction of such stimulants in the definition of “Substances of Abuse” and the imposing for their detection in any concentration of minimal term of ineligibility lasting 3 months can cause a significant increase in the use of cocaine and other similar substances to improve athletic performance - the temptation will be high among speed-power and team sports athletes to use this type of stimulants before the start (even if the sample is positive, the sanction will be minimal).

In connection with the above, we consider the inclusion of cocaine in the class of substances of abuse absolutely unacceptable. At least, it should be established a detection threshold for these types of stimulants,
based on their real ability to improve athletic performance at a specific concentration, above which the
detection of cocaine in a sample should be punished by the standard sanction for non-specified substances.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Article 10.2.4 Substances of Abuse:
UKAD supports the principle of introducing a standard or “flat” sanction for Substances of Abuse to avoid
costly hearings to establish an Athlete’s level of fault. However, UKAD considers that the proposed three
month / one month period of Ineligibility is too short.
It is plain that there is considerable strength of feeling against this proposed period. UKAD is very keen to
ensure that WADA does not react to that by abandoning the principle of a standard sanction in these cases.
The issue of the length of the standard sanction can be considered separately from whether a standard
sanction is introduced at all.
UKAD’s proposition is that Article 10.2.4 is adopted as set out in the December 2018 draft Code, but that the
period to be imposed, in all cases, without any assessment of the Athlete’s level of fault, is 15 months, or 12
months where the Athlete verifies satisfactory completion of a substance abuse program approved by the
ADO with RMA.
Some more detail will be needed about when such a program will need to be completed (for example, before
the expiration of one half of the period of Ineligibility).
It should also be made clear that an Athlete in a Substance of Abuse case will not be entitled to any further
reduction in the period of Ineligibility by the application of Article 10.8.2.

ONAD Communauté française
Julien Magotteaux, juriste (Belgique)
NADO - NADO

Nous ne sommes pas favorable à cette disposition relative aux "substance of abuse".

En premier lieu, l'on ne sait pas encore ce qui serait désigné dans ces substances même si l'on peut
supposer que la marijuana et la cocaïne en feraient a priori partie.

Or, si tel est le cas, que ce soit en termes de santé publique ou sur le plan de l’ordre public, ces deux types
de substances, parfois qualifiées de drogues récréatives, ne doivent plus que probablement pas être mises
sur le même pied (lacocaïne ayant, sauf preuve contrairedes effets addictifs, nocifs pour la santé et
potentiels sur la société plus graves et importants que la marijuana).

Or, avec un régime indistinct prévoyant une sanction de base de 3 mois quelle que soit la substance, on ne
tient plus compte de ces différences, qui nous semblent, pourtant, importantes.

Surtout, nous pensons aussi que compte tenu de la grande diversité des législations et des politiques
 criminelles concernant les drogues (en ce compris en ce qui concerne la question de la répression de la
possession ou de l’usage de ces drogues) de par le monde, il est quasiment impossible et ce n’est
probablement pas à la Communauté antidopage qu’il revient de déterminer ce qui est admissible ou ce qui
ne l’est pas et dans quelles proportions.

Aussi, pour le cannabis et la cocaïne par exemple, nous proposons de garder le système actuel : une
interdiction de base avec deux possibles aménagements:

- le rehaussement des seuils à partir desquels on considérera que l’usage était en compétition et, donc,
interdit. En sens inverse, en dessous du seuil, on considérera que l’usage était hors compétition et ne pouvait
plus avoir de rapport avec la performance

- la possible application du régime plus favorable, des sportifs récréatifs, qui leur permet de bénéficier d’un
régime plus favorable en termes de charge de la preuve et de sanction

Cette proposition relative aux seuils est aujourd’hui, apparemment, scientifiquement possible grâce à
l'affinement des analyses permettant de mieux distinguer ce qui relève du "hors compétition" et ce qui relève
While this new rule is a positive development, athletes should still be able to argue for further reduction under 10.2.4 based on a showing of No Fault or Negligence or No Significant Fault or Negligence. There are certainly circumstances where a sanction for an anti-doping rule violation involving a Substance of Abuse could arguably be less than one month.

The following statement raises fundamental questions relating to the extent to which these rules can have authority over the lives of athletes (and others) outside of sport. "any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, then the period of Ineligibility shall be three months Ineligibility." This explicitly refers to circumstances only apparent through the coincidental identification of the use of substances by definition unrelated to and not impacting on sport. While testing may have the capacity to identify this drug use it is none of the business of sporting bodies with respect to the purposes of these rules. If there is any legitimate reason to utilise this information it can only be in the domain of duty of care (and more commonly applicable to an employment relationship) and should not result in punishment but rather rehabilitation. It may well be a matter of public health but that is explicitly not sufficient and, indeed, if it can be used in isolation then tobacco (and many other medications which are abused) should also be encompassed within such a remit. If it relates to the "spirit of sport" then that should be stated explicitly and explained how it applies. If it is the case it is again indicative of the very narrow (and outdated) representation of the sporting community within WADA governance. The fundamental impropriety of this element of the code is not saved by the ad hoc proposal to raise reporting levels which actually recognises the incongruity of the provision but only puts sellotape over it. To the extent that, failing any fundamental change, this alteration is helpful it is supported. Again the point is that the authority for making such intrusive rules must be made clear.

National Federation: British Rowing agrees with the premise of classing “street drugs” as “Substances of Abuse”, as well as making the primary focus during a hearing regarding one of these substances, athlete health and wellbeing. National Federation: I generally agree with what is being said although I do have some questions: 1. How would an athlete establish if the substance had been taken in or out of competition? What is the decision threshold? 2. Who would run and pay for the rehabilitation programme and what would it involve? 3. If there was a positive test and they went through the above process and later on there was a second violation for cocaine what would the likely sanction be then? Athlete Comment: I wholeheartedly disagree with the changes which suggest a lesser ban for a ‘social drug’. Cocaine could have a performance impact in some sports and as soon as we start saying some drugs are fine because they were taken socially, we have a problem. I also don’t think it is advisable for an Anti-Doping agency to be seen to be condoning its use by saying its social not performance enhancing. As an athlete you know you are responsible for what goes in your body and this has to include ‘social drugs’, blurring the lines is a dangerous move. I do however agree with the suggestion that making the ban an immediate statutory length and thus would save costs and time. Also the possible reduction for participation in a rehab programme does make sense but then again why is rehabilitation the role of WADA? The suggested amendment seems to contradict itself by saying its social and not our responsibility in sport but then take responsibility for a rehab programme! Athlete Comment: I wholeheartedly agree with the statement that ‘resources could be better
spent on anti-doping investigations or anti-doping rule violations which really do affect the level playing field of sport' and that 'In cases where an athlete has a drug problem and not a performance enhancement problem that affects the level playing field, Signatories should prioritise the athlete's health'  
•I'd be interested to know what the satisfactory level of proof would be for the athlete to 'establish that the use occurred out of competition and was unrelated to sport performance'. Would the athlete's word be enough for this? Would it be based on the level of the substance found in the sample? Or would harder proof in some way be needed? In which case, I think this would be extremely difficult to realistically obtain.  
•Would a 'rehab' programme still be seen as compulsory regardless of the level found in the sample? Who would police/enforce this? Who would pay for this? 'Rehab' programmes vary enormously, how would this be standardised? 

**National Federation:** The RFU are very supportive of this approach in the potential new code. As it states, significant amounts of money get spent on illicit drug cases which should be diverted to more performance related substances. If I am honest, I would be surprised if the clause remains, as I gather other jurisdictions have very strong feelings about illicit drugs. My counterparts in France for example have quite different views regarding cocaine particularly. 

I think it might be worth addressing multiple violators of substance of abuse drugs by doubling the bans per offence. It may also be worth considering non-disclosure where the athlete’s mental health can be demonstrably affected by public announcement. 

**National Federation:** we have concerns suggesting a lesser ban for a "social drug" and that this may inadvertently open the back door to doping if an athlete was to acknowledge that cocaine is performance enhancing? Is it possible that cocaine can have a performance impact in some sports and we also should not be condoning its use by saying its social and not performance enhancing. 

Could UKAD and/or WADA look to what the RFU have done in terms of increasing out of comp testing and then offering people rehabilitation if this test is positive for cocaine? 

As an athlete it is the athlete's responsibility for what goes in their body and this has to include 'social drugs', blurring the lines is a potentially dangerous move. 

We would not be against making the ban an immediate statutory length and thus would save costs and time. Also the possible reduction for participation in a rehab programme does make sense but would question is rehabilitation the role of WADA? The suggested amendment seems to possibly contradict itself by saying its social and not our responsibility in sport but then take responsibility for a rehab programme. 

**Lab:** 1. I note from the published WADA Anti-Doping Testing figures that the “69 positive tests” for cocaine world-wide means merely 69 Adverse Analytical Findings reported by WADA accredited laboratories. I do not think that this is a huge problem for sport. Methylphenidate was reported 108 times and amfetamine on 102 occasions. If the latter two substances were covered, at least on some occasions by valid TUEs, then I think that too is a problem that needs addressing but appears not to have been. 

2. Allowing cocaine (or amfetamine) in sport risks serious adverse events (even deaths) as occurred before sport controlled these powerful stimulant drugs. 

3. The first sub-section 3 relates to sanctions where recognising that an Athlete has a drug problem and handling this appropriately is surely a good outcome for sport. Appropriate “sanctions” might include requiring the Athlete to be treated for the drug problem and a sports sanction would be suspended subject to the Athlete accepting and undertaking such a treatment. 

4. The second sub-section 3 suggesting a “flat three month” period of ineligibility, in my opinion, if adopted as written does not address my comment in paragraph 3. above and may well get sport into disrepute under the “duty of care” principle of NADOs. I recommend that a longer sanction be automatic, e.g. six or twelve months, if the Athlete does not accept appropriate counselling for drug abuse. (It may be that internationally, approaches used in Western countries are not used/available elsewhere but then the Athlete is no worse off than the WADA proposed approach.) 

5. The second sub-section 4 does largely address my points but why impose even a one month period of ineligibility? 

**National Federation:** 1. How would an athlete provide evidence that their street drug use was purely recreationally, and not for performance gains?
2. If an athlete is tested positive for street drugs out of competition, is this information shared with the sport/NGB from a legality viewpoint so action could then be taken?

3. When testing for street drugs, is this based on presence? Or is it threshold levels?

4. How do we differentiate a social drug use incident and a drug problem/addiction?

5. If an athlete is tested positive for street drugs and opts to take a rehabilitation course; who organises said course? The athlete? The NGB? The sport?

Medical/Pharmaceutical Professional: I have looked in particular at section 27 and feel that the stance renders any attempts to challenge the law on use/possession of performance enhancing drugs as grossly hypocritical. If this is to be accepted then all in sport should desist in trying to have the current laws on performance drugs in the community criminalised and any further challenges would lead to the new provisions being cited as evidence of such hypocrisy by those in sport.

In essence going “soft” on drugs of proven harm for many against drugs that are proven to harm generally few but have an impact on performance.

If sport wishes to potentially be seen as going “lightly” on the use of cocaine or other recreational drugs that are banned in sport when it deems this has been done recreationally as opposed to use for performance gain this is a dangerous precedent, in my opinion.

An athlete is strictly liable for the product in their system and the use of recreational drugs by “celebrity status” athlete is harmful to their health and against the spirit of sport leven if recreational damages the reputation of sport and has the potential to “normalise” the use of illegal substances so surely the proposed stance is most questionable.

Cocaine remains a Class A drug in the UK [Crack cocaine, cocaine, ecstasy (MDMA), heroin, LSD, magic mushrooms, methadone, methamphetamine (crystal meth)] with Up to 7 years in prison, an unlimited fine or both.

In essence beware of unintended consequences. Indeed to have cocaine and heroin as “not prohibited” out of competition is a disgrace, in my opinion.

Medical/Pharmaceutical Professional: I agree with the idea of a period of 3 months for an anti-doping rule violation involving a substance of abuse where an athlete can establish that use was OOC and was unrelated to sport performance. This enables athletes to recognise the dangers of inappropriate use of substances of abuse, provides consistency in the application of sanctions which is fair to all athletes and reduces the costs of hearings on the appropriate length of sanctions in these cases. However, I am uncomfortable with the reduction to one month if the athlete or other person verifies satisfactory completion of a substance abuse rehabilitation program, for two reasons. The first is that such programs are not available in all countries around the world, therefore athletes would be treated unequally. The second is that of the time courses available for completion of such programs and of the results management process, may not be compatible.

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

Consider removing “approved by the Anti-Doping Organization with Results Management responsibility”. It does not fall within the mandate (and often expertise) of an ADO to appreciate (and judge on) the validity and reliability of substance abuse programs.

It is recommended that the following part be removed: "approved by the Anti-Doping Organization with Results Management responsibility".

10.4 Aggravating Circumstances which may Increase the Period of Ineligibility (14)
Union Cycliste Internationale
Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)
Sport - IF – Summer Olympic

The UCI believes that the breach of a provisional suspension should only be considered as Aggravating Circumstances where such breach was intentional.

Also, the use of “knowingly” could be relevant for, e.g., avoiding aggravating circumstances for unknowingly breaching a provisional suspension. However, the wording currently only refers to “knowingly commit the antidoping rule violation” which does not seem to take into account knowingly breaching the provisional suspension. We would therefore propose the following addition at the end of Article 10.4:

“did not knowingly commit the anti-doping rule violation or breach of provisional suspension”

Also, considering Art 10.3.3 which clarifies that an ADRV of Tampering entails a Period of ineligibility of 4 years, the UCI believes that the reference to Tampering should be deleted from the Definition of Aggravating Circumstances.

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

There is confusion in the new draft about the applicable sanction in a Tampering case where the act of Tampering is committed in connection with another violation. On the one hand, the definition of “Aggravating Circumstances” includes as an example if "the Athlete or other Person engaged in Tampering" which would appear to suggest that Tampering during the results management or hearing process can only result in an uplift of 0-2 years' sanction on the otherwise applicable period of ineligibility. The new article 10.9.3.3 on the other hand suggests that the Tampering violation would be treated as a separate first violation for which a separate sanction (of 4 years) would run consecutively to any sanction imposed for the underlying violation. Of these two approaches, the AIU would support the latter one and suggests in any event that the definition of "Aggravating Circumstances" and article 10.9.3.3 be re-visited to avoid any scope for confusion.

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

FIBA does not support re-introducing the possibility for Aggravating Circumstances

- Four years for a first violation is already the equivalent to a life ban in most sports, including basketball.
- This provision adds complexity to the sanctioning regime by relying on the concept of “knowingly” committing a violation here, and "intentional" violations elsewhere
- Many of the circumstances covered by the definition of Aggravating Circumstances definition are already covered by other provisions (i.e. if Athletes violate a Provisional Suspension, they do not receive credit for the Provisional Suspension, multiple violations are covered elsewhere, deceptive or obstructive conduct would already fall under Tampering, most likely), which creates the impression that Athletes are being punished twice and would certainly present a challenge for hearing panels faced with applying Aggravating Circumstances.
  - FIBA would at a minimum recommend removing “Tampering” from the list - including it here may create an almost automatic 6 year period of Ineligibility for these types of violations
- It would also be in favour of removing the reference to breaking a Provisional Suspension, since there are certainly situations in which the Provisional Suspension is not purposefully violated.

**US Olympic Committee**  
Sara Pflipsen, Senior Legal Counsel (United States)  
Sport - National Olympic Committee

Article 10.4. Aggravating Circumstances

See USOC’s previous comment within the Tampering section for some concern relating to the re-introduction of this concept. Also, although the USOC recognizes there may be a rare extreme instance that could warrant a 6-year sanction, there is a concern for fairness and proportionality if athletes routinely face a 6-year sanction for a first offense.

Further, the USOC believes that it's necessary to clarify if the “seriousness of the violation” relates to the seriousness of the underlying violation or the seriousness of the conduct.

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

**Article 10.5 “No Significant Fault or Negligence” should 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.

Add to the notes to article 10.5 that the application of this article is possible only after admitting that the violation was committed unintentionally in accordance with the provisions of article 10.2. (In our practice there was a case of incorrect application of this item by the CAS Sole Arbitrator – recognizing that the athlete committed the intentional ADRV, the Sole Arbitrator, however, subsequently applied the art. 10.5 “No Significant Fault or Negligence”).

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

**Article 10.4 Aggravating circumstance which may increase the period of ineligibility**

ADNO support the introduction of this paragraph.

**Sport Ireland**  
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)  
NADO - NADO

**Articles 10.4.** Surely, the length of the additional ban should be based on the seriousness of the Aggravating Circumstance rather than the seriousness of the underlying violation? The same point also appears to arise in relation to an Athlete establishing that he or she did not knowingly commit the violation.
For it to be otherwise makes absolutely no sense in a significant number of potential scenarios. The Aggravating Circumstance may be a failure to respect a Provisional Suspension. Why should the length of increased ban for the Aggravating Circumstances be based on the seriousness of the underlying violation (which may not be very serious) instead of the seriousness of the failure to respect the Provisional Suspension (which could involve competing in multiple events and using nefarious means to do so)?

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Art. 10.4 (NEW) remains critical. An "additional sanctioning" within the framework of disciplinary proceedings already initiated is legally questionable.

Art. 10.5.2
Further clarification (in addition to the comment at 10.4) of what will be regarded as No Significant Fault or Negligence would be helpful, as it is difficult to discern consistent principles in the case law. Also, more specifically re 10.5.2 (Current drafting: Article 10.5.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person’s degree of Fault) - the Code should expressly clarify the position in relation to Art 2.3, in particular in light of decisions applying 10.5.2 (or 10.4) to Article 2.3 cases. Should Articles 10.4 and 10.5.2 apply to intentional breaches of Article 2.3? This would help not only to clarify the application of no significant fault or negligence, but also with respect to whether intention (as defined in article 10.2.3) must be proved to establish an ADRV of evasion or refusal contrary to Article 2.3.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

It needs to be clarified what to do with tampering during results management.

If tampering is discovered in the results management phase, it should be pursued as an aggravating circumstance.

if discovered after a final decision, it should be handled as an independent act of tampering.

There is however a significant difference in sanctioning. Tampering pursued as an ADRV has a potential sanction of 4 years ineligibility, with even further possibility of applying aggravating circumstances to that new ADRV. Aggravating circumstances itself only has a possible addition of 2 years ineligibility to the maximum sanction.

The sanction can not solely depend on the moment of discovery.

As it seems, it is a choice of the ADO discovering tampering to bring it forward as a separate ADRV. But tampering during RM can not be sanctioned twice.

In principle, this can lead to situations where an athlete receives a six year period of ineligibility (1st violation + aggravating circumstance of having committed multiple ADRV’s) and receiving 4 years extra for tampering during the RM process. When the tampering during RM would be included in the aggravating circumstances, this would only amount to 6 years in total as opposed to 10 years when treated seperately.
It should be clear when to pursue tampering during RM as an aggravating circumstance, or as an individual act of tampering.

A kind of diversified sanctioning mechanism could be considered, with the maximum of total sanction being 2 years above the maximum sanction for the ADRV for which RM was performed. Some examples:

- If an athlete had a sanction for 2 years but tampered to prove he did not act with intent, a sanction of an additional 4 years is justifiable.

- If an athlete already received the maximum of 4 years + 2 years for aggravating circumstances, an additional sanction for tampering seems disproportionate.

- If an athlete was acquitted after tampering during RM process, he could still be sanctioned for 6 years if aggravating circumstances are in place. This can be due to the severity of his actions.

NADOF suggests to solve this as a rule for multiple violations where there is no separate intent, and treating the tampering as a concurrent first violation. This would mean that tampering during RM is considered a violation within the same culpable intent as the ADRV, and that the new sanction is concurrent, also adding that tampering during RM is always considered an act in which aggravating circumstances should apply. This would automatically result in a 6 year period of ineligibility, even when the athlete had received a very reduced initially imposed sanction as a result of his tampering.

A person not involved in the RM process can also receive 4 years, with a possible additional 2 years for tampering.

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**Canadian Centre for Ethics in Sport**

Elizabeth Carson, Manager, Sport Services (Canada)

NADO - NADO

In Article 10.4, CCES is concerned that the reference to “not knowingly commit” an anti-doping rule violation may be confused with a determination regarding a lack of intent in 10.2. Is the intention that Aggravating Circumstances cannot be applied if there is a proven lack of intent to commit the anti-doping rule violation? That seems to be the case. There could be any number of Aggravating Circumstances present and applicable even when a person had no intention to dope. The wording should ensure that Aggravating Circumstances can apply when the sanction is otherwise at 2 years or less involving specified substances. For example: failing to respect a Provisional Suspension, being engaged in deceptive conduct to avoid detection or adjudication of the anti-doping rule violation, tampering during the Results Management or the hearing process.

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**Institute of National Anti-Doping Organisations**

Graeme Steel, Chief Executive (Germany)

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

The reintroduction of provision for aggravated circumstances as drafted is supported.

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**Law Offices of Howard L. Jacobs**

Howard Jacobs, Attorney (U.S.A.)

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

Allowing a sanction of 6 years for a first offense for a positive test raises proportionality concerns, and is certain to be challenged. Furthermore, requiring an Athlete or other Person to establish that he or she did not knowingly commit the anti-doping rule violation to avoid the additional sanction is an unconscionable
requirement, and conflicts with the fact that the burden of proving aggravated circumstances is placed on the ADO: if an ADO has the burden of proving that Aggravating Circumstances are present, that requirement would have to include a requirement that the ADO prove that the Athlete or other Person knowingly committed the anti-doping rule violation. Just as CAS panels have expressed the difficulty for an athlete to prove lack of intent to violate the anti-doping rules without proving the source of the prohibited substance, the same must be said with respect to the difficulty of an ADO in proving Aggravating Circumstances without also proving that the Athlete or other Person knowingly committed the anti-doping rule violation.

**my own personal initiative**
Jan Mašek, lawyer (Czech Republic)
Other - Other (ex. Media, University, etc.)

**Art. 10.4 Aggravating Circumstances which may Increase the Period of Ineligibility**

**Current version:**

“(...) The imposition of an additional period of Ineligibility for Aggravating Circumstances may be sought by the Anti-Doping Organization with Results Management or any party to an appeal under Article 13, or an additional period of Ineligibility may be imposed by a hearing body on its own initiative.”

**New version:**

“(...) The imposition of an additional period of Ineligibility for Aggravating Circumstances may be sought by the Anti-Doping Organization with Results Management or any party to an appeal under Article 13, or an additional period of Ineligibility may be imposed by a hearing body on its own initiative.”

**Rationale:**

The current wording changes unsuitably the positions of stakeholders involved in the doping hearing. Thus it constitutes a disbalance between them. An athlete shall be considered as a weaker party likewise an employee in the relation to an employer or a consumer in the relation to a business company or to an entrepreneur. The proposal makes his/her position even weaker. An athlete will have to defend himself/herself against all other stakeholders during a process. The only parties that should seek for an imposition of an additional period of ineligibility for aggravating circumstances are the Anti-Doping Organizations. Hearing bodies in the doping proceedings should strictly play only a role of an independent, impartial and unbiased „judge“ whose duty is to decide the cases justly. In this context one can say that the another example of disproportion is that a hearing body does not have apower to consider also potential mitigating circumstances on its own initiative.

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

Nice to see this provision back. But it has to be applied strictly to penalize rather than be ignored in most cases including use of three to four steroids in combination as was the case in 2009 Code.

**10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence (8)**

FINA
Cornel Marculescu, Executive Director (Switzerland)
Sport - IF – Summer Olympic

There are contradictory opinions on the issue of raising the reporting limits for those prohibited substances which are known contaminants. Although the step to raise the levels seems appropriate, especially to facilitate the work of disciplinary bodies, the disparity of concentrations of contaminants present in products from different manufacturers and different batches, will make the investigation and agreement of suitable discriminatory levels very complicated and potentially unfair for some situations. Other kind of evidences
appearing in each investigated case may be even more relevant for decisions on ADRV (e.g. results obtained immediately previously and subsequently to the problematic test to distinguish between a small tail concentration of a big dose or a tiny level coherent with a punctual contamination).

**FIBA**
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

FIBA recommends simplifying the provisions governing No Significant Fault or Negligence to make all NSFN violations for arts. 2.1/2.2/2.6 subject to a 0- to 2- year period of Ineligibility depending on the Athlete’s degree of Fault.

These provisions govern inadvertent violations, committed with a low level of Fault. These types of violations are not – and should not – be a priority of anti-doping regulation. In light of this low priority, it seems difficult to justify creating a complex regime comprising four separate provisions with different application criteria.

FIBA recommends creating one provision governing NSFN for these violations and focus instead on making the definitions of “Fault”, “No Significant Fault or Negligence” and “No Fault or Negligence” more robust/user-friendly to encourage a harmonized approach to evaluating Fault. This would better ensure that sanctions given for violations that are established to be committed with a low level of Fault, and with a negligible link with the objectives of anti-doping regulation receive proportional Consequences.

**US Olympic Committee**
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Article 10.6. Reductions for No Significant Fault or Negligence

In order to address the issue of contamination in certain products, the USOC appreciates that WADA has committed to issue a Technical Document increasing the reporting limit for certain substances that are particularly susceptible to contamination. Establishing threshold limits with those certain substances that are particularly likely to be found as contaminants is an important step to eliminate violations for inadvertent uses. However, without being able to view that document at this time, it’s difficult to comment whether it will adequately address the problem.

Even with increased reporting limits, there still may be circumstances which warrant some leeway for those known “likely” contaminants. Thus, the USOC believes that WADA should, in addition to raising the reporting limits, allow some room for ADOs to assess the circumstances of the case and be afforded with some additional flexibility in the range of consequences, just for those specific substances.

**Japan Anti-Doping Agency**
Akira Kataoka, General Manager, Results Management and Intelligence (Japan)
NADO - NADO

1. Revise the definition of “Protected Person”

One of the conditions of “Protected Person” requires a person who lacks legal capacity under applicable national legislation. However, under Civil Code of Japan, not only people who lack legal capacity but also people who have insufficient or extreme insufficient capacity can also be legally protected as people with limited legal capacity. Thus, the definition of “Protected Person” should include people, whose capacity is extremely insufficient or insufficient, in addition to people who lack legal capacity. We propose to revise the definition of “Protected Person” as: “Protected Person” requires being subject to the limitation of his/her legal capacity under legislation of his/her nationality.

2. Clarify priority of the definition of “Recreational Athlete” between ADOs
According to the second draft proposal, the definition of “Recreational Athlete” is defined by relevant IF, NADO or Major Event Organizations. However, our concern is: when the definitions by these ADOs are inconsistent, which definition is given priority? Does the definition by the Result Management authority prevail over others? We propose to insert a sentence to clarify priority in the definition of “Recreational Athlete”.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

Remarks for protected persons and minor athletes are made under the definition section.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Comment 83: Further clarification (in addition to the comment at 10.4) of what is to be regarded as No Significant Fault or Negligence would be helpful, as it is difficult to discern consistent principles in the case law.

