

2021 CODE REVISION – SECOND DRAFT (FOLLOWING THE FIRST CONSULTATION PHASE)

SUMMARY OF MAJOR PROPOSED CHANGES FOUND IN THE FIRST DRAFT OF THE CODE.

1. The Deadline for Stakeholder Feedback on the First Draft Code Revision was 14 September 2018. By, and after, that date, we received suggestions and comments from 80 different stakeholders. Following the publication of the First Draft we consulted directly, either in person or by telephone, with a significant number of stakeholders (see attached list).

Generally, the conceptual changes included in the First Draft were well received with stakeholder feedback providing useful ideas on fine tuning as well as additional conceptual changes which could be considered.

2. Internal Drafting Process

All of the stakeholder comments on the First Draft were carefully reviewed. The Code Drafting Team held lengthy telephone conference calls on 27 August, 18 September, 24 September and 8 October, as well as five-day in-person meeting 1-5 of October. Between the First Draft and the Second Draft tabled with the WADA Executive Committee, numerous interim drafts were exchanged.

3. Summary of Major Proposed Changes between the Second Draft and First Draft of the 2021 Code.

For ease of reference, we have reincorporated the major changes between the 2015 Code and the First Draft of the 2021 Code which was tabled with the WADA Executive Committee on 16 May 2018. We have added to that listing, in red, the additional changes which are proposed in the Second Draft.

Changes are listed in the order in which they appear in the Code, not in order of importance.

1. Emphasis on Health as a Rationale for the Code

A recent decision of the European Court of Human Rights relied on public health as a primary basis for upholding the whereabouts requirements of the Code. As suggested by a number of stakeholders, health has been moved to the top of the list of rationales for the Code and is specifically mentioned in the sentence following that list.

Second Draft – No change

2. Delegation of Doping Control Functions by Anti-Doping Organizations

There is some confusion under the current Code whether an anti-doping organization may delegate aspects of the doping control process and the extent to which it remains responsible following such delegation. The Introduction to Part One of the Code and Article 20 which sets forth stakeholder's responsibilities, make clear that anti-doping organizations are responsible for all aspects of doping control, that they may delegate any of those aspects, but they remain fully responsible for the performance of those aspects in compliance with the Code.

At the request of several stakeholders, a comment has been added to Article 20 making clear that if a Third Party provides delegated services to multiple Anti-Doping Organizations and then fails to do Code compliant work for one of them, then only that specific ADO, and not others has responsibility for that noncompliant work (Comment to Article 20).

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

When a laboratory reports a sample as an atypical finding, that sends a message to the anti-doping organization that the sample may or may not contain a prohibited substance. It is then the anti-doping organization's responsibility to conduct an investigation to determine whether the sample should be treated as an adverse analytical finding or not. Under the current Code, a laboratory may only report test results involving endogenous substances as atypical findings. The proposed draft permits WADA to develop a list of other prohibited substances which may be reported as atypical findings and thereby trigger investigations. This approach would be particularly helpful when trace levels of clenbuterol are detected in a sample. It is well known that meat contamination in Mexico and China can cause trace levels of clenbuterol to appear in an athlete's urine. Presently, there is significant disparity in how different anti-doping organizations treat these potential meat contamination cases. This change would allow a trace amount of clenbuterol to be reported as an atypical finding which would be investigated and resolved in a harmonized way under WADA's new International Standard for Results Management and Hearings.

Second Draft – No change.

Changes to the International Standard for Laboratories and Technical Documents will be made consistent with the new Code provisions.

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

A number of anti-doping organizations have experienced problems with athletes engaging in fraudulent conduct during the results management and hearing process, including for example, submitting fraudulent documents or procuring false witness testimony. Under the current Code, there is no downside in terms of sanctions to an athlete who chooses to engage in this type of behavior. ~~New Articles 10.3.1.1 and 10.7 provide that an additional sanction of 0-2 years ineligibility may be imposed for this misconduct.~~

Second Draft -- A new Article 10.3.3 has been added to make the potential discipline for fraudulent conduct during the Doping Control Process subject to an even stronger (4 years ineligibility) sanction where it rises to the level of Tampering.