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

It is known that due to the high sensitivity and selectivity of today's detection methods, substances can be detected that possibly entered the athlete's body due to contaminations (food, nutritional supplements or even medication). This problem could be best addressed by the List Committee in rising the reporting limits of such prohibited substances. If this is not the case, then an ADO with Result Management responsibility should prove a doping scenario (similar to the cases with biological profiles). If such a doping scenario cannot be established, then the result has to be declared negative and any anti-doping violation has to be annulled (it cannot be that an athlete is declared to have committed an anti-doping rule violation if he or she had absolutely no fault or negligence as has been showed in a scientific publication some years ago. An athlete took a not prohibited pain killer that was contaminated with a diuretic below the Good Manufacturing Practice and tested positive.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The proposed remedy to the problem faced by athletes unable to identify the source of prohibited substance is insufficient as it may well be a matter of luck for the athlete as to when a contaminated supplement was ingested and the degree of contamination. The Rules remain too heavily weighted against unsuspecting athletes in the effort to eradicate "cheating". For the most part the substances caught by this debate are at the lower end of the scale of real danger and are not where the weight of these rules should be primarily focussed. Provision should be made for a Tribunal to override this requirement and apply a reduced sanction where the full circumstances warrant it. It is acknowledged that this may lead to a lack of harmony but that can not override the need to seek to ensure that "fairness" is an essential element of the Code.

10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6. (5)

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

10.6.1.3 Protected Persons or Recreational Athletes
Generally, the USOC supports providing leeway for particular individuals due to the nature of an individual’s capacity. However, improvements to this definition could be made that would better suit the purposes of aligning efforts to combat doping rather than inadvertent uses.

Under Protected Persons, exempting out minors who are included in an RTP or who have never competed in an international competition for all intents and purposes will nearly exempt out all minor individuals that ADOs test. ADOs don’t normally or regularly test any other group of minors except those elite level athletes. Thus, in practicality, there is no longer any leeway afforded to minors. Secondly, exempting others for “reasons other than age has been determined to lack legal capacity under applicable national legislation,” places the burden on the nation’s laws to determine if that individual has the capacity. Rather, the Code should allow for the ADO to assess the circumstances on a case-by-case basis relative to anti-doping efforts.

The USOC supports the creation of the recreational athlete category and the inclusion of providing leeway for these individuals.

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

ADCH supports the introduction of a technical document redefining the reporting limit for certain substances that are particularly susceptible to contamination

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

A. Violations of article 2.3 should be included in this provision.

Evading sample collection precludes an element of intent. This can also be the case for a refusal to submit to sample collection. But in general, the flexible sanctioning should be broadened to article 2.3. Draft Article 10.3.1 stipulates that only in case of failing to submit to sample collection, the athlete can establish that there is lack of intent.

Recreational athletes are in many cases unaware of the testing procedures and should benefit from the more flexible sanctioning regime under draft article 11.6.3 (minimum sanction is a reprimand).

There should however be maintained the need of proof that there is lack of intent.

B. Although generally substances of abuse are in the opinion of NADOF not to be pursued through a flat rate sanctioning mechanism, it could be feasable to lower the minimum sancton to a reprimand for substances of abuse. This will add flexibility but still allow to have a diversified approach in sanctioning recreational drug abuse.

ONAD Communauté française
Julien Magotteaux, juriste (Belgique)
NADO - NADO

De manière générale, notre ONAD salue le principe de l'article 10.6.1.3 du Code en projet de prévoir un régime plus souple et plus léger, que ce soit en termes de charge de la preuve ou de sanction, pour les mineurs et les sportifs récréatifs.

Ce régime, qui se veut plus souple et qui tient mieux compte du niveau du sportif ainsi que de son niveau d’éducation antidopage réel ou supposé, nous paraît davantage proportionné et, partant, va dans le très bon sens.
Cependant outre la disposition telle qu'elle est actuellement proposée à l'article 10.6.1.3 en projet (mais voir également notre commentaire relatif aux "substances of abuse"), nous demandons de laisser la possibilité aux ONADs, pour ce types de sportifs (amateurs et mineurs), d'assortir une éventuelle réprimande d'une formation obligatoire en antidopage (par exemple sur les effets négatifs sur la santé ou en termes de valeurs du dopage).

Pour prendre un exemple très concret, si un sportif amateur ou mineur était pris pour cannabis et qu'il, par application de l'article 10.6.1.3 nouveau, parvenait à établir qu'il n'a commis aucune faute significative, alors nous souhaiterions qu'à côté de la réprimande qu'il pourrait recevoir, il puisse lui être imposé, au niveau de la "sanction", de suivre, par exemple 4h de formation obligatoire en antidopage.

Si c'est un mineur, ces 4h seraient principalement orientées "valeurs et santé".

Si c'est un amateur et qu'il a été pris pour cocaïne, la formation sera plus orientée "santé et autres conséquences des addictions".

En cas de récidive, par contre, pour un amateur ou un mineur qui aurait déjà été sanctionné et aurait déjà reçu sa formation obligatoire, là, il va de soi qu'il ne serait plus dans les conditions de l'absence de faute significative. Il serait alors, dans un tel cas, effectivement sanctionné (par exemple 6 mois ou un an de suspension) mais même dans un tel cas nous estimerions toujours utile, à nouveau, de prévoir une nouvelle formation obligatoire (venant donc s'ajouter à sa suspension).

De cette manière, avec cette flexibilité laissée aux ONADs à ce sujet - ce serait une possibilité pas une obligation - on aurait aussi une manière de faire de la prévention et de l'éducation lors de la sanction.

Or, comme l'éducation est, à juste titre, de plus en plus aux centre des priorités de toute la communauté antidopage, il s'agit d'un moyen efficace de combler, au moment de la sanction, un déficit d'éducation, déficit auquel les jeunes sportifs et les sportifs amateurs ne sont, bien souvent, en rien responsables.

En effet et en sens inverse, les sportifs d'élite reçoivent, eux, au minimum lors de l'inclusion dans un groupe cible, une base minimale d'éducation en antidopage (que n'ont pas nécessairement les amateurs, ni les mineurs), ce qui justifie en bonne partie (en plus de la valeur exemplative des élites) que le régime qui leur est applicable soit plus strict.

Ici, par ce mécanisme plus souple, laissé à la discrétion des ONADs, on ferait de l'éducation dans la sanction (on l'expliquerait, de même que le pourquoi de l'interdit) et l'onpropagerait encore et toujours l'éducation antidopage auprès des jeunes et des sportifs amateurs, pour combler peu à peu la méconnaissance des règles et de leur but.

Concrètement, il est proposé de modifier l'article 10.6.1.3 en projet de la manière suivante :

"Where the anti-doping rule violation is committed by a

Protected Person or Recreational Athlete, and the Minor Protected

Person or Recreational Athlete can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Minor Protected Person or Recreational Athlete's degree of Fault.6

In case of application and without prejudice to the preceding paragraph, a Protected Person or a Recreational Athlete can also be obliged, by an AOD, to follow mandatory anti-doping training courses."

Cette proposition tient également compte de notre position et proposition concernant les "substances of abuses".
International Testing Agency
International Testing Agency, Legal Affairs Manager (Switzerland)
Other - Other (ex. Media, University, etc.)

The term “Particular Circumstances” is capitalized although not defined.

10.6.1.1 Specified Substances or Specified Methods (1)

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

DFSNZ is a little wary of imposing harsher sanctions where a substance of abuse is detected (compared to a specified substance). As per our comment under the rationale of the Code, this has the potential to distract from what we see as our key role of anti-doping (and not broader social issues). Furthermore, DFSNZ sees some benefit in an unintentional doper (specified substance) receiving some mitigation of sanction in return for attending anti-doping education.

10.6.1.3 Protected Persons or Recreational Athletes (4)

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

Article 10.6.1.3 Protected Persons or Recreational Athletes

ADNO support this article identifying flexibility related to protected persons or recreational athletes. We appreciate that the Code is limiting the flexibility, ensuring that these dispositions will not be abused, but actually be fair towards athletes that is not taking part in competitions where the Code should be addressed in full, or where athletes need to be protected for specified reasons.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

The definition of "protection persons" and the scope of application (in line with the Standard for Education) remains unclear and too general.

(See definitions).

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

Protected Persons or Recreational Athletes

DFSNZ supports this addition to the Code and does not believe it is too lenient..

Our experience bringing non-analytical ADRV proceedings against 40+ athletes who participate below what would generally be defined as “national level” illustrates that where a principled approach is taken, a very small number of these athletes may qualify for this relief. This is on the basis of them meeting the definition for what we envisage a recreational athlete to be AND demonstrating no significant fault.
There is a clear difference throughout the Code between intentional and unintentional doping. We would not envisage this relief being applied to a recreational athlete who was intentionally doping.

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

Article 10.6.1.3 is not too lenient

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1 (2)

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 10.6.2

Although the Code explicitly states that it has been drafted giving consideration to the principles of proportionality and human rights, it makes use of non-flexible regulations and allows only some mitigation of sanctions based on the degree of fault. The use of non-flexible regulations may be based on a general concern and caution regarding the quality of the first instance hearing bodies. We fully understand and support the need for harmonization of the rules and the jurisprudence. However, we believe the Code should give more consideration to the principle of proportionality, by allowing a greater amount of judicial discretion to be applied when deciding the consequences of an anti-doping rule violation. In our readthrough of the submissions from the stakeholders, we find several stakeholders addressing the issue of proportionality related to this Article.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Article 2.3 / 10.3.1 / 10.5 / 10.6.2: Clarification is needed on whether intention needs to be proved for the ADRVs of evasion and refusal. If so, is it the Article 10.2.3 definition of “intentional” that applies? This has further implications for No Fault and Negligence and No Significant Fault and Negligence – can either of these Articles apply in evasion, refusal or intentional failure cases? The Code needs to be clearer in this respect, as currently the comment (88) to Article 10.6.2 leaves room for misinterpretation, as it omits to mention Article 2.3. It would help if this comment set out that No Significant Fault or Negligence cannot be applied to evasion or refusal cases, as these both have “intention” as an element, or in an intentional failure case. In such cases, if intention is not proved, no ADRV is proved. More guidance on the difference between an intentional failure and a refusal would also be helpful. It would also be helpful to define what constitutes “notification” for the purposes of Article 2.3.

10.7 Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons other than Fault (5)

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

FIBA questions whether anti-doping regulation is benefitted by offering Athletes a reduction in a sanction in exchange for information about sports integrity violations other than doping. It seems preferable to link Substantial Assistance only to information that aids in the anti-doping efforts. It would inevitably raise...
proportionality issues to impose different sanctions on Athletes who have committed similar violations for reasons that fall outside the objectives/legitimate aims of the Code.

FIBA would also support granting more flexibility to ADOs to be able to grant a reduction based on Substantial Assistance when an Athlete has given helpful information that does not necessarily lead to an anti-doping rule violation, etc.

**AEPSAD**

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

Article 10.7, provides for the intervention of WADA in cases of substantial assistance. This intervention, approving the proposals of a national public entity are contrary to our constitution, since it supposes displacing the competence of an administrative body, legitimized by the constitution, to a private and foreign entity, without constitutional legitimacy. This situation was already addressed in the adaptation of the Spanish law to the 2015 WADC and the Spanish authorities and public powers only allowed that in the Spanish law, the agency could request a report to WADA, but not submit to its decision issues that must be resolved by Spanish authorities, in this case, the NADO.

The same considerations we can do to the provisions of article 10.8.2. The exercise of the sanctioning power cannot be object of disposition or agreement by the stakeholders. The Spanish public authorities have the obligation to prosecute and punish the infractions, without the Constitution leaving freedom to decide the sanctions. These sanctions are established by the legislator, not by the authority that applies the law.

**CHINADA**

Yao Cheng, Result Management (China)
NADO - NADO

**Article 10.7.1** states that if an athlete provides substantial assistance after the final appellate decision, a part of the otherwise applicable period of ineligibility may be suspended with the approval of WADA and the applicable International Federation. Article 10.6.2 provides that the athlete may be treated more leniently with the consent of WADA. At present, the number of such cases is increasing, and it is recommended that appropriate provisions and guidelines be made on the procedures to seek the consent of WADA and relevant parties.

**University of the West Indies**

J. Tyrone Marcus, Adjunct Lecturer in Sports Law (Trinidad and Tobago)
Other - Other (ex. Media, University, etc.)

This comment relates to the drafting of Article 10.7.1.1 of the 2021 Code. The 2015 Code lists two scenarios which can trigger the Substantial Assistance benefits, while the 2021 Code adds another two. The cumulative list of scenarios is introduced by the phrase "which results in" followed by a colon and then the list. However, since the expression "which results in" already appears BEFORE the colon, there is no need to repeat that phrase in Roman Numerals (ii), (iii) and (iv). The 2015 Code used a similar drafting style in Article 10.6.1.1 but this, respectfully, was not correctly drafted back then either. As long as the expression "which results in" is placed before the colon, all the scenarios can be stated without repeating the phrase after the colon. It means that only Roman Numeral (i) has been correctly drafted.

**International Paralympic Committee**

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

There should be a standard sanction for cases of athletes that have been charged with an ADRV for a substance used for medical reason, where a retro TUE was rejected but a TUE was given for the use of the substance going forward.

10.7.1 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. (1)
Union Cycliste Internationale
Union Cycliste Internationale Union Cycliste Internationale, Legal Anti-Doping Services (Switzerland)
Sport - IF – Summer Olympic

The UCI would recommend lowering the threshold to grant credit for substantial assistance. This would enable ADOs to give incentives when athletes provide tips and substantial information (such as a doping protocol) which do not necessarily lead to an ADRV – all information helps and making the hurdle so high only contributes to the omerta.

Moreover, the UCI thinks that the seriousness of the rider’s violation should only be considered in determining the otherwise applicable period of ineligibility. We think only the significance of the assistance provided should be relevant in determining the extent to which the otherwise applicable period of Ineligibility may be suspended.

Here is the amendment the UCI would suggest to article 10.6.1.3:

10.6.1.3 In the event the assistance provided by the Athlete or other Person is significant to the fight against doping but does not meet the above criteria, the Anti-Doping Organization, with the approval of WADA, can suspend up to one quarter of the otherwise applicable period of ineligibility.

The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the significance of the assistance provided by the Athlete or other Person to the effort to eliminate doping in sport.

10.7.1.1 (2)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU supports the extended scope of article 10.7.1.1. It would propose a minor change to sub-paragraph (iv) to read "or (iv) with the approval by WADA, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of an sport integrity violation other than doping as defined in such rules". Not every integrity violation may be considered a "sport integrity violation".

Article 10.7.1.1 should also make it clear that an athlete or other person cannot seek suspension of the otherwise applicable period of ineligibility if the assistance they provide is in connection with the circumstances of their own doping violation; for example, if it consists of nothing more than the fact that the prohibited substance was administered by their coach or doctor. Athletes are required under the Code to prove the source of the substance in their bodies before they can seek a reduction in sanction; if a reduction is granted, they should not be able to seek, for establishing the same facts, a further suspension of their sanction on grounds of Substantial Assistance.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Drafting point. It appears from the first sentence of this Article that ADOs will be permitted to suspend any part of the Consequences (other than Disqualification), not just the period of Ineligibility, where a person provides substantial assistance.
However, the rest of the Article refers to ADOs suspending the “period of Ineligibility”, implying that ADOs will only be able to suspend this part of any applicable Consequences. Should all of these “period of Ineligibility” references be broadened to “Consequences”?

We note that the related change has been made at Article 13.2 in respect of appeal rights from decisions to suspend or not to suspend Consequences, rather than a period of Ineligibility.

10.8 Results Management Agreements (10)

US Olympic Committee
Sara Pflipsen, Senior Legal Counsel (United States)
Sport - National Olympic Committee

Article 10.8. Results Management Agreements

In principal, Results Management Agreements serve useful purposes in offering incentives (reductions in the period of the ineligibility) for individuals to agree to consequences, which can save time and money for the results management process. Resolutions agreements are already a tool ADOs utilize to resolve the majority of cases. However, as this concept is articulated under Article 10.8.2, it appears to place more restrictions on what athletes and ADOs can agree to, which may actually incentivize an athlete to go to a hearing (the nature of which this attempts to get away from). For example, specified substances and contaminated products have a sanction range of a warning and two years, and now, if a resolution agreement is used, the sanction length would have to be between one and two years. This wouldn’t make sense.

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

Article 10.8

Timely Admission and Prompt Admissions

There is a possibility that, the rules and procedures for hearing panels (“impartial and independent”) can be intersected by the "deal" possibility in Art. 10.8.1 and 10.8.2

Comments on proposed Article 10.8.2 (case resolution agreements):

It is highly recommended that those Countries that are capable of operating an anti-doping system that allows for all cases to be brought before the judicial bodies should be allowed to maintain such system.

Against the above background, it is proposed that Article 10.8.2 explicitly allows for Countries to not implement the condition set forth in the final part of the article that case resolution agreements and the determination of reduction to, and the starting date of, the period of ineligibility are not matters for determination or review by a hearing body.

This can be done either (i) by a specific clause in the direct wording of the article or (ii) by way of a comment to the article.

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

We have reservations about the new article 10.8 for various reasons.
Firstly, re. our comments to article 8.3, the judicial tradition in certain jurisdictions such as Denmark does not normally allow for plea bargaining or administrative decisions in criminal cases. We therefore propose that art. 10.8 as well as art. 8.3 is at least made optional for ADOs to implement in their regulations.

Secondly, while appreciating that a hearing process involving several lawyers etc. may be costly and lengthy, thus making a cause for the possibility of administrative decisions, we also ask WADA to recognize that in certain jurisdictions such as ours, where the hearing panel consists of highly skilled volunteers and legal counsels are seldom used, the hearing process is both cheap and quick. In other words, there is no real need for administrative decisions.

Thirdly, the Code opens up for taking various individual aspects into consideration when determining the decision in a case, such as intent, degree of fault or negligence, etc. It is the legal right of the athlete to plea that such circumstances are taken into consideration. It is our opinion that such considerations are best made by an independent panel and not in a non-independent administrative procedure by the ADO.

Fourthly, we believe it is right and fair to athletes that a reduction for a full and prompt admission could also be given by a panel and not just be given in the case of an administrative decision. The opposite, as proposed in the 2nd draft, would effectively mean that this rule could not be used in Denmark, where all cases are heard by the doping panel.

**Sport Ireland**

Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)

NADO - NADO

**Article 10.8.** These new provisions on Case Resolution Agreement and the 1 year reduction for prompt admission are welcome.

However, the interplay between Article 10.8.1, 10.8.2 and Without Prejudice Agreements may need to be considered further. As currently drafted, they are not mutually exclusive and an Athlete is entitled to a Without Prejudice Agreement so as to attempt to reach a Case Resolution Agreement (or Substantial Assistance agreement). Leaving aside Substantial Assistance, in practice an Athlete may wish to enter a Without Prejudice Agreement with an Anti-Doping Organisation to explore what sort of reduction he or she might be able to get, as doing so means any admission is off the record.

There is a hard deadline for an admission in Article 10.8.1 (within ten days of notice of the B sample result) and Anti-Doping Organisations may need to be very careful to ensure such an Athlete is made fully aware that his automatic right to a 1 year reduction falls away if he does not make an 'on the record' admission by that deadline.

Another implication is that WADA will be involved in all non-hearing Results Management decisions throughout the world (apart from Article 10.8.1 and Substantial Assistance). Is this the intention? Sport Ireland would have no difficulty with this, but clearly WADA will need to ensure it has sufficient resources dedicated to this.

Further, as set out in our submission on the ISRM, Sport Ireland would welcome results management guidelines from WADA in light of the ever increasing complexity of the Code and Results Management requirements.

**NADA**

Regine Reiser, Result Management (Deutschland)

NADO - NADO

10.8.1/ 10.8.2

Rules and procedures for hearing panels ("impartial and independent") can be intersected by the "deal" possibility in Art. 10.8.1 and 10.8.2.
AEPSAD
AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)
NADO - NADO

Article 10.8.1 forbids to add any further reduction of ineligibility to the one year reduction for acknowledgement of Intentional Violation. Under Spanish Law this will be very difficult to implement, and we do not find the rationale for such a thing, may be this can complicate further and more important substantial assistance coming from the same athlete.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

It should be left up to signatories if and how they implement a system of case resolution agreements. It is not to be prefered that the athlete has a right to enter into a case resolution agreement, consisting of an obligation of the ADO to enter in a negotiation.

It should also be provided that the decision of case resolution can be (under NADO rules) directed to an impartial an independent person, preferably a person from the pool of hearing panel members. This person can be the judge over the agreement, to see whether all formal conditions were met and to see whether the athlete was free to decide on the case resolution agreement. This will not give the power to render judgement over the case, but solely to see if the formal conditions, regulations were followed properly are met and the rights of both athlete and ADO were respected.

For NADO, under Flemish law, it can be contrary to general principles of law to settle below the normal sanctioning scheme without being backed by an impartial and independent judge.

In addition, a "without prejudice agreement" can pose difficulties for employees of a NADO when national legislation demands that all criminal offences discovered by governmental staff should be reported to law enforcement. The legal obligation and the without prejudice agreement can be incompatible when the athlete admits criminal offences in the process of negotiation.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Article 10.8.1 and 10.8.2: It would be helpful if 10.8.2 made clear that an Athlete is not necessarily entitled to a reduction just because they agree to resolve a case. Athletes and their representatives are very likely to say they are entitled to a reduction in every case if it is not made express in the Article that the ADO does not have to offer a reduction but can invite the Athlete to accept the full ban and avoid a hearing.

Secondly, there is now no express power for a tribunal to back-date the commencement of a ban to the date of sample collection due to a timely admission, as both Article 10.8.1 and 10.8.2 apply only to decisions issued by a NADO.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The new 10.8 is supported.

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

There is support for these proposals so long as they are clearly limited in applicability to multiple violation circumstances and not to first, second or third violations that are not multiple violations.
10.8.1 Acknowledgement of an Intentional Anti-Doping Rule Violation by an Athlete or Other Person
(5)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU supports this article in principle but suggests that it should only apply in circumstances where the athlete or other person has provided the ADO with an "enhanced admission" (see: WADA v. IIHF & Filip Lestan), i.e., where he or she has described fully and truthfully in writing the background to the intentional doping. Those details might well provide a useful source of intelligence for further investigation by the ADO and add to the ADO's knowledge of current doping practices.

It also needs to be clarified whether article 10.8.1 may apply to the acknowledgement of an intentional violation when the violation in question represents the athlete or other person’s second violation. If so, is the maximum reduction under 10.8.1 still only one year if the otherwise applicable period for a second violation is, for example, 8 years?

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

In FIBA’s view, the ten-day deadline should be removed. Expecting the average Athlete to decide within ten days seems unfair, especially when one considers that most Athletes are not represented at this point. We would recommend inserting the concept of a "prompt" admission to give discretion to consider the facts of the case.

UEFA
Rebecca Lee, Anti-Doping Coordinator (Switzerland)
Sport - Other

This provision should be clarified as to what is considered an admission from a player. Can we consider an athlete admits the ADRV in case of no reply to the initial notification of an ADRV? Or does it have to be done by written by the player? I would suggest to add “expressly admitted.”

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

Article 10.8 Results Management Agreements
ADNO support the article 10.8.1. We would, however, suggest that the 10 days requirement is extended to 15 days.

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

Acknowledgement of Intentional ADRV
DFSNZ wishes to clarify that the last sentence of this Article “... no further reduction in the asserted
period of ineligibility shall be allowed under any other Article " does not prohibit an athlete who admits to intentional doping from benefiting from Article 10.7.1.1. (substantial assistance). The athlete's relief in this case would be suspending (not a reduction) part of the period of ineligibility. The substantial assistance provisions are important in incentivising intentional dopers to share information (this Article is unlikely to be of assistance to an unintentional doper).

10.8.2 Case Resolution Agreement (8)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

The AIU supports this article in principle but suggests that it should only apply in circumstances where the athlete or other person has provided the ADO with an 'enhanced admission' (see: WADA v. IIHF & Filip Lestan), i.e., where he or she has described fully and truthfully in writing the background details to the doping in question. Those details might provide a useful source of intelligence for further investigation by the ADO and add to the ADO's knowledge of current doping practices.

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

The UCI welcomes the idea to grant a reduction to athletes who are willing to admit the ADRV and agree to resolve their cases via an agreement. However, the UCI would favor something simpler to apply and something more predictable (e.g. ¼ reduction and a backdate of the start date if the athlete admits the ADRV and agrees to the consequences proposed, regardless of the seriousness of the violation, the degree of fault and how promptly the athlete admitted).

The UCI believes that entering into a case resolution agreement with an athlete should not be subject to WADA's prior approval in particular as it is the relevant ADO that will incur the costs of proceeding to a final hearing if no case resolution agreement is accepted by WADA. WADA can, of course, ensure compliance by using its right to appeal such agreement. The UCI notes that having the standard formulation (as above) also avoids this complication.

If the current proposal for this Article is maintained, the other relevant ADOs should not be prevented from appealing such agreement (which seems to be the case as drafted). It would also be necessary to clarify how articles 10.8.1 and 10.8.2 interact. Importantly, all decisions applying this article should be published or at least made available to all ADOs to ensure predictability and consistency of the reduction in sanction for all athletes. Finally, it would be useful to clarify at what stage this Case Resolution Agreement should be done in terms of the acceptance of consequence process in the ISRM.

Finally, the UCI believes the athlete should serve at least one-half of the period of ineligibility going forward from the date the athlete accepted the imposition of a sanction or from the date the athlete was provisionally suspended. The athlete's status under provisional suspension is the same as during a period of ineligibility therefore there is no reason to differentiate the two for the purposes of this article.

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

We would like to suggest exploring the possibility to eliminate the reference to WADA in this article. In fact, we believe
that WADA should not be a party of the agreement.

Moreover, the agreement has the same value of the first instance decision for the case and can always be appealed by WADA if it does not agree on the sanction imposed.

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Does case resolution agreement (CRA) apply to all sanctions (i.e. two years to lifetime) given that proposed Article 10.8.1 only applies to sanctions of more than four years?

There should be a time limit to begin negotiations about a CRA – e.g. start negotiations 10 days from the date of the assertion?

The article does not address the consequences when an athlete or other person withdraws from the agreement - this should be addressed.

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

DFSNZ places great value on its Sports Tribunal, which decides anti-doping rule violation proceedings independently of DFSNZ and in accordance with our Sports Anti-Doping Rules (the Code). We believe our anti-doping system is world class in this regard.

DFSNZ supports the principle of reaching agreements as encapsulated in the proposed Article 10.8.2. However, DFSNZ has some concerns about the manner in which the clause is drafted.

In New Zealand (as in several other jurisdictions) whether an ADRV has been committed and (if proven) the appropriate sanction is decided not by the NADO or a NADO-affiliated panel but by an independent tribunal (the Sports Tribunal of NZ). This engenders greater athlete confidence in the anti-doping system. The proposal that a case resolution agreement be entered into by the NADO and athlete with the agreement of WADA and that the amount of the reduction and the starting date of any period of ineligibility are not matters for determination or review by a hearing body cut across this.

In DFSNZ’s view, there should be explicit recognition that where the questions of violation and sanction are determined by an independent tribunal a case resolution agreement may be agreed upon by a NADO and an athlete and approved by the tribunal and not include a requirement for WADA to agree. Such a tribunal decision under 10.8.2 should be able to be appealed by WADA under Article 13. This should provide the necessary satisfaction that the Article would not be abused without WADA oversight – for example WADA could appeal to CAS if an agreed sanction in a case of intentional doping was for a greater reduction than the period allowed under Article 10.8.1 (DFSNZ being of the view that Article 10.8.2 cannot be used to obtain a more lenient outcome for an athlete that chose not to admit the violation under Article 10.8.1). DFSNZ is of the view that any appeal of a case resolution agreement should be limited only to WADA (i.e. the NADO or Athlete should not be able to go back on the agreed position by lodging an appeal).

Canadian Centre for Ethics in Sport
Elizabeth Carson, Manager, Sport Services (Canada)
CCES finds Article 10.8.2 is unclear regarding how the reductions can be applied. If CCES and WADA agree to acceptable consequences, resulting in a reduction in the standard sanction, is there a further and additional reduction in sanction possible, down to a minimum of one half (as outlined in point “a”)? Despite multiple readings, we are still not sure, and the Code must be crystal clear.

Do the ADO and WADA need to first determine the sanction length (the “acceptable consequence”) after which point “a” comes into effect? For example, the athlete commits an anti-doping rule violation which carries a two year sanction, but the ADO and WADA agree to an 18-month sanction (as the “acceptable consequence”). Does point “a” then, in addition, get applied to the sanction length, where the “one half” reduction is applied to the 18-month sanction (and 18 months becomes 9 months)? Or does the one half reduction apply to the original, maximum sanction, whereby two years becomes one year instead of 18 months? Or in considering and agreeing on an 18 month sanction, are CCES and WADA limited to not going below one-half of the maximum possible sanction?

Basically, we would like clarity as to whether it is possible to get a double reduction to the sanction, whereby i) the typical sanction is 2 years; ii) the NADO and WADA agree to a reduction; and iii) the one half reduction referenced is applied to that already-reduced sanction.

This provision appears to place unnecessary restrictions on case resolution without a hearing, that would not exist should an athlete proceed to a hearing. For example, the restriction that a case resolution without a hearing cannot reduce the sanction by more than one-half of the otherwise applicable maximum period of Ineligibility will likely eliminate most “settlements” of cases involving contaminated products and specified substances: in those cases, the sanction range at a hearing would be between a warning and two years, whereas the language in this Article would provide for a “settlement” sanction range between one and two years. This rule will lead to more arbitration hearings, and consequently greater cost.

Consider clarification whether the “admission” can be satisfied by a “no contest approach” or whether the admission must meet the requirement of CAS 2017/A/5282 WADA v. IIHF & Lestan (fully and truthfully admit by providing the factual background. In our opinion and based on practice, the former should apply.

10.9 Multiple Violations (4)

The USOC supports the clarification and specific parameters added for violations of multiple violations.
Newly insert an article where two or more different Prohibited Substances are present

The second draft has proposed additional rules for potential multiple violations (in Article 10.9). However, the current version of the draft is silent on the effect, where two or more different Prohibited Substances are present in the Athletes’ Sample. We propose to newly insert an article on how the Panels consider this fact (i.e. Panel may consider the fact when they evaluate Fault or the length of Ineligibility under Article 10.5 of the current Code).

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Article 10.9
Multiple Violations
Adapt sentences for (multi-) violation by teams
Comment: a repeated violation of the prohibition of participation must lead to a team-sanction such as exclusion—even if this means that not more than two athletes violated rules
Example: Does an athlete fall under the scope of Art. 2.10 WADC if he is a member of a team in which another athlete is convicted of a violation of Art. 2.1 WADC and is e.g. serving a four-year period of ineligibility, but is in the meantime active as a team manager? What kind of sanction has a team to expect which hires (or continues to employ) this suspended athlete as a manager, even though the manager/athlete has violated the prohibition of participation? Clarification of consequences for team sports?
A transparent regulation for a team which is losing its medals, points and prizes. Further comment: Furthermore, does an individual participating in a team sport lose its status as e.g. world champion including his name be cleared from any participating lists.

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

This clause continues to be confusing: For second violation: 10.9.1.1 (b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Article 10.67; or Panels have had the confusion though they have quietly handled the cases without going too much into it. One half of the period of ineligibility imposed for the first anti-doping rule violation?

10.9.3 Additional Rules for Certain Potential Multiple Violations (2)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

It would be helpful if Article 10.3.3, or comment 77, referred to Article 10.9.3.3. Also, might the word “separately” in Articles 10.9.3.2 and 10.9.3.3 be replaced with “consecutively” to denote suspensions served one after the other, as opposed to concurrently?

10.9.3.2 (4)
The rationale for the additional violation needing to have occurred 12 months or more before the first-noticed violation is difficult to understand. The AIU's preferred position is to re-instate the notion of separate culpable intent such that, if an ADO can prove separate intent, an additional violation may be pursued for the purposes of 10.9.3.2 even if it occurs less than 12 months prior to the first-noticed violation. It is conceivable, for example, that separate culpable intent could reasonably be established through the Athlete Biological Passport.

**Article 10.9.3.2.** The period of 12 months appears much too long. 6 months would appear sufficient in Sport Ireland's view.

In Article 10.9.3.2, CCES believes the “and” between point “i” and point “ii” should be an “or.” It would read: “…then the period of Ineligibility for the additional violation shall be the longer of: (i) the period of Ineligibility calculated under Article 10.9.3.1, or (ii) the period of Ineligibility…”

The new 10.9.3.2 is supported.

There is confusion in the new draft about the applicable sanction in a Tampering case where the act of Tampering is committed in connection with another violation. On the one hand, the definition of "Aggravating Circumstances" includes as an example if "the Athlete or other Person engaged in Tampering" which would appear to suggest that Tampering during the results management or hearing process can only result in an uplift of 0-2 years' sanction on the otherwise applicable period of ineligibility. The new article 10.9.3.3 on the other hand suggests that the Tampering violation would be treated as a separate first violation for which a separate sanction (of 4 years) would run consecutively to any sanction imposed for the underlying violation. Of these two approaches, the AIU would support the latter one and suggests in any event that the definition of "Aggravating Circumstances" and article 10.9.3.3 be re-visited to avoid any scope for confusion.
NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

This article must be reviewed in conjunction with articles 2.5, 10.4 and the definition of aggravating circumstances, to make sure that a coherent and proportionate system is in place for tampering during results management.

10.9.3.4 (2)

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

Regarding the last part, it may be better to state that “unless otherwise justified” or something to that effect, as depending on the nature of the second ADRV it may not be appropriate to increase the severity of the sanction by refusing to let it run at the same time. This would at least retain a degree of flexibility.

FIBA
FIBA Legal, Anti-Doping Manager (Switzerland)
Sport - IF – Summer Olympic

While we agree that it makes sense to provide a route to harsher punishment for those who Tamper with the Doping Control process for an underlying asserted violation, the new revisions seem to take this too far. Tampering falls under under art. 10.3.3, art. 10.4 (the Aggravating Circumstances provision), and under this art. 10.9.3.4, which means that for a first violation that involved some sort of Tampering, the result may be a very lengthy period of Ineligibility.

10.11 Forfeited Prize Money (3)

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 10.11 Forfeited Prize Money

We refer to our last submission on this Article and are pleased to see the amended Article.

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

Forfeited Prize Money – Article 10.11

The Government of Canada fully supports the new provision in the draft 2021 Code under Article 10.11 - Forfeited Prize Money, regarding the requirement for athletes to forfeit their prize money as a result of an anti-doping rule violation (ADRV), and that the amount be distributed amongst the athletes who would have been entitled to the prize money. However, it is unlikely that a National Anti-Doping Organization could recover or redistribute prize money from an athlete as a result of an ADRV when it does not have the jurisdictional authority to do so. The provision does not include event organizers or sponsors who may be responsible for the prize money. As a result, we suggest that Article 10.11 be rephrased to “A signatory or event organizer or sponsor who has recovered prize money forfeited as a result of an ADRV shall be
encouraged to take reasonable measures to re-allocate or distribute this prize money to the athletes who would have been entitled to it had the forfeiting athlete not competed.”

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

I think this is a sensible idea.

12 SANCTIONS BY SIGNATORIES (OTHER THAN WADA) AGAINST OTHER SPORTING BODIES (3)

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

1. WADA CODE_SECOND DRAFT says:
«A Signatory's action and rules shall include the possibility of excluding all, or some group of, members of that sporting body from specified future Events or all Events conducted within a specified period of time».

- Signatory, when using their own rules in relation to other organizations under its jurisdiction, should be independent in the choice of these measures and methods. This item is proposed to be deleted.

CHINADA
Yao Cheng, Result Management (China)
NADO - NADO

Article 12 is a provision of excluding all athletes and other persons from its event as a sanction against a member federation. When serious organized ADRVs occur, excluding all the participants in a sport from a country will no doubt have a great deterrent and restraining effect, but it may also harm the clean athletes. Athletes' sporting life is very short, and the participation in the international competitions such as the Olympic Games is particularly rare. In order to protect clean athletes, this Article should have more flexibility. It is recommended to improve the system of “neutral athletes”, increasing the exceptional provision that allows truly clean athletes to participate in the name of individuals and the detailed rules for implementation should be formulated.

Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

The new draft of Article 12 is supported.

13 RESULTS MANAGEMENT: APPEALS (4)

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

ARTICLE 13: APPEALS

Please confer our comments to ISRM.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

We suggest to add: «Decision of the anti-doping organization on reviewing of the case due to newly discovered/new circumstances can be appealed in accordance with the rules provided for in the Code».

Anti-Doping Norway

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

Article 8 and 13 Results Management

ADNO strongly suggest that first instance hearing panels also should be independent as is required for appeal panels re. WADC article 13.2.2.

We support that RM is described in a new standard. Article 8 in the WADC itself (and this should not be left to the RM Standard) should define requirements in terms of principles of both the hearing and the appeal panel, including:

- That both hearing and appeal panels should be independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation, with no interference from these bodies on decisions made by the hearing or appeal panel and on the conduct of the hearing proceedings

- The hearing and appeal panels should be composed of at least a chair and two members with specified competence, including that the chair should have legal background and experience of practising law. The other members of the hearing panel should possess expertise in relevant fields, such as medicine and sport.

- All hearings should be public unless otherwise decided by the hearing or appeal panel in order to ensure that the athletes rights are adhered to and that the hearings are following the important principles defined in Athletes Charter

- The principles of fair trial described in The International Standard for Results Management (ISRM) 8.7 d should be moved from the standard to the WADC.

AEPSAD

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

The arbitral character of the panels, referred in article 13.2.2 of the draft, also has no place in Spanish law. The courts, of justice or of any other type, must always be composed of public officials appointed by the competent authority. The arbitration panel model responds to the Anglo-Saxon model in which private justice is possible. In the continental countries of Europe, in the majority (France, Austria, etc.) the exercise of sanctioning power is always public and arbitration is not possible. The Spanish Arbitration Law expressly excludes the sanctioning power as an object freely available to the parties.

The current wording of the CMA requires courts to be independent and impartial. In our legal system it is possible to meet this demand, but not the arbitral character of the panels.

On the other hand, the decisions of the NADO’s that are administrative authority and apply laws approved by the parliament, are subject in their operation to the public legal system and consequently, their decisions are subject to the tribunals of justice. In this way, the athlete can appeal his decision to the tribunals of justice, being a fundamental right of every citizen, regardless of whether the same decision of the NADO can be dismissed before the CAS. This reality happens in many countries. In the event that the decisions of the CAS and the national tribunals were not coincidental, we would be faced with a difficult situation to resolve by the NADOs and the national defense federations, which must obey and comply with the decisions of the tribunals of justice. Therefore, the appeal to CAS should be limited to the cases of international athletes.
13.1 Decisions Subject to Appeal (1)

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

(NEW) Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance Hearing. This added sentence remains unclear and too general. What does it mean "from the same cause of action". How does that fit with the "de novo"-of CAS arbitration proceedings?

13.1.1 Scope of Review Not Limited (2)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic

Whilst the attempt to limit the scope of a hearing on appeal is welcomed, the new language seems too vague and/or general to achieve its apparent purpose. It is unclear, for example, what is meant by the 'same cause of action' and reference to the 'same general facts or circumstances raised or addressed in the first instance' would seem barely to narrow the scope of appeal, if at all.

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

The IPC Anti-Doping Committee does not support this proposal. This is an abuse of process and the Code should not facilitate it.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Jurisdiction (2)

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

(Art 13.2) We would like to suggest exploring the possibility to mention the ADOs Hearing Panel decision to lift the provisional suspension for an athlete in the list of decisions that can be appealed.

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

In Article 13.2, CCES notes that an appeal involves a “fair, impartial and independent hearing panel” but a hearing, as described in Article 8.1, only involves a “fair and impartial hearing panel,” with no mention of an independent hearing panel. Interestingly, in the draft Result Management Standard there is the requirement for “operational independence” during the first instance hearing – how is this different from requiring expressly an independent first instance hearing? Is this intentional, highlighting the need for final decisions through an appeal to be fully separate from the ADO?

13.2.2 Appeals Involving Other Athletes or Other Persons (5)
In order to ease its implementation, the 2015 version of Article 13.2.2 should be maintained.

The word “arbitral” must be removed; otherwise many stakeholders face the threat of non-compliance. For example in France and Austria (national) appeal panels are not arbitral bodies due to national/constitutional law. They fulfil the criteria listed in Art. 13.2.2, but they are not established on arbitral procedural rules.

The last sentence “If no such body as described above is in place and available at the time of the appeal, the Athlete or other Person shall have the right to appeal to CAS, is able to create an “alternative. But for national level Athletes is not appropriate and proportionate.

In order to ease its implementation, the 2015 version of Article 13.2.2 should be maintained.

The word 'arbitral' should be removed, since the national appeal panel is not per se an arbitral body in Belgium. Independence and impartiality can be guaranteed, even if it is not an arbitral body sensu stricto.

This position is supported by all Belgian NADOs.

13.2.3 Persons Entitled to Appeal (1)
It should be clarified which NADO has a right of appeal, if not both, in a scenario where the athlete lives in a foreign country (see art. 13.2.3 d): the NADO of the Person’s country of residence or countries where the Person is a national or license holder).

14 CONFIDENTIALITY AND REPORTING (3)

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

I would have to agree with the AMA.

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

Regarding to the notice of Anti-Doping rule violation decisions and the need of request for files under article 14.2 of the current Code, the short English or French summary of the decision rendered, we consider the same criteria that we described on the last document, in article 24 of the Code: Spanish must be an official WADA language, due French is the 9th most spoken language on the planet and Spanish considering the number of users, is one of the most important languages, second only to English.

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

It would be advisable to publish reasoned decisions in the case where an athlete is exonerated from all charges. Right now, the authority has to obtain the consent of the athlete to do it. Publishing a detailed decision related to an exoneration will help people and media understand why such a decision was arrived at rather than increase the doubts about why the athlete was reprieved especially in cases where there is overwhelming evidence against the athlete. Not all reasoned decisions are published by all anti-doping authorities. The transparency of a system would be appreciated more if reasoned decisions are published. It will also help lawyers and media study cases and utilize the information for future reference. CAS may also be persuaded to publish reasoned decisions as much as possible unless there are circumstances that may prevent the whole decision being published. The attempt today seems to be to give a Press release and then forget about the detailed decision.

14.3 Public Disclosure (2)

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Article 14.3.1 will be subject to national data protection regulations regarding the processing of personal data.
As with other data specific references in the Code, national laws will shape how these articles are put into practice.
Depending on the nature of the Anti-Doping Organisation, the GDPR will require the disclosure of the person’s identity to be proportionate and compatible with one of the lawful grounds for processing.
Publication of sanction decisions (in conjunction with Art. 10.13 WADC) must be in accordance with European Data Protection Law.

Comment: Adaptation and amendment of the rules on the publication of sanction decisions in accordance with the (European) data protection and personal rights of the athletes.

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

Regarding to the notice of Anti-Doping rule violation decisions and the need of request for files under article 14.2 of the current Code, the short English or French summary of the decision rendered, we consider the same criteria that we described on the last document, in article 24 of the Code: Spanish must be an official WADA language, due French is the 9th most spoken language on the planet and Spanish considering the number of users, is one of the most important languages, second only to English.

**14.3.1 (1)**

**ministère chargé des sports, direction des sports**  
Michel LAFON, Chef de bureau (France)  
Public Authorities - Government

This article is the same than article 4.3 of the international standard for result management on which the Council of Europe expressed a reservation. This reservation should be taken into account for article 14.3.1

Moreover, we understand that this change was made to allow a good articulation with article 14.3.5. Nevertheless, according to the principle of presumption of innocence, the identity of the Athlete or the other person shouldn’t be public disclosed before a decision is taken by the signatory.

Even if it is not a must, this provision should be framed; for example, such a public disclosure could be allowed in specific cases only. Public disclosure before a final decision must be used carefully by the signatories because of the possibility of an acquittal.

**14.3.2 (1)**

**GAISF**  
Davide Delfini, Membership Manager (Switzerland)  
Sport - Other

Art 14.3.2 We would like to suggest exploring the possibility to modify the article so to clarify the obligation of the ADOs, making clearer which decision and when it must be publicly reported. We would propose the following: " 14.3.2 No later than twenty days after it has been determined in a final first instance appellate decision under Article 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in accordance with Article 8 has been waived, or the assertion of an anti-doping rule violation has not otherwise been timely challenged, or in the agreement
between parties the Anti-Doping Organization responsible for results management must Publicly Disclose the disposition of the anti-doping matter including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved and the Consequences imposed. The same Anti-Doping Organization must also Publicly Disclose within twenty days the results of final any eventual second instance or final appeal decisions concerning the same anti-doping rule violations, including the information described above.

14.3.5 (2)

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

Art 14.3.5: We would like to suggest exploring the possibility to mention Athlete support personnel instead of entourage and representatives which are not defined in the Code. We would propose the following: "...or based on information provided by, the Athlete, other Person or Athlete Support Personnel their entourage or other representatives."

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

The Review of Australia's Sports Integrity Arrangements recommended broadening the scope of this article to allow a NADO to respond to public comment to address misinformation in the public domain. Accordingly, Australia proposes this article is broadened to allow an anti-doping organisation to respond to any public comment to address misinformation, regardless of who the comment or information is attributed to.

14.3.6 (1)
14.3.6

The scope of the mandatory public disclosure should be interpreted in light of the Athlete definition. This definition of “athlete” allows not to apply the mandatory public disclosure as part of “consequences” for athletes that are below the international or national level.

There seems to be an imbalance between the definition and the proposed article. By including “recreational athletes” in the wording of article 14.3.6, balance is lost between the definition of an athlete and the consequences in the definition and the article itself.

The athlete definition does not require the application of article 14.3.2 for athletes below national level. Some athletes below national level are not included in the definition of recreational athlete. An athlete that has recently retired (for example 3 years ago) from national level, as defined by the NADO, is not a recreational athlete under the drafted definition (being national level five years prior to the ADRV excludes an athlete from the recreational athlete definition). But the athlete can still compete below national level, even in a different sport or discipline than the one he retired from.

From the athlete definition, it can be concluded that article 14.3.2 as part of Consequences should not be applied. But article 14.3.6 only excludes recreational athletes, not lower level athletes (below national level) that have been national level in the last five years prior to the ADRV.

If the conclusion is that an athlete below national level who is not considered a recreational level athlete under that definition, should fall under the mandatory public disclosure, then it can pose serious problems when applying national privacy legislation. It can be considered that for those athletes competing at a recreational level, mandatory disclosure can be disproportionate and therefore should not be applicable.

NADOF would ask to consider bringing article 14.3.6 in line with the wordings of the athlete definition, excluding all athletes below national level from mandatory public disclosure, since this is considered more proportionate.

For minor athletes and vulnerable persons/ protected persons, NADOF supports the exemption of mandatory disclosure.

14.4 Statistical Reporting (2)

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

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 basic.

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

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 basic.

14.5 Doping Control Information Database and Monitoring of Compliance (1)

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

Although ADCH does not object to Art. 14.5, it is important to note that certain legislation relating to data protection laws may not allow an ADO to share specific information (health related info, data for non-national level athletes etc).

Whereas it is undisputed that WADA needs to oversee big parts of the decisions rendered on the basis of the WADP (e.g. TUE, Results Management), there is little argument for making Whereabouts information imperatively available in ADAMS. ADOs should be free to use whatever system fits best for them to collect Whereabouts information as long as the information will be made accessible to whoever is entitled to access it. Also, ADRV=VS and all decisions related to them should not necessarily need to be reported into ADAMS but should be communicated to WADA by other means.

15.1 Automatic Binding Effect of Decisions by Signatory Anti-Doping Organizations (4)

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

The UCI understands that the implementation of such decision internationally (i.e. extending its effect) constitutes a new decision but that such decision would not be subject to appeal. The UCI believes it should be clarified that the ADOs implementing the decision should not be held liable for any damages caused by such implementation.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

Automatic recognition of decisions related to doping is unacceptable.

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

I would have to agree with the AMA.

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

ADCH supports the decision to enforce that all provisional suspensions are automatically binding for all Signatories

15.1.1 (1)

Anti Doping Denmark
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO
We appreciate the new wording of articles 15.1.1 and 15.2 whereby also non-mandatory Provisional Suspensions must be implemented by Signatory Anti-Doping Organizations.

**15.1.2 (1)**

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

Any signatory has the obligation to recognize and implement decisions rendered by all other signatories.

The concern is “how”? How are we supposed to recognize and implement a decision and its effects “without any further action required, on the earlier of the date the Signatory receives actual notice of the decision or the date the decision is placed by WADA into ADAMS” (Art. 15.1.2)? This raises another question which is how a Signatory is supposed to be notified of such decisions, knowing that Signatories have no free access to all ADAMS profiles.

**18 EDUCATION (7)**

**Ministry of sport of Russia**
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

- 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.

**NADA**
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Article 18
Art. 18.1
The main principle for Education Programs is to actively contribute to the anti-doping system as one of the four prevention strategies (ISE Article 3.2.1) intended to preserve the spirit of sport and to help foster a clean sport environment as described in the Introduction to the Code. The primary goal of Education is to raise awareness, inform, communicate, to instil values, develop life skills and decision-making capability to prevent intentional and unintentional doping. All Signatories, shall within their scope of responsibility (as defined in Article 18 and Article 20 and Article 21) and in cooperation with each other, plan, implement, monitor and evaluate Education Programs in line with the principles set out in the International Standard for Education (ISE) to protect clean sport. The Education Program should encompass a range of interventions as outlined in the ISE.

18.2.1 Education Program
The programs and associated interventions shall promote the spirit of sport and focus on developing a clean Sport environment to have a positive and long-term influence on the choices made by Athletes, Athlete Support Personnel and other Persons. The Education Program shall include the following components: Awareness, Information, Communication, Values-Based Education, and Anti-Doping Education. The education program should cover as a minimum the following topics:
· Principles and values associated with clean sport
· Athletes rights and responsibilities
· Consequences of doping including health and social consequences as well as sanctions
· Anti-doping rule violations
· The prohibited list
· Risks with medications and supplements, including health consequences
· TUEs
· Doping control procedures
· Requirements of a registered testing pool, including Whereabouts and use of ADAMS

Athletes who become part of a registered testing pool should be educated in understanding and fulfilling their Whereabouts requirements. For younger athletes, programs should be values-based, with a focus on instilling the spirit of sport ideally through the school curricula.

18.2.2 Education Plan

Signatories responsible for education must develop an Education Plan that demonstrates the Education Program interventions and who these are targeting. This plan should be long-term and include how the Education Program will be monitored and evaluated. Signatories shall undertake a current situation assessment to establish risk areas, target groups and the resources required to deliver the plan. Any prioritization of target groups or interventions should be justified based on a clear rationale as part of the Education Plan.

[Comment to 18.3.2 – WADA Guidelines document the TDSSA already provides sport specific knowledge relating to the risk of doping with a sport. Such information can be used to inform the risk assessment process to identify priority target groups for education programs. WADA also provides information and education resources for ADO’s to use to support their program delivery.]

18.5 Coordination and Cooperation

The Education Program shall be coordinated by the NADO at national level, working in collaboration with their respective national sports federations, NOC, NPC, Governments and wider educational institutions as described in the ISE, Article 5.3. All Signatories shall proactively support participation by Athletes and Athlete Support Personnel in education programs. WADA will work with international partners to support the implementation of ISE and act as a central repository for information and education resources and/or programs developed by WADA or ADO’s. Signatories shall cooperate with each other and Governments to coordinate their efforts

[Comment to 18.2.1 – Further guidance for signatories with responsibility for education can be found in Article 20.]

EDUCATION

20.1.10 To actively encourage NOCs to ensure that Athlete’s and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Olympic Games they aim to attend.

[Comment to Article 20.1 – The IOC should ensure that NADOs of participating countries where the NADO is not part of the NOC, receive the anti-doping rules for the Olympic Games in a timely manner.]

20.2.9 To actively encourage NPCs to ensure that Athlete’s and Athlete Support Personnel who are members of the participating countries delegation have been made aware of the anti-doping rules and procedures for the Paralympic Games they aim to attend.

[Comment – The IPC should ensure that NADOs of participating countries where the NADO is not part of the NPC, receive the anti-doping rules for the Paralympic Games in a timely manner.]

20.3.13 To require National Federations to conduct education programs for athletes and ASP in collaboration with the applicable NADO/RADO and to ensure that any anti-doping programs associated with international events they sanction consist of both education and testing. International federations should focus on event-based education.

20.4.12 To actively support education and to require National Federations to conduct education programs for athletes and ASP in collaboration with the applicable NADO/RADO.

20.5.9 To ensure an appropriate information and education program as described in the ISE is in place for any athlete joining a national-registered testing pool.

20.6.7 To ensure that any anti-doping programs associated with international events they sanction consist of both education and testing. Major Event Organisations should focus on event-based education consider working in partnership with the host countries NADO or RADO to implement.