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

The current sanction for an anti-doping rule violation involving complicity is 2-4 years ineligibility. However, in some circumstances, violations involving complicity can be very similar to violations involving “administration” (Article 2.8) where the current sanction is 4 years to life ineligibility. To retain some greater flexibility in the sanctioning of certain types of complicity, but to avoid any argument that the most serious types of complicity, which could also be viewed as administration, are subject to a sanction cap of 4 years, the range of ineligibility for complicity has been changed to 2 years – lifetime ineligibility.

Second Draft – No change.

6. Modification of Article 2.10 - Prohibited Association

This Article prohibits association in a sport related capacity with an athlete support person who is serving a period of ineligibility. Since this Article was incorporated into the 2015 Code, there have been very few, if any, anti-doping rule violation cases brought under this Article. A number of anti-doping organizations have expressed concern that one reason for this is because the current requirement that an athlete must be notified before an anti-doping rule violation for prohibited association can be asserted, simply drives that prohibited association underground. In response to that concern, this Article has been changed to eliminate the advance notice requirement and instead, places the burden on the anti-doping organization to demonstrate that the athlete knew, or was reckless in not knowing, that the athlete support person was ineligible.

Second Draft – Only minor changes.

7. Addition of a New Article Providing Protection for Individuals Reporting Violations (Article 2.11)

This Article makes it an anti-doping rule violation to threaten another person to discourage that person from the good faith reporting of an anti-doping rule violation, non-compliant with the Code or other doping activity or to retaliate against another person for doing so. The range of sanction for these violations is two years to lifetime ineligibility depending on the seriousness of the violation.

Second Draft – This Article has been modified to further clarify what is meant by “retaliation.” Further a comment has been added which makes clear that retaliation would not include the good faith assertion of an Anti-Doping Rule Violation against a reporting person.

8. Further Analysis of Samples (Old Article 6.5)

The Article addressing further analysis of samples has been broken into three parts:

a) Prior to the time an athlete has been notified of an anti-doping rule violation, there is no limitation on repeated analysis of the sample. After the athlete has been notified of an adverse analytical finding, additional analysis may take place only with the consent of the athlete or the hearing body in the case. The rationale for this is that once an athlete has been notified of an adverse analytical finding, he or she should not be forced to react to a moving target in terms of the sample analysis during the course of the hearing process. If further analysis is appropriate, then that may be directed by the hearing body (Article 6.5).

Second Draft – No change.

b) 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 (retesting) on the sample. Other anti-doping organizations wishing to conduct further analysis on a sample must get permission to do so from either the anti-doping organization that initiated and directed the collection of the sample or WADA (Article 6.6).

Second Draft - No change.

c) WADA’s right to take physical possession of stored samples, with or without notice, is expressly stated (Article 6.7).

Second Draft – Additional detail has been added. (Now Article 6.8)

9. WADA's Right to Require an Anti-Doping Organization to Conduct Results Management – (Article 7.1.1)

It has occasionally been the case that the anti-doping organization with results management authority has refused to conduct results management. That is not only a Code compliance issue, it is necessary that some anti-doping organization conduct results management in the individual case to determine whether or not an anti-doping rule violation was committed. An addition to Article 7.1.1 makes clear that in this unique circumstance, WADA may demand that the anti-doping organization with results management authority conduct results management and, if the organization refuses, WADA may designate another anti-doping organization to conduct the results management with the resulting cost borne by the refusing anti-doping organization.

Second Draft – No significant change.

10. General Changes to Results Management (Article 7)

A number of stakeholders suggested detailed improvements to the results management process described in Article 7. WADA's plan is to move much of the detail currently found in Article 7 into the new International Standard for Results Management and Hearings. Stakeholder suggestions related to this Article will be considered in the drafting of that new International Standard.

Second Draft – Important principles of results management have been retained in Article 7, particularly those principles dealing with relationships between stakeholders. Those parts of Article 7 addressing how to process different types of Anti-Doping Rule Violations have been deleted from the Code and expanded upon in the International Standard for Results Management.