20.7.6 To promote, conduct, commission, fund and coordinate anti-doping research and to activate education through the development and promotion of anti-doping tools, resources and programs.
21.3.6 To develop and coordinate an information and education program for their regions, working

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<tr>
<th>AEPSAD</th>
<th>AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)</th>
<th>NADO - NADO</th>
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<td></td>
<td>Education in general is not in the hands of NADOs, but in the hands of Ministry of Education, but also, in countries like Spain Education and Recreational Sport is in the hands of the different regions and there are 17 of them, with 17 different educational curricula. So the Spanish NADO can collaborate with these regions (actually is collaborating) in educating athletes, but is not at all possible to interfere in the educational curricula of children and young people in general.</td>
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<tr>
<th>Kamber-Consulting</th>
<th>Matthias Kamber, Independent Expert (Switzerland)</th>
<th>Other - Other (ex. Media, University, etc.)</th>
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<td>In general, I agree with the new articles in this section. However, a new article 18.5 should be created that is dealing with the evaluation of the education plan and its effectiveness. Afterwards, the full IS Education is no longer needed but could be replaced by models of best practice and or a guideline. I fear that going for the proposed IS on Education, ADOs are facing (again) too many administrative burdens and bureaucracy that will leave them with less resources for effective education. In my opinion, education is so much driven by culture and policy in a country that the proposed IS on Education is too rigid and cannot deal with all these differences.</td>
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<tr>
<th>UK Anti-Doping</th>
<th>UKAD Stakeholders Comments, Stakeholders Comments (United Kingdom)</th>
<th>Other - Other (ex. Media, University, etc.)</th>
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<td>National Federation</td>
<td>Paragraph 2 of 18.5 states that ‘international level athletes should be the priority for International Federations’ (regarding Education Delivery). It should be made clear that the education delivery is the responsibility of the National Governing Body with the support of the National Anti-Doping Organisation, with the ‘priority’ for International Federations being the monitoring of said educational delivery for international athletes.</td>
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<tr>
<th>Institute of National Anti-Doping Organisations</th>
<th>Graeme Steel, Chief Executive (Germany)</th>
<th>Other - Other (ex. Media, University, etc.)</th>
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<td>Explicit provision for athletes with an impairment should be made in consultation with the IPC.</td>
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<tr>
<th>International Paralympic Committee</th>
<th>James Sclater, Director (Germany)</th>
<th>Other - Other (ex. Media, University, etc.)</th>
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<tr>
<td>Code Article 18 (Education) should state a principle for the new International Standard for Information and Education, if not the 2021 Code itself, that equivalent or at least comparable treatment of athletes with an impairment.</td>
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**18.1 Principle and Primary Goal (4)**

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<th>GAISF</th>
<th>Davide Delfini, Membership Manager (Switzerland)</th>
<th>Sport - Other</th>
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<tr>
<td>Art 18.1 We would like to suggest exploring the possibility to refer to Doping in general and not only to</td>
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the use of prohibited substance or method: "The primary activities of education are to raise awareness, provide accurate information and develop decisionmaking capability to prevent intentional or unintentional Doping Use by Athletes of Prohibited Substances and Prohibited Methods"

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

In the first sentence the clear description of 4 strategies has to be reflected; or reference to it deleted; E.g…..to help foster a clean sport environment as described in the Introduction to the Code. This states that; education, deterrence, detection and prosecution are the four prevention strategies.

The whole text of 18.1 should be revised to align it with the ISE;

**Anti Doping Denmark**
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO

We propose the following change: The primary activities of education are to raise awareness, provide accurate information and develop decision-making capability to prevent intentional and unintentional Use of Prohibited Substances and Prohibited Methods - anti-doping rule violations.

**Drug Free Sport New Zealand**
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

We strongly suggest that instead of Article 18, the core reference for all Education specific content is presented in the ISE. At the very least, Article 18.1 (the Principle and Primary Goal of Education) should be included in the ISE.

**18.2 Education Program and Plan (2)**

**Anti Doping Denmark**
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO

• The Anti-Doping Charter of Athlete Rights

Should be revised and aligned with eventual changes proposed for the Anti-Doping Charter of Athletes rights.

Add: & responsibilities

Fundamental rights go hand in hand with fundamental responsibilities. Therefore, it is recommended to rename the charter and add a separate section named Athletes Responsibilities. Pls. see separate comment.
• Risks with medications and supplements, including health consequences

Delete the phrase “including health consequences” from the seventh bullet point of 18.2.1; detailed description of this topic should be given in the Education Guidelines.

• Testing procedures, including urine, blood and the biological passports

Delete the phrase “including urine, blood and the biological passports” from the ninth bullet point of 18.2.1; detailed description of this topic should be given in the Education Guidelines;

"For younger athletes, programs should be values-based, with a focus on instilling the spirit of sport, ideally through school programs."

Consideration should be given to the reference to schools in the last sentence of 18.2.1 as IFs and NFs, NADO’s etc. in countries where education is not based on a British education system have no direct links with the formal education system; replace the phrase starting with “through school programs…” with “at early stage of athlete pathways, ideally in cooperation with the relevant public authorities, sport clubs and other entities;

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We note and welcome the inclusion of the updated list of topics. We would also like to see the addition of;

- Anti-doping governance, including jurisdiction
- Results management process

18.2.1 Education Program (2)

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

1) In the first sentence of 18.2.1 more groups of persons should be named between Athletes and other Persons, to better reflect key target groups – coaches, medical personnel, parents

e.g.....to have a positive and long-term influence on the choices made by Athletes, Athlete Support Personnel and other Persons.

2) The sequence of components in the second sentence of 18.2.1 should be revised and aligned with changes proposed in the ISE;

3) Add “economic” to the list of consequences of doping in the fourth bullet point of 18.2.1;

4) Delete the phrase “including health consequences” from the seventh bullet point of 18.2.1; detailed description of this topic should be given in the Education Guidelines

5) Delete the phrase “including urine, blood and the biological passports” from the ninth bullet point of 18.2.1; detailed description of this topic should be given in the Education Guidelines;

6). Consideration should be given to the reference to schools in the last sentence of 18.2.1 as IFs have no direct links with formal education system; E.g. For younger athletes, programs should be values-based, with a focus on instilling the spirit of sport, ideally through school programs or sports clubs.

7). To help implementing the 18.2.1, consider developing a table with different target groups, above topics and preferred education concept; this table could be a part of ISE or Education Guidelines
Consideration should be given to the reference to schools in the last sentence of 18.2.1 as IFs and some NADO’s have no direct links with formal education system; replace the phrase starting with “through school programs…” with “at early stage of athlete pathways, ideally in cooperation with the relevant public authorities, sport clubs and other entities;

18.3 Education Pool and Target Groups (1)

AEPSAD
AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)
NADO - NADO

It will not possible at all to establish a Pool with including all Persons, as is established in Article 18.3.1 and in Comment 96. This obligation is not realistic and will cause big trouble with the compliance of a majority of NADOs.

Even more difficult is to include Athlete Support Personnel in this Pool, a lot of people (professional and not professional) acting as Athlete Support Personnel, has not any sport license and is not included in any list or properly registered, and will be not possible identify them in any way.

18.3.2 Athletes (2)

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

Consider revising the third sentence of the 18.3.2 and align it with the athlete definition to make sure that the group is not limited;

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

As per our feedback on the IS for Education (ISE), we have concerns over the minimum requirements for Athletes in an Education Pool as currently described. Firstly, this does not match what is currently proposed in the ISE and secondly, we believe this will put a large number of Athletes at risk. We recommend the following as the minimum to be included;

Athletes, as defined by an ADO’s anti-doping rules and who are subject to those rules, shall be considered as part of the Education Pool, and as a minimum the Education Pool should include;

· Athletes formally part of an RTP, NRTP or IRTP
· Athletes defined as International-Level Athletes by their respective ADO
· Athletes defined as National-Level Athletes by their respective ADO
· Athletes attending a Major Games
· Athletes returning from a period of Ineligibility
18.4 Education Program Implementation (1)

Japan Anti-Doping Agency
YaYa Yamamoto, Senior Manager (Japan)
NADO - NADO

SUBMITTED

18.4 – change should to “shall”

- Tailor for the athletes with impairments and minor athletes should be specifically mentioned in light of the discussions for sanctions.

18.5 Coordination and Cooperation (6)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

SUBMITTED

We suggest an edit that says “International-Level Athletes should be the priority for International Federations, who will work with National Federations to ensure education is delivered. In addition, event-based education should become a mandatory element of any anti-doping program associated with an International Event.

Replace ‘All Signatories shall proactively support participation by Athletes and Athlete Support Personnel in Education Programs.”

with:

“All signatories should mandate participation by Educational Pool Athletes and ASP in Education Programs, and proactively support participation by others.

ministère chargé des sports, direction des sports
Michel LAFON, Chef de bureau (France)
Public Authorities - Government

SUBMITTED

The main point is that the coordination of prevention’s policies is given to NADOs and that they shall be the authority on education within their respective countries (article 5.2.1 of ISE). In some countries such as France, these provisions could be difficult to implement for legal and political reasons. Among this, the legitimacy of the NADO to lead a interministerial policy is not consistent. In France, the ministry of sport is more legitimate to coordinate a national policy with the ministry of education, health and youth. This organization ensures the effectiveness of that policy. That’s why, in our country we have a steering committee for anti-doping education plan and program, chaired by the ministry assisted by the NADO and other actors.

So, the proposals below give more flexibility for governments:

Art. 18.5 of the code : The Education Program shall be coordinated at national level, working in collaboration with NADO, the respective national sports federations, NOC, NPC, Government and wider educational institutions. This coordination should maximize the reach of education programs across sports, athletes and ASP and minimize duplication of effort.

Council of Europe
Council of Europe, Sport Convention Division (France)

SUBMITTED
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

1) Add other organisations to the list in the first sentence of 18.5: “The Education Program shall be coordinated by the National Anti-Doping Organization at the national level, working in collaboration with their respective national sports federations, National Olympic Committee, National Paralympic Committee, governments, educational institutions and other and relevant organisations (e.g. professional organisations); 2) Consider amending the text of the first two sentences of 18.5 in a way that also acknowledge that these organisations implement and not only coordinate education efforts;

3) Revise the wording of the third sentence to avoid confusion between optional (should) and mandatory (shall) nature of the event-based education;

4) The last sentence of the 18.5 identifies new roles and responsibilities for Signatories and Stakeholders; this should be properly reflected also in the relevant sections of the Article 20 or completely moved from Part 2 Education to Part 3 Roles and Responsibilities;

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

We strongly suggest that greater emphasis is given to the role of all Signatories in mandating Education. Suggested edit: “All Signatories shall mandate participation in Education Programs by Education Pool Athletes and Athlete Support Personnel”

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

On these “embed values-based education into school programs” of Article 18.5, in many countries will not be possible at all to implement any action coming from its NADO.

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We welcome the clarification on Codes of Conduct, and the associated comment (137). We suggest that the final paragraph of 18.5, referring to Codes of Conduct and disciplinary procedures, should either be a separate Article (18.6), or as previously proposed, be moved to Part 1 and Part 3 of the Code. We also suggest that any Code of Conduct should contain a duty to report any suspected ADRV to the relevant ADO.

20 ADDITIONAL ROLES AND RESPONSIBILITIES OF SIGNATORIES AND WADA (9)

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

Articles 20.1.7, 20.2.7, 20.3.4, 20.4.8, 20.6.5 contains requirements that all officials who are somehow related to doping control must comply with anti-doping rules that comply with the WADA Code.

- We consider it inappropriate to include such requirements to the Code.
Council of Europe
Council of Europe, Sport Convention Division (France)
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

Art. 20

1) In all text delete the section “To promote anti-doping education” as it is now replaced by another article referring to ISE; the sections to be deleted are – 20.1.11; 20.2.10; 20.3.14; 20.4.13; 20.5.11; 20.6.9; 21.4.7;

2) Comment to WADC article 20.1.6, 20.3.3 and 20.4.7

Including “agents and other intermediaries” in the listing of the clientele that sports organizations must ensure is governed by the applicable rules due to this clientele’s participation or involvement in the sports competitions of the sport organization in question.

By doing so, for instance, a sports governing body conducting a mega event must ensure – and thus, as a positive consequence, have a direct legal basis for requiring – that agents representing and negotiating on behalf of certain athletes, e.g. long-distance runners entering major road races, have accepted to be bound by the anti-doping rules.

Including “agents and other intermediaries” in articles 20.1.6, 20.3.3 and 20.4.7 will provide sports organizations a needed tool for requiring intermediaries, in whatever capacity and legal structure, to accept being governed by WADC compliant anti-doping rules as a prerequisite for e.g. being recognized as a formal

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

ARTICLE 20 ADDITIONAL ROLES AND RESPONSIBILITIES OF SIGNATORIES AND WADA:

In all text delete the section “To promote anti-doping education” as it is now replaced by another article referring to ISE; the sections to be deleted are – 20.1.11; 20.2.10; 20.3.14; 20.4.13; 20.5.11; 20.6.9; 21.4.7;

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Art. 20 Responsibilities of Officials
Revision of the original addressed audience/target group of the WADC
Comment: Besides the "individual athlete", the athlete support personnel and any "conspirative, systematic interaction" should be more highlighted and ranked on the same level of regulation. At present, only few articles show elements of a violation relating to athlete support personnel (Art. 2.8-2.10). Currently, various problems occur Clear definition and bounding of athletes support personnel to the WADC (NADC).
Example: An athlete receives doping substances from the parents (or family doctor). The athlete can proof in the proceedings that he bears no fault or negligence in the violation. His sanction is (significantly) reduced. The parents (or the family doctor without a specific reference to competitive sports) are currently not subject to sports law in Germany.
Comment: The definition of athlete support personnel could be graded. "Level 1" = coaches and persons with a close (sports related) relationship to athlete; "Level 2" = doctors, physiotherapists, etc.; "Level 3" = officials; "Level 4" = parents, siblings, etc. For the individual levels different, maybe staggered demands on the elements of the violation and the sanctions framework could be attached. Extending the strict liability principle to include possible doping violations by athlete support personnel and systemic doping by ADOs, NOCs or other stakeholders.
Tatyana Galeta, Head of the Results Management Department (Russia)
NADO - NADO

Article 20. Consequences must be imposed not only on organizations that use the services of organizations that provide sampling services, but also on the organizations that provide such services. The lack of sanctions for actions that do not meet the items of the ISTI undermines the credibility of the whole anti-doping system. Perhaps, an authorization mechanism for such organizations should be provided by national anti-doping organizations.

AEPSAD
AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)
NADO - NADO

AS WADA is a Code Signatory, the correct Article 20 will be:

ARTICLE 20 ADDITIONAL ROLES AND RESPONSIBILITIES OF SIGNATORIES AND WADA

.- WADA AS A SANCTIONING AUTHORITY.

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

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

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

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

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

The Spanish sanctioning procedure, established in the anti-doping law, follows the criteria and guidelines established for the exercise of the sanctioning power provided for in the constitution. This procedure, like all sanctioning procedures in all matters, is attributed exclusively to the administration. This means that only the administration can order and decide on the matters that are judged. The intervention of other entities, outside the public powers, is expressly forbidden, being able to only intervene in the procedure as interested, but never with decision-making powers. The draft world anti-doping code, however, contains articles in which it attributes to WADA a direct and decisive intervention in some administrative procedures. Wada is not part of the administration, but a private entity subject to the law of another country.

International Paralympic Committee
James Sclater, Director (Germany)
Other - Other (ex. Media, University, etc.)
This section should capture entities like the Cycling Anti-Doping Foundation and the 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. Private service providers (PWC, IDTM, etc.) and the ITA should be able to become code signatories. The ADOs using them are responsible for the Code compliance and quality of their services.

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

Does the clash of interest apply to Governing Body members of the NADO who could be office-bearers of the NOC or National Federations?

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

In relation to the right to delegate aspects of Doping Control, the provision uses the word “service provider” while in the Introduction to the Code, for the same concept, the word “Person” is used to refer to the delegated entity. For the sake of coherence, it is proposed that a unique term be used.

20.1 Roles and Responsibilities of the International Olympic Committee

20.1.7 (1)

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

Article 20.1.7
ADNO suggests this paragraph also should include IOC members. Board members should also be included in 20.3.4, 20.4.8 and 20.6.5.

20.2 Roles and Responsibilities of the International Paralympic Committee (2)

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We propose that 20.2.10 is reworded as follows:20.2.10To promote anti-doping education, and in particular to require National Paralympic Committees of participating countries to conduct anti-doping Education for Athletes and Athlete Support Personnel in collaboration with the National Anti-Doping Organisation prior to a Paralympic Games.
We propose the following inclusions;20.2.14To require the National Paralympic Committees to have an anti-doping point of contact to support the effective coordination of anti-doping programmes. It would also be helpful if publication of anti-doping rules twelve months in advance of a Games (as a minimum) were made mandatory, to ensure ADOs have sufficient time to educate Athletes and Athlete Support Personnel on them.

International Paralympic Committee
James Sclater, Director (Germany)
Other - Other (ex. Media, University, etc.)
Signatories such as the IPC with such responsibilities on paper lack the tools (such as the International Standard for Code Compliance by Signatories and Compliance Review Committee), not to mention the resources of WADA, to actually exercise their duties. Therefore, there is some need for WADA guidance on what is really expected under the current Code and / or the ISCCS.

20.3 Roles and Responsibilities of International Federations (3)

**Ministry of sport of Russia**  
Veronika Loginova, Head of Antidoping Department (Russia)  
Public Authorities - Government

We believe it expedient to return to the previous formulation of ARTICLE 20.3.13: To do everything possible to award World Championships only to countries where the government has ratified, accepted, approved or acceded to the UNESCO Convention and the National Olympic Committee, National Paralympic Committee and National Anti-Doping Organization are in compliance with the Code.

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

20.3.2. To require as a condition of membership that National Federations and their membership’s policies, rules and programs are in compliance with the Code and the International Standards, and to take appropriate action to enforce that condition.

20.3.7. To require National Federations and their membership to report any information suggesting or relating to an anti-doping rule violation to their National Anti-Doping Organization and International Federation and to cooperate with investigations conducted by any Anti-Doping Organization with authority to conduct the investigation.

**UK Anti-Doping**  
Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO

We propose the following inclusion:

20.3.20

To require National Federations to have an anti-doping point of contact to support the effective collaboration of anti-doping programmes and to ensure they provide access to Athletes for the purposes of education and testing

**IAAF Athletics Integrity Unit**  
Thomas Capdevielle, Deputy Head (MONACO)  
Sport - IF – Summer Olympic

These are all positive amendments to the Code [articles 20.3.2, 20.3.4 and 20.3.8] and they are supported by the AIU. The AIU recommends that WADA consider the current Article 15 of the IAAF Anti-Doping Rules as a means by which ADOs may ensure effective compliance with these new provisions (particularly IFs, although the same principles could apply equally to the IOC imposing obligations on its NOCs).
20.3.4 (1)

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

**Article 20.1.7**
ADNO suggests this paragraph also should include IOC members. Board members should also be included in 20.3.4, 20.4.8 and 20.6.5.

20.3.12 (3)

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

While welcoming the increased responsibilities to NFs in the current draft (20.3.12; 20.4.11), consideration should be given to the consequences of inactivity or non-responsiveness of the NFs – will that subsequently lead to non-compliance of IF, NOC, NPC?

**Anti Doping Denmark**
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO

"20.3.12 To plan, implement and evaluate anti-doping education in line with the requirements of the International Standard for Education, including requiring National Federations to conduct anti-doping education in coordination with the applicable National Anti-Doping Organization." - While welcoming the increased responsibilities to NFs in the current draft (20.3.12; 20.4.11), consideration should be given to the consequences of inactivity or non-responsiveness of the NFs – will that subsequently lead to non-compliance of IF, NOC, NPC?

**Japan Anti-Doping Agency**
YaYa Yamamoto, Senior Manager (Japan)
NADO - NADO

20.3.12 – Event-Based Education must be mentioned in light of the requirement (shall) in the ISE.

20.3.14 (1)

**UK Anti-Doping**
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Can be removed as it is a duplication of 20.3.12

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**20.4 Roles and Responsibilities of National Olympic Committees and National Paralympic Committees (1)**

https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZyPSX2Kylyh3ELHZRwCfaZvkJFTUCiuMVYITvJJa3G6b0jC6…
20.4.2. To require as a condition of membership or recognition that National Federations and their membership’s anti-doping policies and rules are in compliance with the applicable provisions of the Code, and to take appropriate action to enforce that condition.

20.4.4. To require National Federations and their membership to report any information suggesting or relating to an anti-doping rule violation to their National Anti-Doping Organization and International Federation and to cooperate with investigations conducted by any Anti-Doping Organization with authority to conduct the investigation.

20.4.8 (1)

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

Article 20.1.7
ADNO suggests this paragraph also should include IOC members. Board members should also be included in 20.3.4, 20.4.8 and 20.5.6.

20.4.11 (3)

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

While welcoming the increased responsibilities to NFs in the current draft (20.3.12; 20.4.11), consideration should be given to the consequences of inactivity or non-responsiveness of the NFs – will that subsequently lead to non-compliance of IF, NOC, NPC?

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

"20.4.11 To plan, implement and evaluate anti-doping education in line with the requirements of the International Standard for Education, including requiring National Federations to 3 Roles and Responsibilities conduct anti-doping education in coordination with the applicable National Anti-Doping Organization." - While welcoming the increased responsibilities to NFs in the current draft (20.3.12; 20.4.11), consideration should be given to the consequences of inactivity or non-responsiveness of the NFs – will that subsequently lead to non-compliance of IF, NOC, NPC?

Japan Anti-Doping Agency
YaYa Yamamoto, Senior Manager (Japan)
NADO - NADO

20.4.11 – Ensure to specifically mention about NOC/NPCs’ roles and responsibilities to cooperate for the event-based education with the NADO concerned.
20.5 Roles and Responsibilities of National Anti-Doping Organizations (1)

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

Finally, a NADO cannot be the authority in education in its country, as Article 20.5.9 says. The authorities in education are exclusively the Ministries of Education, and it is sure in many countries this competence will never will be overruled by the compliance with the CODE. This obligation is not realistic at all.

20.5.1 (3)

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

Article 20.5 Roles and Responsibilities of National Anti-Doping Organizations

We concur with stakeholders that have asked for a clarification of the requirement of independence found in Article 20.5.1. Independence is not only a matter of independence from sport, but, given recent historic events, also from governments and public authorities. Hence, the Article should read; “To be independent in their operational decisions and activities, including without limitation the adoption and enforcement of a conflict of interest policy prohibiting any involvement by its directors and officers in the management or operations of any Sports organizations or governments/public authorities.”

Australia strongly opposes the proposed exclusion of NADO directors and officers from involvement in the operations of IFs, NSOs, MEOs, or NOCs. This Article, if implemented, imposes false barriers that threaten the prospect of collaboration between governments, national anti-doping organisations and the sporting movement.

The benefits of collaboration are illustrated by the operation of a highly successful pre-Games and in-Games anti-doping program at the 2018 Commonwealth Games, delivered jointly by the Commonwealth Games Federation (CGF), the Australian Sports Anti-Doping Authority (ASADA) and the Gold Coast Organising Committee (GOLDOC). In its report, WADA's Independent Observers team noted:

‘Over the course of competition, the CGF wisely availed itself of the expertise, resources, and existing processes of ASADA. In so doing, the CGF was able to leverage the day-to-day operations of a NADO in a major event setting. Rather than the traditional ‘top-down’ approach to test planning and delivery, the ASADA involvement saw testing, education, intelligence gathering and Science integrated into daily activities whereby CGF/ASADA/GOLDOC plans were adjusted to react to new information collected by Doping Control personnel, ASADA investigators, intelligence analysts, and scientific officers, all of whom were on-site. This capacity, blended with the experience and leadership of the CGF Medical Commission, resulted in a truly integrated anti-doping effort; another first for the Commonwealth Games.’
**Anti-Doping Norway**  
Anne Cappelen, Director Systems and Results Management (Norway)  
NADO - NADO

**Article 20.5**

ADNO supports article 20.5.1 and suggest it should also cover NADO Board members and cover the Sport Ministry as well as the sports organisations listed under this paragraph.

**20.5.7 (3)**

**Japan Anti-Doping Agency**  
YaYa Yamamoto, Senior Manager (Japan)  
NADO - NADO

20.5.7 – add “…for Education, particularly the pre-event/Games and event-based time”.

**NADO Flanders**  
Jurgen Secember, Legal Adviser (België)  
NADO - NADO

NADOs can only be held accountable for the enforcement of consequences, not for the consequences itself that are imposed by a hearing panel. There can only be an obligation to provide with a framework that allows hearing panels to determine consequences for an individual case in an independent and impartial manner.(reference to comments on article 8 and ISRM).

**ONAD Communauté française**  
Julien Magotteaux, juriste (Belgique)  
NADO - NADO

L’évolution actuelle, qui transparaît dans plusieurs modifications proposées du Code et des standards (notamment celui sur la gestion des résultats et des instances d’audition), va dans le sens d’un renforcement de l’indépendance de tous les acteurs de l’antidopage.

Par ailleurs, en vertu des articles 20.5.1 et 22.6 du Code, les ONADs doivent pouvoir disposer de l’indépendance et de l’autonomie dans toutes leurs décisions et activités opérationnelles.

Dans de nombreux pays, les instances d’audition ("hearing panels") sont tout à fait indépendantes des ONADs, sur le plan opérationnel, donc, mais aussi, parfois, sur le plan fonctionnel et/ou juridique.

L’article 20.5.7 du Code est actuellement rédigé comme suit :

"Poursuivre vigoureusement toutes les violations potentielles des règles antidopage relevant de leur compétence, y compris enquêter sur l’implication potentielle du personnel d’encadrement du sportif ou d’autres personnes dans chaque cas de dopage et s’assurer de l’application correcte des conséquences".

La dernière obligation/responsabilité, prévue par cet article : "s’assurer de l’application correcte des conséquences", peut être lue comme une obligation de résultat, à charge de l’ONAD.

Aussi pour éviter d’entamer l’indépendance de l’ONAD (et celle de l’instance d’audition, par voie de conséquence), il est proposé de transformer cette dernière obligation en une obligation de moyen.

Concrètement, il est proposé, à l’article 20.5.7 du Code, d’insérer les termes : "veiller à " entre les termes "dans chaque cas de dopage " et les termes "s’assurer de l’application correcte des conséquences".
L'article 20.5.7 tel qu'il serait ainsi modifié se lirait alors comme suit :

"Poursuivre vigoureusement toutes les violations potentielles des règles antidopage relevant de leur compétence, y compris enquêter sur l'implication potentielle du personnel d'encadrement du sportif ou d'autres personnes dans chaque cas de dopage et veiller à s'assurer de l'application correcte des conséquences".

Pour une application concrète de cet article 20.5.7 tel qu'il serait ainsi modifié, une ONAD satisfairait à son obligation principale et première dès lors qu'elle aurait détecté un cas de dopage, l'aurait allégué et aurait transmis le dossier à une instance indépendante, pour suivi disciplinaire.

Ensuite, si cette instance indépendante devait rendre une décision que l'ONAD jugerait comme étant non conforme au Code (par exemple parce qu'elle ne respecterait pas l'échelle des sanctions prévue par le Code) alors l'ONAD interjeterait appel de cette décision, en vue de "veiller à s'assurer de l'application correcte des conséquences".

Par contre, si, malgré cet appel, l'instance d'audition (toujours aussi indépendante de l'ONAD) devait rendre à nouveau, en appel, une décision non pleinement conforme au Code, l'ONAD ne peut en aucun cas en être tenue pour responsable.

En effet, elle aura tout fait pour veiller à s'assurer de l'application correcte des conséquences et ne peut pas aller plus loin (et ne peut pas être tenue responsable d'une décision prise par une instance tout à fait indépendante), sous peine de compromettre sa propre indépendance et celle de l'instance d'audition.

C'est la raison pour laquelle nous demandons à ce que cette obligation soit transformée en une obligation de moyens.

A défaut, cette disposition est de nature à compromettre l'indépendance des ONADs et des instances d'audition, ce qu'il convient impérativement d'éviter

20.5.8 (1)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Include a requirement for NADOs to promote anti-doping education.

20.5.9 (3)

ministère chargé des sports, direction des sports
Michel LAFON, Chef de bureau (France)
Public Authorities - Government

The main point is that the coordination of prevention's policies is given to NADOs and that they shall be the authority on education within their respective countries (article 5.2.1 of ISE).

In some countries such as France, these provisions could be difficult to implement for legal and political reasons. Among this, the legitimacy of the NADO to lead a interministerial policy is not consistent. In France, the ministry of sport is more legitimate to coordinate a national policy with the ministry of education, health and youth. This organization ensures the effectiveness of that policy. In our country we have a steering committee for anti-doping education plan and program, chaired by the ministry assisted by the NADO and other actors.

That's why the WADC can't provide that NADOs are the authority on education. It depends on the organization in each country.
Proposal:

Art. 20.5.9: To coordinate the plan their education programs plan for their country, and to cooperate at national level in collaboration with national Federations, NOC, NPC, Government and wider professional associations International Federations, IOC/IPC and MEOs in the implementation of education programs for International-level athletes during international sport events.

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

Revise the 20.5.9 to clarify that it refers to the anti-doping education within the context of ISE.

E.g. Each National Anti-Doping Organization shall be the authority on education as it relates to clean sport in accordance with the International Standard for Education within their respective countries.

Submitted

Japan Anti-Doping Agency
YaYa Yamamoto, Senior Manager (Japan)
NADO - NADO

20.5.9 – if this sentence remains for NADO, the same one should be applied to the IFs by changing “…shall be the authority on education within their respective sport” as such.

20.5.10 (2)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Submitted

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Introduction and Article 20.5.10, Roles and Responsibilities:
This provision needs to be widened to ensure that it covers people performing tasks for ADOs on a less formal basis than directors, officers and employees - specifically “contractors”. As the Code draft explains (at p14 comment 8) that the purpose of these provisions is to tie employees etc into the rules on tampering, trafficking, administration, complicity, prohibited association and retaliation, it is imperative that it covers personnel responsible for sample collection. In the UK, these people are not employees but are contracted for each individual mission. They are paid and so are not covered by the word “volunteers”.

20.5.11 (1)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

This article is unnecessary if suggestion for article 20.5.8 is incorporated.
20.6 Roles and Responsibilities of Major Event Organizations

20.6.5 (1)

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

**Article 20.1.7**
ADNO suggests this paragraph also should include IOC members. Board members should also be included in 20.3.4, 20.4.8 and 20.6.5.

20.6.7 (1)

**UK Anti-Doping**
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We propose the following inclusion:
‘…… International Standard for Education, and to consider in good faith collaborating with the host country NADO or RADO to implement event-based Education.

20.7 Roles and Responsibilities of WADA (3)

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

**Article 20.7**
ADNO suggest a similar paragraph for WADA Executive Committee responsible for and making decisions related to Code Compliance. A new 20.7.1 could read: “WADA Executive Committee to be independent in their operational decisions and activities, including without limitation the adoption and enforcement of a conflict of interest policy prohibiting any involvement by its board members, directors and officers in the management or operations of any International Federation, National Federations, Major Event Organisation or National Olympic Committee.”

**CHINADA**
Yao Cheng, Result Management (China)
NADO - NADO

WADA's responsibilities and obligations can be increased moderately since it has less responsibilities and obligations compared with those of other signatories, athletes, and athlete support personnel.

**UK Anti-Doping**
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

We propose that WADA should include management of their International Co-Operation programme as one of their responsibilities.
Council of Europe  
Council of Europe, Sport Convention Division (France)  
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)  
SUBMITTED

With regard to the role and responsibilities of WADA, consider including in the 20.7.6 reference to WADA as a clearing house or host of lists of recognised education programs as proposed for ISE;

Anti Doping Denmark  
Jesper Frigast LARSEN, Legal Manager (Denmark)  
NADO - NADO  
SUBMITTED

20.7.6 To promote, conduct, commission, fund and coordinate anti-doping research and to promote anti-doping education. 3 Roles and Responsibilities: Regarding the role and responsibilities of WADA, consider including in the 20.7.6 reference to WADA as a clearing house or host of lists of recognised education programs as proposed for ISE;

UK Anti-Doping  
Pola Murphy, Compliance Coordinator (United Kingdom)  
NADO - NADO  
SUBMITTED

We propose the following:

“To promote, conduct, commission, fund and coordinate anti-doping research and to activate Education through the development and promotion of anti-doping tools, resources and programmes.”

20.7.10 (1)

Institute of National Anti-Doping Organisations  
Graeme Steel, Chief Executive (Germany)  
Other - Other (ex. Media, University, etc.)  
SUBMITTED

The new 20.7.10 is supported.

21.3 Roles and Responsibilities of other Persons Subject to the Code (4)

US Olympic Committee  
Sara Pflipsen, Senior Legal Counsel (United States)  
Sport - National Olympic Committee  
SUBMITTED

Article 21. Roles and Responsibilities of Athletes and Other Persons

Article 21.1.6 provides that Athletes and Other Persons will cooperate with investigations. It would be helpful to have clarification and parameters around “cooperation” and what it means to “cooperate.”

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

21.1 Roles and Responsibilities of Athletes

Add the reference to the respect of the clean sport values; e.g. Positively encourage/promote/advocate the spirit of sport
21.2 Roles and Responsibilities of Athlete Support Personnel

Add the reference to the respect of the clean sport values; e.g. Positively encourage/promote/advocate the spirit of sport

21.3 Roles and Responsibilities of other Persons Subject to the Code

Add the reference to the respect of the clean sport values; e.g. Positively encourage/promote/advocate the spirit of sport

Japan Anti-Doping Agency
YaYa Yamamoto, Senior Manager (Japan)
NADO - NADO

21.1 – in light of promotion of positiveness and proactive act by the athletes for their right based on the Charter and the ISe, one consideration can be to include: “To cooperate with ADOs for clean sport messenger” (the term is used in ISE).

Caribbean Regional Anti-Doping Organization
Sasha Sutherland, Executive Director (Barbados)
NADO - RADO

21.4.1 To ensure member countries, through governments/ministries responsible for sport, National Olympic Committees, and National Anti-Doping Organizations to adopt and implement rules, policies and programs which conform with the Code.
21.4.2 To require as a condition of membership that a member country sign an official Regional Anti-Doping Organization membership form which clearly outlines their commitment and any delegation of anti-doping responsibilities to the Regional Anti-Doping Organization.
21.4.3 To cooperate with governments, National Olympic Committees, and other relevant national and regional organizations and agencies and other Anti-Doping Organizations.
21.4.4 This statement can be made consistent with Article 20.5.4:- To encourage reciprocal Testing between National Anti-Doping Organizations and Regional Anti-Doping Organizations.
21.4.5 To promote and assist with capacity building within National Anti-Doping Organizations under their jurisdiction

See discussion on this article below:

in the areas of Anti-Doping Rules, Doping Control, Education, Results Management and Therapeutic Use Exemption programme implementation and training. I’m not sure whether we can also make an amendment to Article 22.6 to suggest that governments work with NOCs AND RADOs (for “expert” assistance) in setting up the NADO. This will give the necessary prestige for working alongside “difficult” NOCs and privileges the RADO as WADA's delegate organization in the region to lend the necessary assistance.

21.4 Roles and Responsibilities of Regional Anti-Doping Organizations (3)

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

In cases where NADO is non-compliant, the increased role and responsibility of RADO in education should be envisaged.

21.4.7 to be deleted
Anti Doping Denmark
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO

"21.4.6 To plan, implement and evaluate anti-doping education in line with the requirements of the International Standard for Education." - In cases where NADO is not functioning or is non-compliant, the increased role and responsibility of RADO in education should be envisaged;

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

National Federation: Appears to be a typo in line 2 and 3. Possibly a faulty link to an external document.

22 INVOLVEMENT OF GOVERNMENTS (8)

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

Involvement of Governments – Access for doping control officials and removal of samples - Article 22.8

The Government of Canada fully supports the addition of Article 22.8 regarding Code Signatories expectations of governments on doping control activities, namely, when required to access anti-doping related data when required as part of an investigation. However, when WADA's access is impeded by existing governmental legislation or regulations, it is suggested that each government should seek corrective measures to be taken by the responsible public authority, based on a firm, agreed upon schedule.

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

1. WADA proposal: Article 22.2: «Each government will put in place legislation, regulation, policies or administrative practices for cooperation and sharing of information with Anti-Doping Organizations and, sharing of data among Anti-Doping Organizations as provided in the Code, unrestricted transport of urine and blood Samples, unrestricted entry and exit of Doping Control officials and unrestricted access for Doping Control officials to all areas where International Level Athletes or National-Level Athletes live or train». It is necessary to provide a definition of the concept of “Doping Control officials” in the relevant section of the Code – “Definitions”.

- We propose to consider an alternative formulation: 22.2. Each government should adopt and develop legislation, regulations, policies or administrative practices for cooperation and information exchange with Anti-Doping Organizations, exchange of data between Anti-Doping Organizations as provided for in the Code, take reasonable measures to ensure unlimited transportation of urine and blood samples, admission of Doping control inspectors in all zones where athletes of international and national levels live and train, to carry out the test if there are appropriate documents confirming the need for sampling.

2. WADA proposal: Article 22.3: «Each government will require that all government officials or employees directly involved in the governance or operations of a sport subject to the Code agree to be bound by the Code as a condition of such involvement».

- This provision should either be deleted or further worded.

Anti-Doping Singapore
Say Po Yeo, General Manager (Singapore)

https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZypVX2Kyjyh3ELHZRWcFaZvkFtUCiuMVTYtJJa36GbKLjlC6e... 112/157
We would also like to propose (within Article 22) a new clause stating that governments of countries which are part of a particular RADO be required to recognise the roles and responsibility of the RADO (Article 21.3), and cooperate with the RADO to enable and provide reasonable support for its programmes and activities within their country and region.

Such a clause will provide greater standing for the RADOs and may enable them to work more effectively with governments of countries within their region.

Japan Anti-Doping Agency
Akira Kataoka, General Manager, Results Management and Intelligence (Japan)

1. Japan Sports Agency understands that the articles 22.2, 22.3 and 22.8 of the World Anti-Doping Code 2021 Draft were proposed to enhance the effectiveness of the anti-doping activities.

In order to ensure the validity of those articles, however it would be necessary for each government to amend relevant laws and regulations after careful adjustment with other conflicting rights within its legal system. To this end, it would be necessary to consider amending the International Convention Against Doping In Sports (hereafter referred to as "the Convention") so that each government can have legal background to amend relevant laws and regulations. Considering this situation, we suggest that WADA management and the secretariat of the Convention should have consultation about coherence between the World Anti-Doping Code and the Convention from legal point of view.

Without coordination between the World Anti-Doping Code and the International Convention Against Doping In Sports (hereafter referred to as "the Convention"), it would be difficult for each state to adjust their legal system in line with the amended World Anti-Doping Code. If those articles are incorporated into the World Anti-Doping Code 2021 without such coordination, we have concern that it would cause confusion when each government doesn't implement those articles and as the result its national anti-doping organization is declared non-compliant to the World Anti-Doping Code.

2. Japan Sports Agency has concern that the amendment of the World Anti-Doping Code could add inconsistent with the International Convention Against Doping In Sports (hereafter referred to as "the Convention") when the proposed article 2.11 is incorporated into World Anti-Doping Code 2021. We suggest that WADA management and the secretariat of the Convention should have consultation about the coherence between World Anti-Doping Code and the Convention.

Japan Anti-Doping Agency
YaYa Yamamoto, Senior Manager (Japan)

Article 22
- Stating the government role in values-based education should be made. Even though the ISE strongly mentions about the “Values-Based Education”, going beyond the minimum, be included in school programme, the government role is the most important.
On the other hand, the content of Article 22, as regards the obligations of governments, we believe is contrary to international law and respect for the sovereignty of states to impose obligations that interfere with the immigration policy of the states or of circulation of goods. Even when the transport of blood in our country is subject to strict regulations when it comes to medical use. There is no justification for the same product to have a different treatment.

1. To strengthen governments’ support for investigation

The importance of investigation in anti-doping work is increasing, but for many anti-doping organizations, investigation still lacks legal basis and effective means. Therefore, it is proposed that in the Code Article 22 (Involvement of Governments) it should be clearly stated that governments provide legal and policy support and substantial assistance to anti-doping organizations in the process of investigation, especially for such serious violations as illegal manufacturing and trafficking doping, organizing, coercing, deceiving and abetting athletes to use doping, provide intelligence information and judicial assistance, cooperate with anti-doping organizations to carry out follow-up investigation, investigate criminal liability according to applicable laws when necessary and increase deterrence and sanctions on serious violations.

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

Government controls everything as far as anti-doping in India is concerned Is there not a clash interest when Govt and its agencies sink huge amounts of money into sports and then expect medals in major competitions? Where does the desire to curb (if not eliminate) doping come in? NADO, Lab, hearing panels etc all have individuals nominated by the Govt. Will elite athletes who are caught get any concessions in such a scenario?

22.2 (4)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Supported in-principle, but need to acknowledge that this is subject to national legislation.

Council of Europe
Council of Europe, Sport Convention Division (France)
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)
Art. 22.2:
This provision potentially interferes with fundamental freedoms.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO
SUBMITTED

It can be difficult to put an obligation of unrestricted access into national legislation. This would allow not only NADO DCO’s but all DCO’s unrestricted access to private facilities. The rationale is good, because it prevents athletes from seeking out locations with very restricted access for DCOs. But it should be the obligation of the athlete to make sure he can be found in an area accessible to DCOs. It is unclear how national legislation can go beyond the normal limitations of access of private property, protected facilities, restricted areas, etc.

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

It should be included explicitly that no advance visum for DCP to enter a country is needed for each entering

22.3 (5)

IAAF Athletics Integrity Unit
Thomas Capdevielle, Deputy Head (MONACO)
Sport - IF – Summer Olympic
SUBMITTED

The AIU supports the principle of governments being required to ensure the "unrestricted transport of urine and blood Samples, unrestricted entry and exit of Doping Control officials and unrestricted access for Doping Control Officials to all areas where International-Level or National-Level Athletes live or train". This has often proved to be a major obstacle for ADOs conducting testing activities in some jurisdictions. The issue remains one of enforcement however. In reality, these new provisions impose no more than "expectations" on governments since they are only "obligated" to adhere to the requirements of the UNESCO Convention. Unless and until the enforcement mechanisms in the Convention become more effective, the changes proposed are unlikely to be of any real consequence.

Council of the European Union
Lucian Constantin Mircescu, Chairman Working Party on Sport (Romania)
Public Authorities
SUBMITTED

The proposal for a new Article 22.3 poses legal difficulties in terms of application to government officials or employees, and as a result it should be deleted.

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government
SUBMITTED

Article 22.3 is not supported. The employment conditions of government employees is varying across jurisdictions, but often subject to national legislation that outlines workplace relations. Governments are bound by the Convention, not the Code, and it is unlikely this article could be enforced.
Council of Europe
Council of Europe, Sport Convention Division (France)
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

Art. 22.3: This provision will be difficult to implement.
The proposal for a new Article 22.3 poses legal difficulties in terms of application to government officials or employees, and as a result it should be deleted.

NADO Flanders
Jurgen Secember, Legal Adviser (België)
NADO - NADO

Sanctioning government officials will be very difficult to maintain, because of administrative and criminal laws. For NADOF, this is sufficiently covered by those laws, stating that if they violate legislation, they can be sanctioned through the aforementioned laws.

22.5 (1)

AEPSAD
AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)
NADO - NADO

In this sense, the new paragraph 22.5 refers to arbitrations as the preferred means of resolving doping-related disputes and as we stated above, this common law measure is not possible in our system of public law.

22.7 (1)

Anti-Doping Singapore
Say Po Yeo, General Manager (Singapore)
NADO - NADO

In addition to autonomy, it is important for the authority of the NADO to be officially recognized by the government (through any means, including legislation). This could facilitate the NADO’s work with different government or non-government agencies. We suggest a modification to Article 22.7 as follows: “Each government will recognize the authority and respect the autonomy of a National Anti-Doping Organization in its country and not interfere in its operational decisions and activities.”

22.8 (3)

Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

This article should be amended to include a statement that this is subject to national legislation. For example;

Each government, to the extent permissible under national law, shall not limit or restrict WADA's access to any doping or anti-doping records or information held or controlled by any Signatory, member of a Signatory or WADA-accredited laboratory.
**Antidoping Switzerland**
Ernst König, CEO (Switzerland)
NADO - NADO

ADCH supports the addition of 22.8. (government shall not limit or restrict WADA's access to any doping records). However, one needs to realise that this is barely an expectation and not an obligation, so in reality will have limited implications.

**Institute of National Anti-Doping Organisations**
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

Article 22.8 is supported.

**23.5 Monitoring and Enforcing Compliance by Signatories (3)**

**Ministry of sport of Russia**
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

We appreciate that the possible consequences of non-compliance is now specified in article 23.5.

**International Paralympic Committee**
James Sclater, Director (Germany)
Other - Other (ex. Media, University, etc.)

Independent anti-doping service providers should be subject to direct WADA oversight. Otherwise, Signatories are de facto responsible for the Code compliance of these organizations, but without the monitoring and enforcement capacity and mandate of WADA's CRC.

**23.5.12 (1)**

**Ministry of sport of Russia**
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

The proposed measures are too tough, further discussion is needed. 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.
Department of Health - National Integrity of Sport Unit  
Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

To ensure the non-compliant NADO remain committed to the compliance process, this Article should be re-written to give the non-compliant NADO a role in the selection of a third party, with this decision subject to WADA's agreement. There is a risk that, if WADA is the decision-maker, the non-compliant NADO is likely feel they have lost ownership of the process and be less committed to the outcomes. Another suggestion to ensure the ongoing involvement of the non-compliant NADO is to replace references to the third party ‘taking over’ the operations of the non-compliant NADO with the term ‘facilitation’.

There is also a risk for the third party, should it provide the required services, but the non-compliant NADO does not have the resources to pay a third party for their services. The third party should have some protection from this occurring.

WADA should also consider the appropriateness of including the reference to government legislation in this Article. WADA is a non-government organisation and, as a result, Governments sign up to the UNESCO Convention Against Doping in Sport which commits them to abide by the principles of the Code. Legislation firstly needs to be consistent with government policy, is subject to Parliamentary drafting standards and exposed to debate in the Parliament. Accordingly, WADA’s focus should therefore be on whether the program and activities of the NADO comply with the Code rather than the strict wording of legislation.

APPENDIX 1 DEFINITIONS (22)

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

World Rugby note the reference to "Protected Person" defined in the draft Code, but referred to in the draft ISTI as "Vulnerable Person". Can WADA please clarify which terms is to be used?

FINA  
Cornel Marculescu, Executive Director (Switzerland)  
Sport - IF – Summer Olympic

We find it fundamental that a definition of In-Competition Period be homogeneous and accepted by all Major Event Organizations, including Olympic Games and World or Continental Championships.

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

In-Competition:

The current wording extends the in-competition period for withdrawn athletes for longer than athletes who compete. The UCI thinks that the wording should be amended so that withdrawn athletes remain subject to in-competition testing only until the end of the competition.

Tampering:

The UCI would suggest replacing the word "Bribe" by something more general such as incentive or undue advantage.
The definition of Provisional Suspension should also reference 10.14.1.

Norwegian Olympic and Paralympic Committee and Confederation of Sports
Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

DEFINITIONS

«Protected persons»:
We concur with other stakeholders addressing the definition of «minors» and consider the new category and its definition more suitable.

«Recreational athletes»:
In previous submissions, we underlined that the definition of an athlete is a key point in the Code. We called on WADA to amend the definition thus recognizing that anti-doping work is organized differently in each country and therefore provide the necessary flexibility to ADOs that want to apply the Code on lower level athletes that compete under their authority. For this group of athletes, the current use of non-flexible regulations could easily lead to disproportionate sanctions. And although we suggested that simply amending the definition of “athlete” would provide the flexibility asked for by the stakeholders, we support WADAs proposal of this new category of athletes.

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

Definition of Protected Person: We would like to suggest having an harmonized definition:
"Protected Person: An Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in the open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation."
Definition of Recreational Athlete: We would like to suggest exploring the possibility to give to International Federations the responsibility to define who should be considered Recreational Athlete.

"Recreational Athlete: A natural Person who is so defined by the relevant International Federation, National Anti-Doping Organization or Major Event Organization; provided, however, the term shall not include any Person who, within the five years prior to committing any antidoping rule violation, has been an International-Level Athlete (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or National-Level Athlete (as defined by each National Anti-Doping Organization consistent with the International Standard for Testing and Investigations), has represented any country in an International Event or has been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organization."

UEFA
Rebecca Lee, Anti-Doping Coordinator (Switzerland)
Sport - Other

"Protected person": This term replaces the term of “minor” that was defined as aged under 18 years old. With this new definition, it concerns mainly athletes under 16 years old. Athletes between 16 and 18 y.o would not be concerned by this definition if they have already participated in an international event. It would therefore mean that a player between 16 and 18 y.o with very little experience in international event would not be covered by the definition of protected person and therefore not benefit from a milder sanctioning regime. In football, this does not make much sense. Players of this age (between 16-18) might have participated in an international event before but have almost no international experience and their chances to evolve later as an adult in the international level of football is not high. Furthermore, these players are minors according to civil and criminal law and therefore are treated differently than adults so there is no reason to divert from this in sports law.
Department of Health - National Integrity of Sport Unit  
Luke Janeczko, Policy Officer (Australia)  
Public Authorities - Government

IN-COMPETITION

The proposed changes to the definition of in-competition are not supported. It is recommended the definition of in-competition remain as it is currently defined.

If athlete withdraws from event after 11:59pm then they remain subject to IC testing for 24 hrs. This is NOT supported as if the athlete does not compete then no advantage has been gained through the use of IC only substances and it could result in unreasonable consequences for an athlete.

- Withdrawal from competition may be a reason to conduct testing but OOC testing is suitable in this context.
- If an athlete becomes aware they have may still have an IC only substance in their body and so decides to withdraw from an event then this appropriate action by the athlete should be encouraged. They should not be penalised for the presence of an IC substance when they have elected not to compete.
- If an athlete becomes unwell, withdraws from competition and needs to utilise an IC prohibited substance for their health (such as pseudoephedrine) they should be able to use these substances.

To illustrate, two athletes use a specified stimulant 13 hours before their event, the stimulant use would have had a similar impact on their performance yet the consequences for them could be very different depending on what time of day they compete.

- Athlete 1 competed at 8am, used at 7pm and so is subject to a presence violation and not a use violation. Likely consequence – 2 year suspension.
- Athlete 2 competed at 8pm, used at 7am and so is subject to a presence violation and a use violation. Likely consequence – 4 year suspension.

PROTECTED PERSON

Australia reiterates its previous comments that this, as it is currently defined, is not supported. The definition will create a situation where athletes under the age of 16 competing at an open international event are subject to different anti-doping rules to their rivals.

RECREATIONAL ATHLETE

The operation of the definition (and the provision) needs clarification, particularly in relation to how an ADO is to determine at what point the five years from an ADRV starts and is calculated, and what occurs if there is a conflict between definitions between a NADO and an IF.

It is also uncertain how the different treatment of these Athletes (for example in relation to the testing of Masters Athletes, TUE requirements, dealing with individuals who engage in fitness activities etc) will be practically managed, especially when the WADC Consequences (excepting mandatory public disclosure under Article 14.3.2) must be applied in the event of a presence, use or tampering ADRV (taking into account Article 10.6.1.3).

In addition, there should be clarification on the process if there is a conflict in the definition of a recreational athlete between an IF, MEO, and NADO.

Ministry of sport of Russia  
Veronika Loginova, Head of Antidoping Department (Russia)  
Public Authorities - Government
Para-athlete – is a sportsperson with physical disabilities, visual impairment or intellectual disabilities, participating in the International Paralympic movement.

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

“Protected persons”

Although the introduction of a new notion and the definition of the “protected person”, in replacement to the first suggested definition of a “minor”, is generally welcome, there are several points which still need to be discussed.

- The new definition of “protected persons” that aims to solve the issue of arranging more flexibility in the sanctioning regime for minors, without being too lenient with minors from 16 to 18 competing at a high level, raises a difficulty in the new wording of Article 14.3.6.

The drafting team proposes that the mandatory public disclosure of ADRVs shall not be required where the athlete or other person who has been found to have committed an ADRV is a “protected person”. The exception in the public disclosure disappears for minors who do not fall within the definition of “protected persons”. That is incompatible with our current national legislation and will certainly be a major issue if the draft does not evolve.

-> Recommendation:

Public disclosure shall not be requested for all minors, irrespective of the fact that they fall or not under the definition of “protected persons.”

- The change in the definitions and the new range of sanctions proposed for “protected persons”, from reprimand to 2 years as a maximum ban, is welcomed.

However, it’s incomprehensible why this regime remains applicable in the sole cases of presence, use or possession of a prohibited substance. Such a modification of the length of the ban should also be applicable to other ADRVs, and at least, in case of evasion, refusal or failure to submit to sample collection (Article 2.3).

Indeed, a “protected person” might, in good faith, feel uncomfortable when submitted to a first doping control and refuse, for example, to be supervised during the collection of the sample. In this case, we think that the ban should not exceed 2 years. Otherwise, the new regime could lead to unfair differences in the sanctioning regime between a 15-year-old athlete sanctioned for 2 years for the use of anabolic steroids and another one sanctioned for 4 years because he felt uncomfortable having to submit to a first doping control.

-> Recommendation:

The range of sanctions proposed for “protected persons” goes from reprimand to 2 years in case of a violation of articles 2.1, 2.2, 2.3 and 2.6 at least.

The Drafting Team explained the goal of the new definition of “Protected Persons”. Due to contributions from athletes and the IPC the Drafting team decided to review the definition of persons, who should benefit from lighter sanctions. Not only age but also (educational) experience as elite athlete in sports should be taken into account for the decision whether or not, a 17-year old (high level) swimmer could be treated like an adult or a like a minor in the context of a potential ADRV. In the new International Standard for Education an “Education Pool” for athletes will be installed. Athletes, who participate in that “Pool” are regularly educated and informed about Anti-Doping rules, their responsibilities and obligations.

“Protected Person” is defined as: Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in the open
category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.

The further comment explains: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic athlete with a documented lack of legal capacity due to an intellectual impairment.

The Council of Europe fears that this definition might raise a conflict with the Art. 2 of the UN Convention on the Rights of the Child (UNCRC). Age, as an indicator of a “status” of a child could constitute a discrimination.

In this light the Council of Europe regards a legal expert’s opinion concerning that question as necessary. Maybe Judge Jean-Paul Costa, former President of the European Court of Human Rights, could be asked for his expertise in this matter.

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

Definition of recreational athletes

We appreciate that the comment to the draft of the definition of "athlete" states: "The decision on whether Consequences apply to recreational-level Athletes who engage in fitness activities but never compete is left to the National Anti-Doping Organization." We take that as an acceptance of a different sanctions regime for these non-competing athletes where the "clean competition" aspect is not present.

However, we have to repeat our previous comments that another major problem remains if testing of non-competing recreational athletes were to be carried out under the scope of the Code. As it is, in ADAMS and otherwise, an "athlete" must be registered under a certain sports discipline, and the International Federation must be a Code signatory. However, these athletes do not fit in under an IF. They might do their physical activity in a fitness center with no particular relation to any IF and they do not participate in a specific sports discipline. In other words, they are not "gymnasts", "weightlifters", "boxers" etc.