Article 7.5.1 has been added to make clear that Anti-Doping Organizations (other than Major Event Organizations), must not limit their decisions to a particular geographic area or sport. Currently, some Anti-Doping Organizations limit their decisions so that other organizations must initiate their own proceedings to disqualify results in their events. This Article, together with new Article 15 gives the disqualification of results by a Signatory world-wide affect in all sports without further action. An exception is made for the Results Management decisions by Major Event Organizations where the athletes' only opportunity to appeal the decision by the Major Event Organization is through an in-games expedited process. Those decisions are not given effect beyond the major event and are turned over to the applicable International Federation for follow up Results Management. (Article 7.1.4 and 7.5.2)

11. More Rigorous Standards for Fair Hearings under Article 8

A number of stakeholders have suggested that the fair hearing requirement in Article 8 be expanded. A significant concern expressed by many is that the “impartial hearing panel” requirement in Article 8.1 is not being followed by all Signatories where, for example in some cases, the same individual is involved in the investigation, the decision to charge an anti-doping rule violation and the hearing on whether a violation has been committed. Rather than add pages to the Code which set forth detailed rules to ensure a fair hearing, these requirements will be incorporated into a new International Standard for Results Management and Hearings.

Second Draft – We are working with the team responsible for drafting the International Standard for Results Management. We are satisfied that they have provided additional useful detail ensuring impartial hearing bodies and at least one opportunity in the course of the hearing and appeal process to appear before an independent hearing body.

12. Added Flexibility for Sanctioning Minors

The current Code provides increased flexibility for sanctioning minors as follows: a minor need not establish how the prohibited substance entered his or her system in order to benefit from a reduced sanction on account of No Significant Fault or Negligence (Definition of No Significant Fault or Negligence). **Second Draft – A number of stakeholders thought this was an appropriate additional concession for minors. Others thought that excusing a minor from establishing how a prohibited substance entered his or her system went too far. In the end, our proposal is not to modify the First Draft.** Public Reporting in a case involving a minor is not mandatory and, if reported, must be proportionate to the facts and circumstances of the case (Article 14.3.6). The First Draft of the 2021 Code adds additional flexibility in the sanctioning of minors in the following three respects: for purposes of the 4 year ban for the presence, use, or possession of a non-specified substance, the burden is no longer on the minor to establish that the anti-doping rule violation was not intentional (Article 10.2.1) **Second Draft – a number of stakeholders thought this accommodation to minors went too far. The Second Draft removes this special protection for minors and returns the Article to the 2015 Code text;** when a minor can establish No Significant Fault or Negligence for an anti-doping rule violation involving a non-specified substance, the minimum period of ineligibility imposed is now a reprimand instead of the 1 year minimum applicable to other athletes (Article 10.5.1.3). **Second Draft – No change but new Article Number 10.6.1.3.** Finally, based on feedback from athletes who are concerned about giving sanctioning flexibility to 16 and 17 year old athletes who compete at the elite level, the definition of “minor” has been modified to exclude 16 and 17 year old athletes who are in a registered testing pool, or who have competed in an international event in the open category.

Second Draft – There were a significant number of comments to the effect that the term “minor” is a well-recognized and defined term in international law and therefore we shouldn’t try to change it in the Code by excluding elite level 16 and 17 year olds. There were also comments to the effect that we needed something in the Code that offered

special protection for athletes with intellectual disabilities. To address both of these concerns we created a new definition of “Vulnerable Person,” which is both age-based (under 18 except elite level 16 and 17 year olds) and impairment-based (for reasons other than age, the person has been determined to lack legal capacity under applicable national legislation).

13. New Category of Athletes – “Recreational Athletes” Permitted More Flexibility in the Imposition of Consequences

Under the current Code, anti-doping organizations are not required to test lower-level athletes, but if they do and anti-doping rule violations result, then all of the consequences imposed by the Code apply. A number of the stakeholders who regularly test these lower-level athletes have pointed out that: they do so as a matter of public health and imposing full Code consequences (as opposed to rehabilitation) is counter-productive to that objective; that these lower-level athletes have not had the same anti-doping educational opportunities as higher-level athletes and that the consequence of mandatory public disclosure on the employment status of someone who participates in sport only at the recreational level is unduly harsh. A new Code definition describes these lower-level athletes as “Recreational Athletes.” This definition includes athletes who: are not and have not for the prior 5 years been an international-level or national-level athlete; have never represented a country in an international event; have never been in a registered testing pool or other whereabouts pool of an international federation or national anti-doping organization; or at the time of the anti-doping rule violation were not nationally ranked in the top 50. In the First Draft, “Recreational Athletes” benefit from the same flexibility in sanctioning as minors as provided in Article 14.3.6 (public disclosure not mandatory) and Article 10.5.1.3 (minimum sanction is a reprimand when no significant fault is established).