For obvious reasons, this is only a NADO problem. The testing of these athletes may be a legal obligation for a NADO as part of the "public heath" policy of the Government.

There is a definite need for a new category of athletes in ADAMS called "Other Athletes" or similar, and also for increased recognition and understanding by WADA of the fact that (N)ADOs may conduct testing for public health reasons on non-competing, recreational athletes and not only on competitive athletes.

Antidoping Switzerland
Ernst König, CEO (Switzerland)
NADO - NADO

Protected Person: ADCH supports the introduction of the new definition of “protected person”

Recreational Athlete: ADCH supports the idea of leaving it up to ADO to identify who is a recreational athlete within the boundaries suggested

Sport Ireland
Siobhan Leonard, Director of Anti-Doping & Ethics (Ireland)
NADO - NADO
Definition of Aggravating Circumstances. Sport Ireland has concerns regarding one aspect of the definition – “a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility”.

This could be feasible if substances were categorised this way in the Prohibited List, failing which Sport Ireland has significant concerns regarding the practicality of this and is of the view it may be susceptible to legal challenge. There would be wide scale inconsistency unless WADA published guidance on what these substances might be. There is also the question of what if the Athlete is not a ‘normal individual’ and could establish that he / she would not benefit beyond the otherwise applicable period of Ineligibility.

Definition of In-Competition. Sport Ireland has a concern regarding the definition including Athletes who withdraw from a Competition after 11:59 p.m. and the fact that those Athletes would be deemed to be In-Competition for 24 hours after withdrawal. Firstly, Sport Ireland will be unaware of when an Athlete withdraws from a Competition and as such will not know whether to request the In-Competition suites of analyses. Secondly, an Athlete who withdraws from a Competition at, for example, 2pm, would be In-Competition until 2pm the following days, whereas an Athlete who took part in the Competition may only be In-Competition until the doping control process. Both Athletes could take a substance which is banned In-Competition only on the night of the Competition. The Athlete who did not take part would be subject to In-Competition Testing the next day, whereas the Athlete who competed (and perhaps won) would not.

Definition of Recreational Athlete. The introduction of this definition will be a significant administrative issue for NADOs and IFs in particular and may have a number of unintended consequences:

1. NADOs will have to change their definition of National-Level Athlete. This will cause unintended consequence as regards the TDSSA and retroactive TUE applications. The formers requires a minimum level of analysis in relation to National Level Athletes, depending on the sport / discipline. Expanding the pool of Athletes required to be subject to minimum level testing and thereby substantially increasing testing costs. Similarly, any expansion to the pool of National-Level Athletes could mean a significant increase in the number of TUE applications and the number of positive tests for which an Athlete would currently be entitled to a retroactive TUE.

2. The question of who should be a Recreational Athlete will vary from sport to sport and one overarching definition will be extremely problematic, as WADA found during the first consultation phase. It will undoubtedly lead to inconsistencies.

3. The wording in relation to representing a country in an International Event is of concern. Athletes competing in International Events are not necessarily representing their country in doing so. Again, this will vary significant from sport to sport.

4. It is quite possible that an Athlete rising through the ranks quickly will be a Recreational Athlete and may therefore receive a reduced ban even though he / she may now be competing at a relatively high level.

5. The question of whether an Athlete represented a country in an International Event within the previous 5 years will have to be monitored by IFs and Major Event Organisations and this information provided to other ADOs upon request.
6.

Is it intended that the burden of establishing he/she is a Recreational Athlete will be on the Athlete? Given the likely complexity of the definition, it will not always be clear.

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

**Athlete**

As DFSNZ has previously submitted, the definition of athlete in the Code is circular. DFSNZ strongly suggests a change to the second sentence: An Anti-Doping Organisation has discretion to apply anti-doping rules to a Participant who is neither an International-Level Athlete nor a National-Level Athlete, and thus to bring them within the definition of "Athlete".

**Protected Person**

Note that there is inconsistent use of the protected person definition. "Protected person" is used in the Code and the same description is applied to "vulnerable person" in the ISTI. DFSNZ prefers the term "protected person" to be used throughout.

**Recreational Athlete**

DFSNZ supports the new definition of Recreational Athlete, in particular that the definition of a recreational athlete be determined by the ADO.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

**Recreational Athletes**

NADA Germany express reservations regarding the new definition of "recreational athletes". The implementation of this new category of Athletes might be a big challenge for current Doping Control Systems, testing strategies, responsibilities for testing, rights of athletes. Finally, the definition of recreational Athletes must be checked in regard of any relevant sport- and athletes categories and their framework (competitions, appointment calendar eg).

**Protected Persons**

This definition might raise a conflict with the Art. 2 of the UN Convention on the Rights of the Child (UNCRC). Age, as an indicator of a "status" of a child could constitute a discrimination.

AEPSAD
AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs department (Spain)
NADO - NADO

**MINORS.**

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

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

**Protected Person**: An Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in the open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.

And also we find comment 132:

132 [Comment to Protected Persons: The Code treats Protected Persons differently than other Athletes or Persons in certain circumstances based on the understanding that, below a certain age or intellectual capacity, an Athlete or other Person may not possess the mental capacity to understand and appreciate the prohibitions against conduct contained in the Code. This would include, for example, a Paralympic athlete with a documented lack of legal capacity due to an intellectual impairment.]

With this definition all MINORS are not protected, and the “mental capacity to understand and appreciate the prohibitions against conduct contained in the Code” (Comment 132) of a young people sixteen or seventeen years old, is not at all related to having “competed in any International Event in the open category” (Protected Person definition).

The Protected Person definition must include all minors of eighteen years, we are proposing the following definition:

**Protected Person**: An Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of eighteen years; or (ii) for reasons other than age has been determined to lack legal capacity under applicable national legislation.

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**UK Anti-Doping**

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

The definition of “substantial assistance” needs to be amended to be consistent with the new Article 10.7.1.1, as this now encompasses information about non-compliance with the Code, an IS or TD, and...
criminal offences and breaches of sports rules about integrity issues other than doping. The definition refers only to the Person providing substantial assistance disclosing information in relation to ADRVs. In addition, we propose that the definition should allow for the Person providing substantial assistance to provide all the information they possess in relation to ADRVs in either a signed written statement or in a recorded interview, at the discretion of the NADO. It would also be helpful for this definition to stipulate whether the Person is supposed to provide all information (ie full details) about their own ADRV(s), as well as in relation to those allegedly committed by others, in order for the substantial assistance provisions to apply.

ONAD Communauté française
Julien Magotteaux, juriste (Belgique)
NADO - NADO

Pour la définition proposée de "doping control", et plus particulièrement pour l'ajout de la mention : "and the enforcement of Consequences," il est renvoyé à notre commentaire relatif à l'article 20.5.7 du Code, portant sur la question de l'indépendance des ONADs, par rapport aux instances d'audition.

Si cet ajout a pour but ou pour effet de compléter ou de préciser les responsabilités des OADs dans le processus, alors, pour les mêmes raisons que celles précisées pour l'article 20.5.7, il est demandé de supprimer cette mention.

Si cet ajout est neutre par rapport aux responsabilités des OADs, il est alors proposé d'ajouter un commentaire, à la définition du "doping control" pour préciser que cette définition est neutre quant aux responsabilités effectives d'une ONAD, dans ce processus et qu'il convient, à cet égard, se référer à l'article 20.5.7 (tel qu'il serait modifié) et à son commentaire.

Pour la définition de "protected person", il est proposé de supprimer les termes "and has never competed in any International Event in the open category" de la définition.

Le fait d'avoir participé une seule fois à une de ces compétitions nous paraît disproportionné pour être exclu de ce régime plus favorable.

Par contre, pour rééquilibrer la définition suite à la suppression ici proposée, nous proposons de ne pas restreindre l'exclusion (au régime plus favorable) aux seuls sportifs inclus dans le RTP mais à tous ceux qui sont inclus dans un testing pool (même national).

La définition ainsi revue de "protected person" avec nos deux propositions, serait alors la suivante :

"Protected Person: An Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Testing Pool; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation"

Le commentaire 132 pourrait aussi être revu d'une manière plus neutre ou juridique. Peut-être serait-il préférable et moins stigmatisant d'évoquer la capacité juridique plutôt que la capacité intellectuelle.

Pour la définition de "results management", il est renvoyé à notre commentaire relatif à l'article 20.5.7 du Code, portant sur la question de l'indépendance des ONADs, par rapport aux instances d'audition.

Aussi et pour ôter tout doute, il est proposé d'ajouter un commentaire, à la définition de "results management" pour préciser que cette définition est neutre quant aux responsabilités effectives d'une ONAD, dans ce processus et qu'il convient, à cet égard, se référer à l'article 20.5.7 (tel qu'il serait modifié) et à son commentaire.

Dans les définitions de "No fault or Negligence" et de "No significant fault or negligence", il est proposé d'admettre également les "recreational athletes" en plus des "protected persons" dans les sujets d'exception qui n'ont pas la charge et l'obligation d'établir comment la substance est entrée dans leur corps, pour bénéficier des régimes juridiques plus favorables qui vont de pair avec ces notions.
Cela semblerait également plus cohérent avec l'ensemble qui veut que les régimes des mineurs et des sportifs récréatifs soit similairement plus favorable et plus léger que celui des élites.

Dans la pratique, les sportifs actuellement amateurs (demain récréatifs selon la nouvelle définition) peuvent éprouver de réelles difficultés à faire cette démonstration (portant sur la manière dont la substance est entrée dans leur organisme). Ils ont en outre, bien souvent, moins de moyens et temps pour faire cette démarche et l'établir.

Un régime plus favorable que celui des élites, à cet égard, semblerait davantage proportionné.

Ainsi et, par exemple, une prépondérance des probabilités devrait pouvoir suffire à un sportif mineur ou récréatif, pour établir qu'il n'a pas commis de faute ou de négligence significative.

Cette prépondérance des probabilités ou cette vraisemblance serait par exemple établie dès lors que le sportif a livré une version des faits crédible, vraisemblable et non contre-dite par aucun élément scientifique ou juridique et que cette version est à la fois crédible sur la manière dont est entrée la substance dans son organisme et permet, en outre, à l'instance d'audition, d'apprécier le degré de faute (relatif) du sportif concerné.

Nous préférerions, pour les raisons expliquées à l'article 20.5.7 du Code (indépendance de l'ONAD par rapport à l'instance d'audition) et aussi pour préserver au mieux les droits visés à l'article 6 de la CEDH et 8 du Code (droits à un procès équitable et à une instance d'audition indépendante et impartiale), que les "without prejudice agreement" ou toute autre forme de transaction ou d'accord pré-instance d'audition soient supprimés.

Au niveau pratique et juridique, nous nous posons de réelles questions quant à la faisabilité et à la praticabilité de ce type d'accords.

En tout état de cause, si ce type d'accords devaient être laissés dans le Code, comme étant des instruments possibles de résolution des litiges, nous demandons à ce qu'ils puissent alors, le cas échéant, être utilisés, non pas uniquement par les OADs elles-même mais par les instances d'audition indépendantes.

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**Law Offices of Howard L. Jacobs**

Howard Jacobs, Attorney (U.S.A.)
Other - Other (ex. Media, University, etc.)

Definition of “minor” has been replaced with new definition for “Protected Person” [“An Athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in the open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation”]. This new definition will eliminate the Code protections for most tested athletes between the ages of 16 and 18, as most tested athletes between the ages of 16 and 18 are being tested because they are in a Registered Testing Pool or are competing in International Events. If this definition is adopted, then WADA should not pretend that it is affording extra protections to minors, because in the vast majority of cases it will not be.

**Institute of National Anti-Doping Organisations**

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

In-Competition

The new definition is an improvement but a problematic issue remains. If, for example and through no fault of the athlete, notification is delayed following the completion of competition such that an athlete has genuine cause to believe that he/she will not be subject to testing the athlete should not be bound by in-competition rules. There are a variety of conceivable examples but say an athlete were, in the interim, to take a corticosteroid tablet to relieve inflammation the athlete should not be charged with a potential rule violation. There should be recognition of such exigencies in the definition.
International Testing Agency
International Testing Agency, Legal Affairs Manager (Switzerland)
Other - Other (ex. Media, University, etc.)

Without prejudice Agreement Definition:

The “without prejudice” should reciprocal: Athlete cannot use the ADO’s stance against the ADO during further prosecution in the event that the agreement falls through and case goes to trial.

Consider narrowing the scope of “the information provided by the Athlete or other Person in such setting” which cannot be used if the agreement falls through since it be could interpreted extensively and include all information provided by the athlete in the scope of the RM.

Other Suggestions (30)

FINA
Cornel Marculescu, Executive Director (Switzerland)
Sport - IF – Summer Olympic

The Problem of Substances Which are Not Prohibited Out-of-Competition Appearing, in Trace Amounts.
In principle we agree with the proposal of considering reporting thresholds for certain substances which are prohibited in competition only but which may appear in trace amounts in in-competition tests. Again, as in the bullet point 14, the investigation and agreement on discriminatory thresholds of wide applicability will be complicated. Other analytical data such as differential appearance of representative retrospective metabolites or intelligence information may also be useful.

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

Article 3.1:
The UCI still believes that 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).

Moreover, the UCI suggests that WADA 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

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Article 6.5:
The concept of an asserted ADRV is not always entirely clear. There are occasions on which ADO seeks an explanation prior to asserting the violation. Perhaps the use of "potential" instead of "asserted" would be better.

The UCI would suggest regulating the situation where an athlete requests further analysis. It would recommend amending this provision so that it is clear that an ADO is not obliged to conduct further testing of a sample when requested by an athlete; however, an ADO can be compelled to conduct further analysis by a relevant hearing body after a request from an athlete.
Moreover, the UCI fails to understand why the approval of the athlete or of a hearing body should be required to conduct further analysis after the athlete has been notified.

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Article 9:

The UCI would recommend regrouping all articles related to disqualification under the same article (i.e. 9, 10.1 and 10.8).

At article 10.1, the UCI would remove the reference to “upon the decision of the ruling body of the Event”. NADOs should also be allowed to disqualify these results without the need for the IF to render a second decision to disqualify these results. Even more so considering that if these other results have occurred after the date of the AAF, the NADO can already disqualify them as per art 10.10, even if they were obtained during the same Event. Moreover, it is not always clear who the Ruling body of the Event is.

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Article 10.2:

Considering the basis on which non Specified and Specified Substances are distinguished (i.e. the likelihood that a substance was used for a purpose other than performance enhancement) the UCI would respectfully suggest that WADA revisit whether different levels of sanctions remain appropriate for specified/non Specified substances once intention has been ruled out.

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Article 10.2.1.1:

Regarding the Comment to article 10.2.1.1, this concerns the assessment of the evidence and it is difficult to understand that the regulator gives indications to the hearing body in this respect.

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Article 10.10:

The UCI believes the disqualification of results in case of Retesting/further analysis should be clarified.

The UCI also believes that WADA should clarify which results should be disqualified in case of an ADRV of Use based on the athlete’s ABP.

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Article 10.14.1:

The UCI considers it is essential to further clarify the following terms in a comment or in the definitions to give athletes (and their IFs/ADOs) a better understanding of what they are not allowed to do during a period of ineligibility or mandatory provisional suspension:

- “activity”

- “other member organization of a Signatory’s member organization”

- “international or national-level event organization”.

This is particularly important considering the addition of “not respecting a provisional suspension” to the concept of aggravating circumstances – even more so as the “knowingly” exception does not seem to
encompass “unknowingly” breaching a provisional suspension, as it only refers to the ADRV.

**FIBA**  
FIBA Legal, Anti-Doping Manager (Switzerland)  
Sport - IF – Summer Olympic

- As a general comment, FIBA is concerned about the level of complexity introduced both within the existing provisions and by the addition of the new ISs. Our comments aim to highlight aspects that may be simplified without losing the focus on seeking out and punishing "real" doping.

- Changes to Articles 2 and 7 to address the management of ATFs is supported. However, it is worth noting that this doesn’t fully address the issue as the fundamental problem is sourcing expertise that can interpret the results of WADA laboratories and it is unrealistic to expect sports and all ADOs to undertake this role. Thought needs to be given to how ADOs and sports can be supported when there are difficult interpretations in the results management process.

- While not strictly speaking a part of the Code review, although it has been referred to, each in-competition prohibited substances should have a relevant thresholds level that reflects IC use and effects on performance.

- Art. 2. We would propose that each of the violations are redrafted in such a way that it is more obvious what “elements” are needed to constitute an anti-doping rule violation, and which entity is responsible for proving which element

- Art. 2. It should be clarified whether “intentional” as used in the violations is supposed to be interpreted according to the definition of “intentional” in art. 10.2.3

- Art. 3. FIBA would welcome clarification as to which entity bears the burden of proof for the route of administration for those Prohibited Substances where only certain routes are prohibited (i.e. glucocorticoids)

- Art. 7. We would note that there are several areas of discrepancy and overlap between art. 7 and the new ISRM. These should be brought in line to avoid confusion and interpretational issues.

- Art. 10. FIBA recommends that the “seriousness” of an anti-doping rule violation is defined, given that this concept plays an important role in a number of the provisions in Art. 10 to encourage a more harmonized interpretation and application of the sanctioning regime.

- Art. 10. FIBA would support introducing a means to suspend a period of Ineligibility for Athletes who have committed less serious violations and are willing to make (or have made) good faith and sizable contributions to anti-doping regulation, for example by participating in an education program - a type of "community service" option.

- Art. 10.2.3. We would recommend clarifying the effects of the “special assessment” for Specified Substances prohibited In-Competition but Used Out-of-Competition. As it stands, it is unclear what is “gained” by proving Out-of-Competition Use, since violations involving Specified Substances are by default “rebuttably presumed” to be not intentional according to Article 10.2.1.2 (i.e. the ADO bears the burden to prove that it was intentional).

- Art. 10.2.3. FIBA recommends moving the definition of “intentional” to Appendix 1 and making use of the normal convention in which defined terms are capitalized to make it clearer which uses of “intentional” in the Code refer to the definition, and which refer to a more general concept of “intentional”

- Art. 10.14.1. FIBA recommends redrafting this provision to make it clearer for Athletes (and hearing panels) what exactly is prohibited during a period of Ineligibility or Provisional Suspension (perhaps with a bullet point list?). The current definition has a number of undefined terms (i.e. “activity”, “local sports event”, “national-level Event organisation” “international-level”) that pose issues for those applying/interpreting the provision. FIBA views this as particularly important given that it has been proposed that breaking a Provisional Suspension could be considered an Aggravating Circumstance.

**Norwegian Olympic and Paralympic Committee and Confederation of Sports**  
Henriette Hillestad Thune, Head of Legal Department (Norway)  
https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZyPvX2Kyjy3ELHZRWcFaZVkfUciuMvYtIVljJa36GbKljC6…  131/157
GENERAL COMMENTS AND OBSERVATIONS ON THE CODE IN ITS ENTIRETY

GENERAL REMARK

We are pleased to note that several of our previous observations and remarks have been considered by WADA and subsequently led to proposed changes of the Articles in question. In this third and final phase of the Code review process, we will in the following provide comments to 1) Articles that have been subject to new proposed changes, 2) Articles that have not been proposed changed, although several stakeholders specifically have recommended a revision, and 3) present a few new suggestions for WADA's consideration. No specific reference will be made to previous submissions not having been applied, however, as a general note, we ask WADA to reconsider these submissions.

FUNDAMENTAL RATIONALE FOR THE WORLD ANTI-DOPING CODE

General remark

According to the document “Summary of Major Proposed Changes”, WADA has received numerous comments on the Fundamental Rationale for the World Anti-Doping Code from both the WADA Ethics Committee and numerous stakeholders and has forwarded the stakeholders’ comments to the WADA’s Ethics Committee to deliberate if a consensus view may be achieved.

In our last submission, we questioned why WADA/the team had chosen not to respond and address the number of stakeholders - ranging from athletes and sports organizations to NADOs and governments - explicitly expressing the need for amending the criteria for placing a substance/method on the prohibited list. We assume that WADA, with reference to the Fundamental Rationale for the World Anti-Doping Code, is suggesting a revision of Article 4.3 i.e. the criteria for placing a substance/method on the prohibited list. Although we are pleased to see that WADA is finally addressing this matter, any amendments proposed by the Ethics Committee at this late stage, after the third and final review phase, will not be subject to stakeholders’ feedback, which is unfortunate considering the obvious need for a transparent Code review process.

In our last submission, we asked WADA for a more transparent review process and to make public minutes from meetings held between the Code Review Team and others, be it legal units or persons. We are pleased to see that WADA has addressed this issue and announced, in the paper mentioned above, to having “consulted directly, either in person or by telephone, with a significant number of stakeholders (see attached list)”. However, no list is attached, and no list has been received despite several inquiries sent to code@wada-ama.org.

Anti-Doping Charter of Athletes’ Rights

In our last submission, we emphasized that we welcome all initiatives from the athletes, and requested WADA to ensure that rights found in the proposed Charter of Athletes’ Rights not already enshrined in the current WADC, be implemented in the Code.

However, we also warned that the Code should avoid referring to any document that is not under the jurisdiction of WADA, and that using a simple reference to such document as the legal basis for a possible ADRV is not acceptable, cf. drafting note “depending on the final format of the Charter, Article 2 (Anti-Doping Rule Violations) could be amended to add a new anti-doping rule violation for violations of specific provisions of the Charter.”.

These, and similar concerns, have also been addressed by other stakeholders in the last review phase, and we rely on WADA to consider these submissions seriously hence avoid amending the Code as suggested in the drafting note without this consideration.

PART 1 DOPING CONTROL

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

https://connect.wada-ama.org/print-report-toscreen.php?qs=3Qte6UenTXq7VcHnZypVX2Kyljy3ELHZRWcFaZVkJtUCluMvTlYtJLa36GbKLjiC6... 132/157
Article 2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

Article 2.1.2

We refer to our last submission on this Article and are pleased to see the suggested clarification.

Article 2.11 Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting

Article 2.11.1

We refer to our last submission on this Article and are pleased to see the amended Article.

ARTICLE 4: THE PROHIBITED LIST

Article 4.2.3 Substances of abuse

In our previous submission we addressed the following; When moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such proposed changes have been made. Instead, the decision to move health to the top of the list has accentuated the lack of logic between the Code, the list and subsequent consequences.

WADA’s new proposal will contribute to solve the problem, raised by many stakeholders, with positive tests from substances that are only prohibited in competition, but clearly taken out of competition. However, the proposal will not solve the fundamental lack of logic referred to above, and we are concerned that this could be detrimental to the legitimacy of the anti-doping rules.

ARTICLE 5: TESTING AND INVESTIGATIONS

Article 5.7 Retired athletes returning to Competition

If an International- or National-Level Athlete in a Registered Testing Pool retires and then wishes to return to active participation in sport, the Athlete shall not compete in International Events or National Events until the Athlete has made himself or herself available for Testing, by giving six months prior written notice to the Athlete’s International Federation and National Anti-Doping Organization.

Restrictions should also be implemented to any athlete who wants to participate in an International Event or National Event, not only retired athletes wishing to return to sport. We recommend the above to be implemented in the Code, and trust WADA to undertake necessary measures accordingly.

ARTICLE 6: ANALYSIS OF SAMPLES

Article 6.1 Use of Accredited and Approved Laboratories

According to this Article, the choice of the WADA-accredited or WADA-approved laboratory used for the Sample analysis, shall be determined exclusively by the Anti-Doping Organization responsible for Results Management. In our previous submission we addressed that such rule, given recent historic events, needs amendment. Firstly, we ask WADA to consider whether it is advisable that a NADO directs samples from its national athletes to its national laboratory(ies) alone. Secondly, an independent NADO may be insufficient if the national laboratory receiving the samples, is not considered adequately independent from both sport and government/public authorities.

We believe that there is sufficient reason for WADA to consider a safety valve incorporated in the Article, for example by requiring each NADO to send samples to different WADA accredited laboratories.

Article 6.8 WADA’s Right to Take Possession of Samples

We refer to our last submission on this Article and are pleased to see the amended Article.

ARTICLE 8: RIGHT TO A FAIR HEARING AND NOTICE OF HEARING DECISIONS

Article 8.1 Fair Hearings
In our two last submissions we underlined that the Code and the Standards are increasingly becoming more extended and complex with detailed wording. This complexity itself requires further emphasis on the legal rights of persons being accused of an ADRV. This might be mitigated by WADA implementing more detailed requirements on the hearing process and other means to guarantee due process.

We believe this would safeguard and further strengthen the efforts of protecting fair play and clean sport, and we commend WADA for establishing ISRM. This is line with the concerns and suggestions presented in our two submissions, and we are pleased that WADA has proposed to include several of our proposals in the new standard. Please confer our submission to the ISRM.

We have previously recommended that the Code uses the accurate phrasing found in the ECHR Article 6.1, cf. “…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal…”

All hearing panels should be subject to the same requirements for independence and transparency. Both requirements are crucial to provide legitimacy to the judicial procedures. We suggest once more 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 either in the Code or in ISRM.

Furthermore, we repeat the suggestion that the Code or ISRM should require that dissenting opinions within a hearing panel or arbitration panel should be recognized and notified.

For further comments to the procedural rules, please confer our submission to the ISRM.

ARTICLE 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

According to Article 9 an anti-doping rule violation in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition in addition to following consequences. The mere presence of a prohibited substance is considered sufficient to cause the disqualification of the results. This is because the athlete assumingly had a potential advantage over the other athletes. However, the AAF could be caused by an unhealthy non-performance enhancing substance. An automatic disqualification of results, could be more severe for an athlete than a period of ineligibility, depending on when the period of ineligibility is endured. If the presence of a prohibited substance is sufficient to cause the disqualification of the results, and the Prohibited list does not require substances to have a possible performance enhancing potential, an automatic disqualification may not serve the intended purpose of rectifying an unlevel playing field.

Therefore, in our last submission we asked WADA to consider amending this rule, and we have, in our readthrough of all the comments submitted by the stakeholders in the second phase, taken note of other stakeholders also raising same concerns. Hence, we ask WADA to reword this Article in line with the suggestion below or other similar wording:

“Article 9 Disqualification of individual results

An anti-doping rule violation in Individual Sports in connection with an In-Competition test leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes, if the Athlete’s performance in the Competition were likely to have been affected by the anti-doping rule violation.”

ARTICLE 10: SANCTIONS ON INDIVIDUALS

Article 10.2.4

Please confer our comments to Article 4.2.3., which is repeated below:

“In our previous submission we addressed the following; When moving health to the top of the list, as the most important rationale for the Code, one would assume this would result in amendments of the criteria for placing a substance/method on the prohibited list, the substances/methods placed on the in-competition-list, the distinction between specified and non-specified substances/methods in terms of consequences etc. No such proposed changes have been made. Instead, the decision to move health to the top of the list has accentuated the lack of logic between the Code, the list and subsequent consequences.
WADA's new proposal will contribute to solve the problem, raised by many stakeholders, with positive tests from substances that are only prohibited in competition, but clearly taken out of competition. However, the proposal will not solve the fundamental lack of logic referred to above, and we are concerned that this could be detrimental to the legitimacy of the anti-doping rules."

**Article 10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

**Article 10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1**

Although the Code explicitly states that it has been drafted giving consideration to the principles of proportionality and human rights, it makes use of non-flexible regulations and allows only some mitigation of sanctions based on the degree of fault. The use of non-flexible regulations may be based on a general concern and caution regarding the quality of the first instance hearing bodies. We fully understand and support the need for harmonization of the rules and the jurisprudence. However, we believe the Code should give more consideration to the principle of proportionality, by allowing a greater amount of judicial discretion to be applied when deciding the consequences of an anti-doping rule violation. In our readthrough of the submissions from the stakeholders, we find several stakeholders addressing the issue of proportionality related to this Article.

**Article 10.11 Forfeited Prize Money**

We refer to our last submission on this Article and are pleased to see the amended Article.

**ARTICLE 13: APPEALS**

Please confer our comments to ISRM.

**ARTICLE 16: DOPING CONTROL FOR ANIMALS COMPETING IN SPORT**

WADA should consider including the regulation of doping controls etc. for animals competing in sport in the Code.

**PART THREE ROLES AND RESPONSIBILITIES**

**Article 20.5 Roles and Responsibilities of National Anti-Doping Organizations**

We concur with stakeholders that have asked for a clarification of the requirement of independence found in Article 20.5.1. Independence is not only a matter of independence from sport, but, given recent historic events, also from governments and public authorities. Hence, the Article should read; “To be independent in their operational decisions and activities, including without limitation the adoption and enforcement of a conflict of interest policy prohibiting any involvement by its directors and officers in the management or operations of any Sports organizations or governments/public authorities.”

**DEFINITIONS**

«Protected persons»:

We concur with other stakeholders addressing the definition of «minors» and consider the new category and its definition more suitable.

«Recreational athletes»:

In previous submissions, we underlined that the definition of an athlete is a key point in the Code. We called on WADA to amend the definition thus recognizing that anti-doping work is organized differently in each country and therefore provide the necessary flexibility to ADOs that want to apply the Code on lower level athletes that compete under their authority. For this group of athletes, the current use of non-flexible regulations could easily lead to disproportionate sanctions. And although we suggested that simply amending the definition of “athlete” would provide the flexibility asked for by the stakeholders, we support WADAs proposal of this new category of athletes.
The USOC offers the following comments to the below listed articles:

Article 2.9. Complicity:

“Complicity” doesn’t adequately describe this type of violation considering that it covers conduct that is much more far-ranging than just complicity, such as: aiding, abetting and conspiring. As a suggestion, WADA may consider calling these violations something along the lines of “Sabotage” instead. Then, having a consequence of a period of ineligibility up to lifetime may make more sense for egregious conduct whereas it seemed disproportionate for just “complicity.”

Further, the USOC warns over having such long ranges for a period of ineligibility, here and elsewhere in the Code, without having more guiding principles, examples, and/or parameters. NFs in the U.S. worry that when ADOs in other nations have too much discretion in the imposition of consequences, sanctions might not be standardized for similar violations world-wide.

Article 5.7. Retired Athletes Returning to Competition:

ADOs are allowed to establish different levels of testing pools. Although this provision only refers to the “Registered Testing Pool,” commentary would be appreciated whether the athletes in the other testing pools are subject to this same requirement.

Article 10.14. Status During Ineligibility or Provisional Suspension:

In the effort to support athletes with fundamental fairness during the pendency of their case, the USOC does not support the changes made to this section which places substantial additional restrictions on athletes under a provisional suspension. As this is a high priority for athletes, the USOC requests that WADA seriously reconsider this amendment, and instead include a separate section for “Status During Provisional Suspension” which only restricts an athlete from competition during a provisional suspension and does not place a restriction on them from all activities.

The amendment here has expanded and aligned one’s status under a provisional suspension with that of one’s status when declared ineligible. This bars athletes from participating in any “activity” during a provisional suspension which is problematic for several reasons. First, and most importantly, while under a provisional suspension, the athlete has not yet been afforded with the opportunity to be heard and the circumstances of the case are not yet known. During this interim pendency before their case has been decided, the benefit of the doubt needs to be provided to the athlete. Requiring an athlete to cease from all activity during this time subverts that principal. Despite that the Code specifically calls out that acceptance of a provisional suspension is not an admission and shall not be used in any way to draw an adverse inference against the athlete, equating their status to ineligible and barring them from all activities effectively eliminates this due consideration and casts a shadow of guilt on them immediately.

Secondly, there is no justification that allowing an athlete to engage in other activities, except for competition, will undermine anti-doping efforts. Keeping athletes suspended from competition, which is our recommendation, during the pendency of their case retains the level playing field in competition for all athletes. On the other hand, expanding the suspension to include a bar on all activities can severely harm an athlete in many ways, and especially those with the inadvertent violation, of which occur frequently. Restricting them from all activities restricts them from being able to train during the pendency of their case, and taking away an athlete’s valuable time of training can impact their performance in the short and long term. Additionally, barring them from all activities can extend even further than training and can impact their livelihood: it could extend to taking away their housing, stipends, health insurance, food, and medical services (including mental health services) just to name a few. Allowing an athlete to continue to train and engage in other activities during the pendency of their case does not harm anyone else on the playing field, but if taken away, could have long-lasting negative consequences.
Third, barring an athlete from activities could essentially act like a public disclosure because others will most likely overtly notice the absence. Provisional suspensions need to be confidential, and not publicly disclosed. Public disclosures are recognized as a significant deterrent in doping because of the negative affect it can have on an individual as a public shaming method. Athletes have suffered severe mental health issues from this public disclosure piece, especially in cases of inadvertent violations. If provisional suspensions are public, or essentially the same as public once banned from all activity, it could cause a heightened negative affect on the athlete since all the facts are not yet known or presented. This is the opposite of what a provisional suspension should aim to do.

Further, barring an athlete from participating in any activity during a provisional suspension may actually take away any incentive for an athlete to voluntarily accept a provisional suspension. If an athlete can’t engage in any type of activity during the pendency of the case, the small amount of extra time served they could get might not be worth it. Additionally, since “activity” is quite vague and can encompass a number of restrictions on what an athlete can and cannot do, the athlete runs a higher risk of violating a provisional suspension, and then is at risk for getting aggravating circumstances with an even higher period of ineligibility. Aggravating circumstances specifically uses violation of a provisional suspension as an example. Then, if athletes do not accept a provisional, this could actually lead to the scenario of non-clean athlete competing, which is also opposite of what a provisional suspension should aim to do and is not in the best interest of other athletes. If provisional suspensions are simply limited to suspension from competition, the integrity of sport is still upheld during the pendency of the case, and athletes are afforded with a small grace of the benefit of the doubt in the interim.

Provisional suspension and ineligibility should be treated differently and only until a person is provided with the opportunity for a fair hearing and with a decision rendered on the matter should they be declared ineligible. It is recommended that a separate section “Status during Provisional Suspension” be added with clear parameters around what the provisional suspension limits an athlete from engaging in. Our recommendation is that it should be limited to only a suspension of competition. In the alternate, or at the very least, it should be limited to only a suspension of competition for acceptance of a voluntary provisional suspension.

GAISF
Davide Delfini, Membership Manager (Switzerland)
Sport - Other

(Art 6.2) We would like to suggest exploring the possibility of adding in the comment of art 6.2 a clarification to specify that ADOs can decide to collect samples and store them without analysing them, if they wish to do so.

(Art 10.3.2) We would like to suggest changing the regime of sanction for violations of art 2.4. We would propose the following: "10.3.2 For violations of Article 2.4, the period of Ineligibility shall be at a minimum 6 months and at a maximum two years, subject to reduction down to a minimum of one year, depending on the Athlete’s degree of Fault. The flexibility between
two years and one year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

UEFA
Rebecca Lee, Anti-Doping Coordinator (Switzerland)
Sport - Other

Article 10.14.1: In football, if a player is not entitled to train with a team, he cannot maintain his level, which is not the case for other sports. In order to be fair, it is requested to either extend the training with a team during the whole duration of the ineligibility of the player (and not like now, only the last few months of the end of the suspension) or to let the player train at least with a non-international-level team during the whole duration of the suspension.

Article 10.12.1: How can an IF impose on a player not to take part in competitions not organised by them or its members, such a non-signatory-league, Amateur league? If this IF does not have any authority on such a competition? Also, who has the responsibility for checking this?

Council of the European Union
Lucian Constantin Mircescu, Chairman Working Party on Sport (Romania)
Public Authorities

COMMENT ON HEALTH AS A RATIONALE FOR THE CODE

In line with the EU’s objectives of ensuring a high level of human health protection in the definition and implementation of all EU policies and activities[1] and of protecting the physical integrity of sportsmen and sportswomen[2], especially the youngest sportsmen and sportswomen, the EU and its Member States welcome the insertion of health at the top of the list in the Code’s Rationale section.

[1] Articles 9 and 168(1) of the Treaty on the Functioning of the European Union (TFEU)
[2] Article 165(2) of the TFEU.

PUBLIC HEALTH THREAT

The handling, including the accidental handling, of outputs or residuals resulting from certain doping practices (i.e.: genetic doping viruses, or genetic doping rubbish in public places) can pose a threat to Public Health. Article 4.3.1.2 should reflect the need to appropriately manage such risks and consequently should read as follows (added text is in **bold**):

*Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete or to the Public Health;*
Department of Health - National Integrity of Sport Unit
Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

TUE Definition (Article 4.4) - The definition is not consistent between the Code and the ISTUE. Suggest the Code be amended to reflect the definition proposed in the Standard.
Research (Article 19.2) - We suggest that measuring the effectiveness of anti-doping education and prevention programs should be included in 19.2 given the increased importance of education with the incoming international standard.

GENE-DOPING

Australia continues to advocate for a lifetime ban for the use of gene doping for sports performance enhancement, given the rapid progress of gene editing technology and continued revelations of unethical application of such technologies.

Given the potential for abuse of gene technologies to fundamentally damage the integrity of sport, an uncompromising approach must be adopted now. Accordingly, a lifetime sanction for anyone caught participating in this practice is required.

Only minor changes to the Code are required to meet this future challenge. The Prohibited List already includes an appropriate specification of gene doping as a prohibited method. The Code only requires an amendment to Article 10 (Sanctions on Individuals) to impose life-time ineligibility for any person involved in gene doping. For example, a new provision could be included under 10.2 as follows:

'Where an anti-doping rule violation involves the deliberate use of gene and cell doping as listed in the Prohibited List, an Anti-Doping Organization shall impose life-time Ineligibility for either an Athlete or other Person.'

OVERALL - Consistent terminology should be used throughout the Code and International Standards. Currently the terms 'possible', 'alleged', and 'potential' are used to refer to an asserted ADRV. The term 'asserted' should always be used.

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

Added flexibility for Sanctioning of Minors – Article 10.2.1

○The Government of Canada welcomes the 2021 World Anti-Doping Agency (WADA) Code Drafting Team’s recommendation to maintain increased flexibility in the sanctioning of minors, as currently reflected in the 2015 Code, in the second draft of the 2021 Code which states; “a minor need not establish how the prohibited substance entered his or her system in order to benefit from a reduced sanction”.

○However, the Government of Canada is of the opinion that minors should benefit from more flexibility when receiving an anti-doping related sanction and does not support the recommendation from the WADA Code Drafting Team to remove the special protection for minors under Article 10.2.1 in the first draft of the 2021 Code.

○Minors are not subject to the same responsibilities and consequences as adults and many legal systems in the world consider them to not yet have the capacity and maturity to act according to their own free will. The 2021 Code must reflect this principle, which is also addressed under the United Nations’ Declaration of Children’s Rights.

Norwegian Ministry of Culture
Eva Cathinka Bruusgaard, Senior adviser (Norway)
Public Authorities - Government
UNESCO Convention Compliance Program and the Code

With reference to the UNESCO Convention Compliance Program and the recent work by a UNESCO working group on Framework of Consequences for Non-Compliance (pending endorsement by UNESCO COP 2019), the Norwegian Ministry of Culture would like to suggest including possible consequences for non-compliance with the UNESCO Convention on Doping in Sport in the 2021 WADC.

In our opinion the preparation must take place now, during the present revision of the code, to enable a possible compliance strengthening of the UNESCO Convention to be aligned with and supported by the 2021 version of the Code.

Thus, with the case of endorsement of the Framework of Consequences for Non-Compliance by the UNESCO COP as a prerequisite, we suggest that preliminary amendments be made to the following relevant World Anti-Doping Code articles:

 Articles 20.1.8 – 20.3.11 – 20.6.6. – 22.1 and 22.8

Ministry of sport of Russia
Veronika Loginova, Head of Antidoping Department (Russia)
Public Authorities - Government

- Article 2.6: It is necessary to take into account the fact that a doctor is entitled to carry Prohibited Substances for his/her personal use (under the condition of have medical documents which confirm the diagnosis and the needof using the Prohibited Substances). Thus, this provision violates the norms of The Universal Declaration of Human Rights of December 10, 1948, The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 and The Constitution of the World Health Organization, which stipulate the right of an individual to receive medical care on a timely basis. We suggest to add a comment to Article 2.6.2 : "Acceptable justification would include, for example, a team doctor carrying Prohibited Substances for dealing with acute and emergency situations, or an Athlete Support Person possessing a document proving a chronic/acute condition.

- WADA proposal: Article 10.3.5: «For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two years, up to lifetime Ineligibility, depending on the seriousness of the violation». At present, the responsibility for this violation is a disqualification for up to 4 years. It seems advisable to at least maintain the current level of responsibility.

- WADA proposal: Article 10.3.7: «For violations of Article 2.11, the period of Ineligibility shall be a minimum of two years, up to lifetime Ineligibility, depending on the seriousness of the violation.." This item needs the most serious discussion as well as the Article 2.11.

- Article 4.3: We suggest to add the wording to the section: «The procedure of the inclusion of substances and methods in the WADA Prohibited List including the publication of the results of the research confirming the need for such inclusion on the WADA website should be public. The results of such researches should be passed to the signatories for the appropriate review and discussion. The inclusion of substances and methods in the WADA Prohibited List shall be provided upon approval by the signatory parties on the basis of consensus».

- Article 4.4.(Therapeutic use exemptions (“TUES”): 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 for which there is no information about the studies conducted based on the principles of evidence-based medicine, confirming that this substance or method does not improve the effectiveness of the sport performance. 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.

- **Article 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS** We suggest to add the wording to the section: The anti-doping organization has a right, in exceptional cases, not to cancel the athlete's results achieved in the competition where he/she was tested positive. An anti-doping organization should be given such a right in case the athlete can prove there is No Fault or Negligence, as well as provide evidence that the use of specific prohibited substance could not enhance sports performance in this specific case. The need to introduce such amendment is related to the fact that, in some cases, the prohibited substance comes from Contaminated Products or because of sabotage by third parties, and the concentration of the prohibited substance is so small that excludes the possibility to enhance athlete's performance. In such cases, the anti-doping

- **Article 10:** It is proposed to add a subsection: Revision of the decision on newly discovered/new circumstances The anti-doping organization should have the authority to begin the review of the case on newly discovered/new circumstances, if it recognizes that they are of significant importance for a particular doping case.

**SANCTIONS ON INDIVIDUALS REGARDING PARA ATHLETES** It is proposed to insert into WADA Code Article 10 the following changes: Add the following amendments in the Article 10 of the WADA Code: 1) in part 10.2.1.1. of the Article 10.2.1. after the words "involve a Specified Substance" add the words "or Para athlete"; 2) in part 10.2.1.2. of the Article 10.2.1. after the words "involve a Specified Substance" add the words "or Para athlete"; 3) in Article 10.3.1. after the words "the anti-doping rule violation was not intentional (as defined in article 10.2.3)" add the words "or the violation is committed by a Para athlete,"; 4) in Article 10.3.3. after the words "violation involving a Minor" add the words "or in relation to a Para athlete,"; 5) in the Comment to Article 10.4. after the words "he or she was sabotaged by a competitor" add words "or the Para athlete, was able to prove that he had no real opportunity to independently control the intake of drugs, food, beverages, and other ways of penetrating forbidden substances into their bodies" 6) in the title of Article 10.5.1. After the words "Reduction of Sanctions for Specified Substances or Contaminated Products", add the words "or Para athletes" 7) Article 10.5.1 shall be supplemented with a new part 10.5.1.3 as follows: "10.5.1.3. Violation of anti-doping rules by Para athletes. In cases where the violation of anti-doping rules by Para athletes is due to a violation of articles 2.1, 2.2, 2.3, 2.4, 2.6 of the WADA Code, and a Para athlete or other Person will be able to prove Minor fault or negligence, the period of Disqualification should constitute, at a minimum, warning without the actual disqualification, and, as a maximum, two years of Disqualification, depending on the degree of Guilt of the Para athlete or other Person."

- **Article 23:** It is proposed to add the following provision: «In case the signatory of World Anti-Doping Code is declared non-complying with it, the criteria for its restoration, sanctions and restrictions should be linked only with those roles and responsibility, which are introduced in the Code, and related to the operational activity of the organization. If the state party is declared non-complying with the UNESCO Convention the conditions for its restoration, sanctions and restrictions should be linked only with the obligations of the state, introduced in the Convention. It is necessary to adhere to the principle of a "unified approach" and non-discrimination». 
Council of Europe
Council of Europe, Sport Convention Division (France)
Public Authorities - Intergovernmental Organization (ex. UNESCO, Council of Europe, etc.)

Independent Anti-Doping Service Providers

The status of anti-doping service providers must be clarified in the WADC. There is the definition of "Anti-Doping Organization" and the term "Service Provider". Both are provided with a corresponding definition.

WADA must define whether the ITA is considered as an anti-doping organization or a service provider (such as PWC, IDTM, GQS, etc.). This classification is relevant to the legal relationships of NADOs and IFs / NFs with the ITA. A reference to the fundamental responsibility of the ADOs / IFs, even if they "outsource" parts of the doping control process, is not enough. It is about a general and landmark decision of WADA.

We note that the Introduction to the redline version of the Code emphasises that ADOs remain responsible for all aspects of Doping Control, and therefore for the conduct of sample collection authorities.

We would prefer sample collection authorities to be directly subject to the Code. We propose that the Code should require sample collection authorities at major events to be bound by the Code. At present, the Independent Testing Authority and the commercial sample collection agencies are neither Code signatories nor are they bound by the Code, so there is no mechanism to ensure that their processes comply with the Code and the Standards, whereas ADOs are required to comply with both. This means that their processes can be sub-standard and non-compliant but WADA would not be able to issue a sanction of any kind or declare them non-compliant. It also means that athletes will have less confidence in their processes. To make this change it would be necessary to define “major events” but we envisage that this would include all large-scale international events where an ADO would not automatically have jurisdiction over the participating athletes.

ARTICLE 8 RIGHT TO A FAIR TRIAL

8.1 Fair Hearing

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

8.2 Event Hearings

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

a) Composition of the hearing panel (body) and impartiality of its members (3rd comment)

b) Right of access to a hearing (4th comment)

c) Right to effective defence and equality of arms (5th comment)

8.3 Waiver of Hearing

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

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

8.5 Right to appeal - Single Hearing Before CAS

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

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

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

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

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

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

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

Procedural fees should not prevent a person from accessing to the hearing. When necessary, States Parties should consider establishing a legal aid mechanism in order to ensure this access.

5th comment - Effective defence and equality of arms

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

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

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

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

Anti Doping Denmark
Jesper Frigast LARSEN, Legal Manager (Denmark)
NADO - NADO
Article 4.4

On the surface, article 4.4.3.1 should grant that a TUE granted by any ADO in accordance with the ISTUE and registered in ADAMS is by default automatically recognized by all other ADOs, be it NADOs, International Federations or others without additional examination or paperwork, as it reads: "Where the Athlete already has a TUE granted by his or her National Anti Doping Organization for the substance or method in question, if that TUE meets the criteria set out in the ISTUE, then the International Federation must recognize it. If the International Federation considers that the TUE does not meet those criteria and so refuses to recognize it, it must notify the Athlete and his or her National Anti-Doping Organization promptly, with reasons."

However, in reality this is far from always the case, leading to the administration of TUEs being a major burden on ADOs, athletes and the National Health Authorities. Steps should be taken to limit these burdens, thus freeing money and manpower to other important anti-doping tasks.

In particular, the obligation of an IF to consider if a TUE issued by a NADO meets the criteria is a burden on both IFs and NADOs.

WADA should still have the authority to review and, if need be, alter the decision of granting or denying a TUE. To achieve this, it should be made mandatory that in order to be valid, all TUEs must be registered in ADAMS by the issuing ADO. We believe that this is not always the case today.

Accordingly, article 4.4.3.1 could be amended so that the following sentence is deleted: "If the International Federation considers that the TUE does not meet those criteria and so refuses to recognize it, it must notify the Athlete and his or her National Anti-Doping Organization promptly, with reasons", and the article could simply read: "Where the Athlete already has a TUE granted by his or her National Anti-Doping Organization for the substance or method in question, and if that TUE meets the criteria set out in the International Standard for Therapeutic Use Exemptions, it is valid both at the national and international level."

In particular, disagreements on the interpretation of WADA’s Guidelines can lead to disputes between NADOs and IFs over TUEs which, in the opinion of the NADO, are consistent with the ISTUE even though they may differ from the Guidelines in a minor way due to, for instance, regional medical practices. The Guidelines are guidelines, not the Code or a Standard, and thus minor deviations which can be properly explained should be acceptable. However, this is not the opinion of certain IFs who insist that the Guidelines are followed to the word by NADOs.

Furthermore, bearing in mind that there are 209 official languages in the world, and that in most countries, English or French is not the national language, the obligation for an ADO to provide all medical documentation regarding a TUE in English or French is a heavy and unfair burden on many ADOs. This problem should be addressed.

Article 10.5

We repeat our proposal concerning article 10.5 - Reduction of the Period of Ineligibility based on No Significant Fault or Negligence. The difference between the consequences between specified and non-specified substances when No Significant Fault or Negligence is established is too big and unfair to athletes.

We appreciate that the sporting advantage gained from a non-specified substance may be significant and that, accordingly, too short suspensions may be unfair to clean athletes.

However, a minimum sanction of one year’s suspension for the non-intentional use of a non-specified substance where No Significant Fault or Negligence is established is unfairly hard on athletes.

We suggest that specified and non-specified substances are basically treated equally, but that the substance in question is taken into consideration when determining the sentence.

Accordingly, article 10.5.1 and 10.5.1.1 could read:
10.5.1 Reduction of Sanctions for Prohibited Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

10.5.1.1 Prohibited Substances

Where the anti-doping rule violation involves a Prohibited Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault and the substance involved.

Article 19

19.1 Purpose and Aims of Anti-Doping Research

"Anti-doping research contributes to the development and implementation of efficient programs within Doping Control and to information and education regarding doping-free sport." First paragraph: The last part of the sentence of the 19.1 should be changed to "Clean sport environment"

19.3 Coordination of Research and Sharing of Results

"Coordination of anti-doping research through WADA is essential. Subject to intellectual property" - Revise the wording of the second sentence to avoid confusion.

"rights, copies of anti-doping research results shall be provided to WADA and, where appropriate, shared with relevant Signatories and Athletes and other stakeholders." - Either anti-doping research where WADA is involved through funding etc. shall be provided to WADA. Stakeholders are encouraged to share research conducted where WADA is not involved.

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

The World Anti-Doping Program consultations

ADNO would recommend that Technical Documents be subject to similar consultations as the standards and the Code, considering the importance and obligatory status of the TDs.

In order to ensuring transparency; all submissions to any consultation process should be made public.

UNESCO Convention Compliance Program and the Code

In light of the UNESCO Convention Compliance Program (newly developed by a UNESCO working group and pending endorsement) ADNO suggest including possible consequences in support of the Program.

Drug Free Sport New Zealand
Jude Ellis, Programme Director - Testing & Investigations (New Zealand)
NADO - NADO

5.4.2 WADAConnect does not permit a comment directly on this new clause. While comment on this clause is provided under "other suggestions" this remains important feedback from DFSNZ’s perspective.

DFSNZ notes that the TDSSA is now formally recognised in the Code. We have concerns regarding the inflexibility of the TDSSA and the demand it places on resources that might otherwise be directed more intelligently elsewhere.

DFSNZ proposes that rather than have each NADO apply the TDSSA across every sport it tests (if that is indeed the intent) that the TDSSA should instead be based on risk specific to the individual country - for
example, the 10-15 highest risk sports). NADOs would then have discretion (using the MLAs as a guidance) as to whether to apply the TDSSA below a country's highest risk sports. This would enable additional analyses to be applied intelligently, where there is the greatest risk, rather than it becoming a tick box exercise. The TDSSA in its current form restricts the NADO's ability to apply its own thinking and its own intelligence.

Rather than WADA assessing whether an ADO has 'ticked the boxes' for MLAs it could instead audit an ADO's risk assessment and correlating test plan to gauge that it is understanding and applying an intelligent testing plan.

Further to the above, DFSNZ proposes that where less than 10 tests are carried out in a sport, the TDSSA should simply not apply.

For smaller NADOs that conduct a small number of tests in lower risk sports (i.e. <10) as a deterrent, the TDSSA generates disproportionate numbers of additional analyses required compared to NADOs that do higher numbers of testing (under the TDSSA >1 rule). For small, remote NADOS, the costs of the additional analyses under the revised Code (and TDSSA) will require either more resources to be found or a drop in the number of overall tests conducted.

DFSNZ would like to better understand the risk assessment behind the TDSSA where for example, it requires ESA analysis for samples collected in the sport of weightlifting. There appears to be an element of adding a 5% requirement for good measure (or just in case) to a number of analyses/sports, which collectively add significantly to the cost and complexity of implementing the TDSSA. This will be particularly challenging when the GH analysis becomes mandatory as the cost of collecting and transporting blood samples in a location remote from a laboratory can be prohibitive in lower risk sports.

10.2 Note there is a typo in the first line "...Article 2.1, 2.2 or 0...."

10.13.1 DFSNZ notes here that investigations into non-analytical ADRVs can be complex and take some time. We propose that time spent on such an investigation should not be considered as a delay under this clause.

10.14.3 Violation of the Prohibition of Participation during Ineligibility DFSNZ welcomes and is very supportive of the inclusion of "coaching" in the comment (comment 105) to this Article as a prohibited activity.

19.2 Types of Research We suggest that research should be conducted 'where possible'.

NADA
Regine Reiser, Result Management (Deutschland)
NADO - NADO

Artikel 2.3

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

Art. 4.4 - TUE
International Federations should be responsible for granting TUEs not only for International-Level Athletes but also for other athletes, e.g. non-testing pool athletes, who take part in international competitions. Due to the national regulations, a German 'non-testing pool athlete' does not need to apply for a TUE in advance.

He is able to participate in competitions if he provides a medical certificate, which demonstrates the medical necessity for the use of the prohibited substance due to an acute or chronic medical condition. In case the athlete would start internationally, the International Federation (event organizer) could impose stricter rules (such as a need for a TUE). Therefore, the International Federation (!) must be responsible for granting (or denying) the TUE and needs to have an applicable TUE system in place.

The NADO cannot be responsible since its system differs and the NADO would have to act against its own rules. Currently these athletes start without a valid TUE and are left with the insecurity of a retroactive TUE approval.

19.3 Social Science Research
Social science research should focus on sport educational practices, athlete education techniques and Motives (psychosocial) reasons for doping behaviour. Research studies to evaluate the reach and impact of education programmes and interventions should also be prioritised, including development of programs for less resourced ADOs to help them meet the requirements of the ISE. WADA shall support the coordination of social science research, encouraging the research community to submit...
proposals in collaboration with ADO’s. WADA will commit to sharing such research with the anti-doping community.

Art. 23.2.2. WADC

Please define the following five major points – as mandatory in the catalogue of Art. 23.2.2 WADC – in the next draft of the WADC2021:

- **Operational independence** and a mechanism of challenge
- **Fair trial** – right to be heard, equality of arms
- **Access to justice** – for athlete to be able to protect his or her rights including financing
- **Natural judge** – not a panel put together for a case but one elected in advance
- **Proceeding in a timely manner**

**RUSADA**

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

NADO - NADO

1. 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).

2. 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.

3. We propose to add to the notes to article 10.5 that the application of this article is possible only after admitting that the violation was committed unintentionally in accordance with the provisions of article 10.2. (In our practice there was a case of incorrect application of this item by the CAS Sole Arbitrator – recognizing that the athlete committed the intentional ADRV, the Sole Arbitrator, however, subsequently applied the art. 10.5 “No Significant Fault or Negligence”).
4. For uniform application of the Code and Rules developed on the basis of the Code, by all the panels which render decisions, including appeal instances and CAS, it is expedient to consider the possibility of specifying as a mandatory condition for application of Article 10.2.2 – establishing the circumstances how the prohibited substance entered the system. As an alternative, if there is a minor possibility for an athlete to apply for reduction of the sanction period without fulfilling this condition, it is possible to specify that which particular circumstances may be indicative of No Significant Fault or Negligence even in case the Athlete failed to establish the source of entering the prohibited substance his/her system, or to specify which particular circumstances should not be interpreted as the basis for reducing the sanction period within the framework of this article (this principle was applied and is successfully implemented in article 10.4).

5. 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.

6. Substances prohibited only during in-competition period.

Considering that currently the anti-doping laboratories have the most modern equipment capable of detecting these substances in meager concentrations that are not capable of actually providing any improvement in athletic performance, it is advisable to establish threshold concentrations for such substances.

7. RUSADA proposes to remove the word "Registered" from the "Registered Testing Pool" and expand this article to cover all athletes included in all levels of Testing Pools.

Athletes included in RTP already face a higher level of responsibility since they have to provide 60-minutes slot and be present at the specified location or face a Missed Test. However, we believe that Athletes in lower tier Pools, who are not subject to a potential Missed Test, shall still be held accountable through Filing Failures for cases where it can reliably be demonstrated that the whereabouts data in ADAMS is materially inaccurate (e.g. an athlete who submits that he is at home is 'seen' training or competing at the location remote enough to rule out possibility of daily commute) as well as for failures to submitted the information in due time.

The existing system in which the ADO is advised to 'upgrade' such athletes to RTP creates an impression that being included in RTP is a punishment and may not align with the level of ADO interest in an athlete and ADO's ability to bear additional costs of such inclusion (three out-of-competition tests per year and, for endurance athletes, inclusion in ABP program).

8. RUSADA believes that the definition of the types of research should be expanded to include various aspects of data analysis from statistical processing of anti-doping and/or athlete performance data to various types of modelling and artificial intelligence systems.

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**AEPSAD**

AGUSTIN GONZALEZ GONZALEZ, Manager Legal affairs departament (Spain)

NADO - NADO

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**WADA AS ANTIDOPING ORGANIZATION AND CODE SIGNATORY.**

We find on ARTICLE 23 ACCEPTANCE, COMPLIANCE AND MODIFICATION, 23.1 Acceptance of Code, 23.1.1, a list of entities who shall be signatories accepting the Code, and WADA is not on that list. AEPSAD find this totally inacceptable.
On Code 2003, 2009 and 2015, in the same Article 23, 23.1, 23.1.1, WADA is always in the list as an Anti-Doping Organization, and suddenly in 2021 WADA will not be more a Code Signatory. But we do not find any explanation for this important modification.

First of all we must always bear in mind that the Definition of Anti-Doping Organization in this Code 2021 states very clearly what an Anti-Doping Organization is, and never forget the status of WADA as an Anti-Doping Organization: “Anti-Doping Organization: A Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, WADA, International Federations, and National Anti-Doping Organizations.”

What is the meaning of this change?

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

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

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

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

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

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

It’s clear that WADA definition as it appears on the APPENDIX 1. DEFINITIONS: WADA: “The World Anti-Doping Agency” is not acceptable as a definition, this is not a definition it is only the explanation of an acronym with four letters. It is necessary to write a new ARTICLE 23 THE WORLD ANTI-DOPING AGENCY, its definition, its scope, its roles and responsibilities and its compliance to the Code and its Governance.

Article 10. SANCTION ON INDIVIDUALS is clearly not applicable in the case of minors.

Relating to the publication of sanctions on minors, application of Article 10.15 (Automatic Publication of Sanction) will imply very important Data Protection and Human Rights Violation issues with the Publication of Sanctions in Minors. And in 10.15 and 14.3 (14.3.6), with the Disclosure and Publication of Not Protected Minors Data.

In an alternative way, AEPSAD is proposing:

A group of experts should to analyse the problem and to work on standards, to develop a new ARTICLE 11 MINORS in which the following subjects on minors will be addressed AS: Minors and different doping types, Minors and Control Planning (when, where, how), Management of results and Minors (sanctions, environment), doping in Minors and Ordinary Justice, sanctions of doping in the interests of the Minor. Minors and Substance of abuse, how this types of substances can hurt on minors health and its consequences...

WADA AS A SANCTIONING AUTHORITY.

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

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

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

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

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

The Spanish sanctioning procedure, established in the anti-doping law, follows the criteria and guidelines established for the exercise of the sanctioning power provided for in the constitution.

This procedure, like all sanctioning procedures in all matters, is attributed exclusively to the administration. This means that only the administration can order and decide on the matters that are judged. The intervention of other entities, outside the public powers, is expressly forbidden, being able to only intervene in the procedure as interested, but never with decision-making powers. The draft world anti-doping code, however, contains articles in which it attributes to WADA a direct and decisive intervention in some administrative procedures. Wada is not part of the administration, but a private entity subject to the law of another country.

**CHINADA**  
Yao Cheng, Result Management (China)  
NADO - NADO

1. To increase investigation into the liability of athlete support personnel

The 2021 Code strengthens the restraint on athlete support personnel, but there is no specific provision on how to investigate the liability of athlete support personnel, except in the Comment to Article 23.2.2 which states that “Nothing in the Code precludes an Anti-Doping Organization from adopting and enforcing its own specific disciplinary rules for conduct by Athlete Support Personnel related to doping but which does not, in and of itself, constitute an anti-doping rule violation under the Code.” Although it provides some basis for investigating the liability of athlete support personnel, it fails to provide the uniform standard, which will inevitably lead to distinctions in practice, thus prejudicing the core objective of the Code in imposing harmonized sanctions. For example, it turned out that athlete support personnel played a role in a large majority of cases of knowing use handled by CHINADA. In this regard, it is recommended that the 2021 Code further increase the investigation into the liability of athlete support personnel or make more specific interpretation of the Comment to Article 23.2.2.

2. Reporting limits for contaminated products

As mentioned in the Comment to Article 10.5, “Many stakeholders have expressed the view that the current No Significant Fault or Negligence requirement that the Athlete must establish how the Prohibited Substance entered his or her system is unfair in a number of cases... Rather than modify the definition of No Significant Fault or Negligence which requires that, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his or her system as a necessary element, WADA will issue a Technical Document increasing the reporting limit for certain substances that are particularly susceptible to contamination”.

We don’t believe that it is enough to merely increase the reporting limit of certain substances that are particularly susceptible to contamination. Some non-specified substances, for example, clenbuterol, are...
found in contaminated meat products. With the increased analytical sensitivity, the number of adverse analytical findings for clenbuterol keeps increasing. As a result, the laboratory has to waste a lot of resources for confirmation, the anti-doping organization wastes resources for results management and hearing and the athlete tries to prove that the adverse analytical finding was caused by meat contamination. Even if these cases are dealt with atypical findings, the same kind of confirmation will consume a large number of resources in the investigation. Therefore, it is necessary to increase the reporting limit for those individual non-specified substances, such as clenbuterol or to set a reasonable reporting threshold of AAF.

3. Coordination on the number of testing

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

UK Anti-Doping
Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

Article 2.3 / 10.3.1 / 10.5 / 10.6.2: Clarification is needed on whether intention needs to be proved for the ADRVs of evasion and refusal. If so, is it the Article 10.2.3 definition of “intentional” that applies? This has further implications for No Fault and Negligence and No Significant Fault and Negligence – can either of these Articles apply in evasion, refusal or intentional failure cases? The Code needs to be clearer in this respect, as currently the comment (88) to Article 10.6.2 leaves room for misinterpretation, as it omits to mention Article 2.3. It would help if this comment set out that No Significant Fault or Negligence cannot be applied to evasion or refusal cases, as these both have “intention” as an element, or in an intentional failure case. In such cases, if intention is not proved, no ADRV is proved. More guidance on the difference between an intentional failure and a refusal would also be helpful. It would also be helpful to define what constitutes “notification” for the purposes of Article 2.3.

Article 10.14: Currently there is no reference to education during a period of ineligibility. The ISE states that one of the groups of Athletes that must be educated is those returning from a sanction, therefore this should also be reflected in the Code. One way to achieve this would be by a new Article or comment requiring the ADO that prosecuted the relevant ADRV to provide, as a minimum, a copy of the current Code and prohibited list to an Athlete returning to competition at least three months before they do so.

Article 10.14.1. (or 5.2.5.): As Ineligible Athletes remain subject to testing, it would be helpful to stipulate that they also remain liable to provide such whereabouts information as required by the relevant ADO, to facilitate such testing.

Other / Disqualification of results:

It would be helpful to clarify who it is that makes the determination of whether and which results are to be disqualified following an ADRV, pursuant to Articles 9 and 10 e.g. the ADO with results management, or the relevant tournament organiser(s).

Article 5.2.:

It is unclear whether an ADO has jurisdiction to test an Athlete who has not retired but no longer holds a licence to compete in their sport. An example of this is professional boxing, as Athletes can apply for a licence shortly before a fight. During the period in which they do not hold a licence, it is unclear whether an ADO would be able to test them (if they have not retired and are not in a testing pool).
Whilst some IF rules include a specific provision about this, not all do, and so we propose that this Article be amended to give ADOs authority to test for a set period after a licence has expired, if the Athlete has not retired.

**Article 5.7.1. and 5.7.2.:** More clarity about ‘active participation in sport’ would be helpful. If these Articles apply to a return to any sport (ie not just the one that the Athlete retired from), this could be made explicit to avoid any arguments from Athletes seeking to return to a new sport. UKAD also has an issue with retired International and National-Level Athletes returning to participate in recreational sport eg amateur triathlon events, without making themselves available for testing beforehand. UKAD proposes to deal with this by applying to WADA for an exemption from the requirement that such retired athletes are subject to six months of testing before they may return, on a case by case basis. We estimate that this may happen between 5 and 10 times each year. If WADA thinks that this approach is inappropriate, we would be grateful for an indication to that effect, as we would then look to propose an amendment to Article 5.7.1 to deal with this scenario.

**Article 4.4.3.2, 4.4.4.2 and 21.2.4.:** Specify what is meant by 'his/her NADO', e.g. NADO of the country where an Athlete practises sport? Athlete’s country of residence? Both (and any conflict determined by WADA)? This seems an easy clarification to make. It applies to Articles 4.4.3.2, 4.4.4.2 and 21.2.4.

**Article 10.3.3 (Comment 77):** It would be helpful if Article 10.3.3, or comment 77, referred to Article 10.9.3.3. Also, might the word “separately” in Articles 10.9.3.2 and 10.9.3.3 be replaced with “consecutively” to denote suspensions served one after the other, as opposed to concurrently?

**Article 10.14.1 / comment 105:** It would be helpful if the comment could stipulate that a banned Athlete may, during the period of their ban, sign a contract to come into effect when their ban is over. So an Athlete banned until 30 June may sign a contract with a new team on 10 June, that contract to come into effect on 1 July. In such a case all that takes place during the ban is the negotiation and signing of the contract, rather than any participation in the sport itself.

**Article 19.2:**

We propose that social science research be explicitly referenced in this Article, as follows -

*Social science research should focus on sport educational practices, Athlete education techniques and motives (psycho-social) or reasons for doping behaviour. Research studies to evaluate the reach and impact of education programmes and interventions as specified in the ISE should also be prioritised.*

**Article 19.4:**

While there is a large amount of resource available from numerous funding bodies for social science research, it is not always useful and in some cases is duplicative. The Code could help to address this, in particular as it relates to social science research, by encouraging this type of research to be conducted in collaboration with an ADO. The aim is for relevant, necessary and useful research to be conducted and embedded into the anti-doping system, helping to underpin or improve it.

We propose the following:

*WADA shall encourage the research community to submit proposals in collaboration with ADOs*

**Article 20.1.11:**

We propose that 20.1.11 is reworded as follows:

20.1.11

*To promote anti-doping education, and in particular to require National Olympic Committees of participating countries to conduct anti-doping Education for Athletes and Athlete Support Personnel in collaboration with the National Anti-Doping Organisation prior to an Olympic Games.*

We also propose the following inclusion:
20.1.15

To require the National Olympic Committees to have an anti-doping point of contact to support the effective coordination of anti-doping programmes.

It would also be helpful if publication of anti-doping rules twelve months in advance of a Games (as a minimum) were made mandatory, to ensure ADOs have sufficient time to educate Athletes and Athlete Support Personnel about them.

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

In Article 15.3, CCES is troubled by the phrase “purports to be” and suggests rewording the sentence as follows: “…if the Signatory finds that the decision is within the authority of that body and the anti-doping rules of that body are otherwise consistent with the principles contained in the Code.”

The Comment to Article 10.13.2.1 is missing capitalization for the term “Aggravating Circumstances.”

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Agence française de lutte contre le dopage (AFLD)
Floriane Cavel, Département des affaires juridiques (FRANCE)
NADO - NADO

The French NADO welcomes the work that has been done so far by the drafting team and most of the amendments made on this N°2 version of the WADC 2021.

Most of our comments for this new round of consultation have been submitted by the Council of Europe.

We however would like, in addition, to comment on Article 25.3 on transitionnal provisions.

Comment on Article 25.3

The proposed transitional provision raises our concern.

First, the French NADO has a comprehensive testing program which covers for a large part low-level athletes. Dozens of those athletes currently serving a period of ineligibility could apply for a reduction of their period of ineligibility as of 1st January 2021 (as they could fall under the more favorable definition and regime of “recreational athletes”).

Second, we would also like to know whether those more favorable measures should or should not be taken into consideration by ADO in managing the results of an ADRV occurring during the course of 2020, when the new provisions of the Code will be adopted but not yet in force? Does WADA consider to leave flexibility for Results Management departments to appreciate the opportunity, in 2020, to immediately apply some provisions to cases treated in 2020 (in particular, the absence of public disclosure for “recreational athletes” – a period of ineligibility can be reduced after 1st January 2021, but the prejudice of a public disclosure cannot be erased)?

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

SUBMITTED
5.4.1 This is very important provision. However, it is not going far enough: ADOs should have the possibility and the right to use new and innovative approaches for testing including tests and matrices that will not provide the full analytical menu as established urine tests. I think of Dried Blood Spot approach or breath analysis. According to new deterrence models, international level athletes are most deterred using doping when tested about 8 to 10 times a year. Independent of the used testing method. An ADO could use the flexibility to choose the testing matrix according to its needs. Sometimes it is better to make a several tests with DBS (say to test substances prohibited in-competition) than fewer urine tests. See also footnote 51 on "intelligent testing"

5.4.3 WADA should facilitate new developments done by ADOs in the field. that includes other managementsystems than ADAMS. Instead of insisting using ADAMS it would be better to facilitate the electronic exchange of data (test coordination, DCFs, paperless....)

6.4.2 The rigid TDSSA is hindering ADOs to do intelligent testing and leads to ticking boxes on an excel sheet just to fulfill the TDSSA levels. ADOs have limited resources for testing. Therefore, it might be more efficient to do a higher number of tests than to spend money on analyzing substances described in the TDSSA (e.g. higher numbers of testing for hGH did not lead to higher numbers of positive cases but deprived ADOs from resources to do intelligent testing). However, it is clear that ADOs have to report on how the money for analysis is spent if they choose not to follow the TDSSA. As an example: Some years ago, we got information from the Swiss customs that small peptides are imported to Switzerland. We decided then to tests all samples of national level athletes to establish the eventual size of the problem. it was an expensive testing, therefore, we could not fulfill the strict requests from TDSSA, but we did intelligent testing. This is certainly more important than to check boxes on a TDSSA file. ADOs need to have such flexibility.

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

2.2.2 National Federation Article 2.2.2 should include text clearly signposting to article 3.2. Comments in the footer suggest the original wording is too vague and not informative enough. We propose Article 2.2.2 reads “The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material and can consist of any means outlined in Article 3.2”.

10.14.1 National Federation Anti-Doping education and rehabilitation programs must be incentivised more for athletes and athlete support personnel. If the only reason athletes are attending rehabilitation programs is for reductions on periods of ineligibility, then we fear athletes and athlete support personnel will not get the true benefit of these programs or engage effectively. Rehabilitation programs should be made mandatory for athletes and athlete support personnel who want to return to sport, not just for athletes and athlete support personnel who are looking for a reduction on their periods of ineligibility.

10.14.2 National Federation We would request more clarity on the ‘Return to Training Policy’ for athletes involved in sports requiring large pieces of equipment i.e. boats. For rowers who are experiencing a ban from sport, it is near enough impossible for rowers to participate in water rowing (as they are not allowed to train with clubs who are affiliated with British Rowing i.e. member clubs), unless a rower owns their own boat, which is rare. Can there please be some clarification on what consists as ‘interacting with member clubs’. Would this consist of using a club’s boat to allow for solo training, or would this be a violation? Would rowing on a river used by a member club be permitted, or would this be considered as involvement with a member club? More clarity on this situation is needed.

Major Change Document Comments:

Item 12 Athlete Comment

Added Flexibility for Sanctioning Minors

Impairment-based – would read better ‘Intellectually Impaired’ or more preferably ‘Additional intellectual needs’ the word impaired is not well received by most people with a disability.

I also feel that minors should not be given additional understanding and believe firmly that it is a programme of education of parents / carers that should be implemented to ensure athletes who are part of a world class programme know and understand their responsibilities in terms of strict liability and anti-doping rather than excusing them because of their age.....it sends the wrong message and missed messaging.

Item 15 Lab
We await to see the WADA List Committee’s approach. However, this article does nothing to recognise the need for research on the rate of elimination of drugs misused by Athletes better to determine the facts of claims of “inadvertent” doping many months prior to sample collection and importantly to be able to distinguish true inadvertent doping caused by contact with a doper or someone who wishes to defame an Athlete.

Gambit Law
Aynur Nuriev, Partner (Russia)
Other - Other (ex. Media, University, etc.)

Art. 10.2.1.1

Within the previous revision’s discussions several stakeholders fairly submitted the necessity for WADA to provide examples of the circumstances that might be sound enough to conclude the non-intentional nature of the ADRV to have committed by the Athlete if the source of the prohibited substance was not identified. Yet, the 2nd Code revision does not provide any.

This is a very important issue that have influenced many athletes’ careers already. For example, when the athlete disposed of the supplement’s can which was the potential source of the prohibited substance and/or could not acquire a new one of the same ID batch; sabotage; food contamination; etc.

Thus, it is believed it would be unreasonable to leave full discretion as to interpretation of this issue (i.e. identification of circumstances that might justify the acknowledgement of non-intentional ADRV without the source of the prohibited substance identified) to CAS/other disciplinary tribunals. The Code is needed to list at least some guiding clarifications (e.g. in Annex or in Comment to Art. 10.2.1.1 or Art. 10.2.3). Otherwise, we continue to see the situation which is in place right now: in cir. 20 CAS awards on the matter at hand the panels or sole arbitrators just state - “the Panel do not consider these circumstances exceptional”, “the Panel do not find these circumstances to be of that rarest cases”, “this is not a binary decision; the Panel submits that the athlete could not convince the Panel on the balance of probabilities his/her violation was not intentional”, and etc. That is the panels do not give any specific examples or guidelines as to what circumstance might be considered as exceptional ones in situations the athlete cannot explain how the prohibited substance came to be in his/her body.

The Code regulations should be clear for athletes which is not the case at all with the current WADC 2015 in regards «intentional vs. non-intentional» violations. The current revision of the Code’s articles 10.2.1.1 (+ Comment thereto) and 10.2.3, basically, changes nothing, - athletes will find themselves in a position they were before WADC 2021.

Art. 15.3 + Comment to Art. 15.3

It is believed that either Art. 15.3 or Comment to Art 15.3 should specifically address situations when a non-Signatory decision is based on a AAF laboratory report from a non-WADA Accredited Laboratory. As it was enshrined in the Code - any decision by the Anti-Doping Organisation regarding violations by Athletes of Art. 2.1 should be based on laboratory results produced by WADA Accredited Laboratories. Yet, there is still a number of sports organisations (non-Signatories) that conduct anti-doping testing in non WADA accredited labs (e.g. World Raw Powerlifting Federation (known as WRPF/WRPA/WRPO). If such a non-Signatory finds the athlete liable for the ADRV (based on the report from the non-WADA accredited laboratory) and applies a sanction , how would such a case be handled by the Signatory? As we see it, it means the Signatory should not recognize such a decision (because it is not consistent with the Code), and basically the athlete is open to compete in the competions under the umbrella of the Signatory. But on the other hand, many of those ADRVs (potentially not recognized) are very serious (e.g. different anabolic steroids used). So it seems there is a gap in regulation. If Signatory allows the athlete-transgressor to compete - we see a distortion of level playing field and fair play; if Signatory doesn’t allow the athlete to compete - then there is a violations of athetes rights (his/her ban handed down by the Non Signatory was based on non WADA lab report) as his/her violation is not proved according to the Code.
Institute of National Anti-Doping Organisations
Graeme Steel, Chief Executive (Germany)
Other - Other (ex. Media, University, etc.)

Athletes Charter
With respect to the incorporation of an "Athletes Charter" the following provisions are supported:

· The Charter should be part of the WADC and at the WADC's level of status in the World Anti-Doping Program. It should not be positioned at a subsidiary level, such as the International Standards or WADA Guidelines.

· The Charter should be annexed to the WADC and should be explicitly mentioned in the Purpose, Scope and Organization provisions, and in the interpretative provisions (Article 24), of the WADC.

· Where relevant, the Comments to WADC Articles should refer to Charter rights. For example, WADC Article 8 should refer to the Charter right to justice.

· Each International Standard in its introductory provisions should (a) refer to the Charter and (a) state that that compliance with the International Standard is to be judged in light of meeting Charter commitments.

The International Standard for Code Compliance by Signatories should provide explicit processes for assessing Charter compliance, processes for dealing with Charter breaches, and consequences / remedies for those breaches.

Service Providers
The lack of capacity and ability for a significant number of signatory ADOs to, in any realistic way, be expected to competently meet all requirements of the Code must be acknowledged. The desk top review of compliance of many NADOs, while very helpful, can and does obscure the real world capacity of many ADOs to implement effective, expert programmes. That expertise does exist within some service suppliers and they should be authorised, in their own right, to conduct elements of anti-doping work on behalf of signatories and held to account as signatories for that work. Failing that the following provisions should be implemented.

§ Independent anti-doping service providers should be subject to direct WADA oversight. An anti-doping organization is an anti-doping organization is an anti-doping organization. Otherwise, Signatories are de facto responsible for the Code compliance of these organizations, but without the monitoring and enforcement capacity and mandate of WADA's CRC (the point made above).

§ Amend Articles 20 and 23 to capture entities like the Cycling Anti-Doping Foundation and the new Athletics Integrity Unit which are not now Code Signatories and therefore not directly subject to Code compliance. In those cases, UCI and IAAF remain the Code Signatories and are "legally" responsible to WADA for the Code compliance of their service providers. 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 (see the support above for clarifying this). But query whether there is at the moment adequate supervision of service providers by ADOs.

At the very least, WADA should provide mandatory language for adherence to Code requirements and for ADO indemnification for Signatories to include in their contracts with independent service providers.

Article 2.10 This version of the Code continues to provide insufficient clarity as to the breadth of what activity is proscribed during a period of ineligibility. In particular what a coach can/cannot do. Much clearer guidance needs to be given as set out in a CAS decision of Dec 2017.

Art 23.1 - Requires a guideline.

my own personal initiative
Jan Mašek, lawyer (Czech Republic)
Other - Other (ex. Media, University, etc.)

Art. 10.14.2 Return to Training

Page 45
Current version:

“As an exception to Article 10.14.1, an Athlete may return to train with a team or to use the facilities of a club or other member organization of a Signatory’s member organization during the shorter of:
(1) the last two months of the Athlete’s period of Ineligibility, or (2) the last one-quarter of the period of Ineligibility imposed.”

New version:

“As an exception to Article 10.14.1, an Athlete may return to train with a team or to use the facilities of a club or other member organization of a Signatory’s member organization during the shorter of:
(1) the last two months of the Athlete’s period of Ineligibility, or (2) the last one-quarter one-third of the period of Ineligibility imposed”

Rationale:

The fundamental and decisive punishing element of the imposed ineligibility period should be the prohibition of participation in any competition in the global dimension. A current possibility of a return to an official training is insufficient and unjust. An athlete can only train on his/her own capacity for a crucial period of time. He/she cannot be prepared well enough, in the most cases, for his/her return to the competition after the end of an ineligibility period. This is manifestly obvious in team sports but also in many individual sport disciplines. The form of restrictions concerning official training goes beyond what is really necessary. There is no need to be so strict. For example, the 4-year ban with regard to competitions is a sufficient penalty. It seems to be fair to allow the athletes to participate in effective training with a team or using facilities of a club or other member organization for a longer period of time.

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

Article 5.2: Despite years of stand-off between Indian NADO and the Board of Control for Cricket in India (BCCI) the Code article remains breached because the BCCI does not recognize the authority of NADO and the International Cricket Council (ICC) whose rules are also breached, does not come forward to resolve the issue barring period diplomatic statements. The Code does not provide any major specific role to the National Federations. Yet, the latest anti-doping rules of the IAAF stipulate that several responsibilities should be performed by the National Federations which of course is good. The problem comes where the rules say any laxity on the part of NADO, say for example test distribution planning, or registered testing pool would be considered that of the National Federation. Both the Code and the IAAF demand that the anti-doping rules be incorporated fully into the rules of the NADO.

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

In relation to Art. 10.3.3, consider remodeling the sanction to four years subject to reduction down to a minimum of two years, depending on the seriousness of the violation. Under the current formulation, the offence carries a four-years sanction, irrespective of the subjective and objective elements surrounding the violation. A plain four-years regime appears disproportionate in certain instances and may cause reluctance in prosecuting the offence.