Second Draft – There was a general consensus among stakeholders that truly recreational athletes should deserve some special accommodation. There was a great deal of comment on what the definition of a recreational-level athlete should be. We ended up leaving it to International Federations, National Anti-Doping Organizations and Major Event Organizations to each identify who is a recreational athlete based on their own definitions of international and national level athletes with three remaining limitations: that within the preceding five years the athlete has not met the definition of national or international level athlete, has not represented a country in an international event or has been included with any International Federation or National Anti-Doping Organization whereabouts information pool.

14. Addressing the Problem of Common Contaminants in Supplements and Other Products

The ability of WADA accredited laboratories to detect miniscule quantities of prohibited substances in athlete samples has, in some cases, improved one hundred to one thousand fold over the last decade. This increased analytical sensitivity has made it

easier to detect the tail end of the excretion curve from the intentional use of a prohibited substance. However, it has also increased the likelihood that an adverse analytical finding will result from contamination of a supplement or other product. The current Code provides that in order for an athlete to receive a reduced sanction on account of product contamination, the athlete must be able to identify the contaminated product which he or she consumed that caused the adverse analytical finding (Article 10.5.1.2 in combination with the definition of No Significant Fault or Negligence). Generally, this is a good rule to protect the rights of clean athletes. However, there are cases where the adverse analytical finding involves a very low level of a prohibited substance which is known to occur in contaminated products, but the athlete is not able to specifically identify the product which caused the adverse analytical finding. In some of these cases, the adverse analytical finding is much more likely the result of product contamination than the tail end of an excretion curve, but under the current rule no reduction of sanction is permitted. Rather than modify the rule in the current Code related to contaminated products, the Drafting Team's recommendation is that a better approach would be to raise the reporting limits for those prohibited substances which are known contaminants. The WADA List Committee is working on an approach to do this.

15. The Problem of Substances Which are Not Prohibited Out-of-Competition Appearing, in Trace Amounts, in In-Competition Samples

It has always been the case under the Code that some substances are prohibited at all times, and other substances are only prohibited in-competition. The general rule has been that if a substance appears in an athlete's sample in an in-competition test it is an adverse analytical finding, it doesn't matter when the substance was taken. The consequences of this approach have become increasingly problematic as WADA accredited laboratories have developed the ability to detect evermore minute quantities of prohibited substances in an athlete's urine in in-competition samples. In some cases these substances were obviously used out-of-competition and could not possibly have had an in-competition effect. To address this problem, the WADA List Committee is considering reporting thresholds for certain substances which are prohibited in-competition only but which may appear in trace amounts in in-competition tests.

16. Expansion of the Types of Cooperation which Justify a Reduced Sanction for Substantial Assistance – (Article 10.6.1.1)

Under the current Code, an athlete or other person who provides substantial assistance to an anti-doping organization, criminal authority, or a professional disciplinary body, in relation to anti-doping rule violations may receive a suspension of part of the otherwise applicable sanction. In the First Draft of the 2021 Code, substantial assistance credit may also be given for assistance provided in relation to establishing non-compliance with the Code and International Standards and other types of sport integrity violations.

17. New Article Entitled “Prompt Admission of an Anti-Doping Rule Violation After Being Confronted with a Violation and Acceptance of Consequences” – Article 10.6.3

The current Code contains two similar Articles: “Prompt Admission” (Article 10.6.3) and “Timely Admission” (Article 10.11.2). The “Prompt Admission” Article allowed an athlete facing a 4 year ban to receive a reduced sanction down to a minimum 2 years for prompt admission of the violation subject to the approval of the anti-doping organization bringing the case and WADA. “Timely Admission” of an anti-doping rule violation allowed the period of ineligibility to start as early as the date of sample collection instead of the date of the hearing decision which is normally the case under the Code. The underlying rationale for both of these Articles was that the admission would save the anti-doping organization the time and expense of a hearing. In practice, however, what frequently has happened is that the athlete will admit the anti-doping rule violation but insist on going to hearing on the issue of consequences. As a result there is no significant savings of time or money. In the new Article, proposed in this First Draft, the athlete can only receive a reduction in the 4 year ban or a sanction start date going back to sample collection if the athlete and anti-doping organization agree on the applicable consequence and that agreement is approved by WADA.

Second Draft – Article 10.6.3 has been eliminated and replaced with a new Article 10.8. The old Article 10.6.3 has been a repeated source of questions and misinterpretations.

18. Re-Introduction of the Concept of “Aggravating Circumstances” (Article 10.7)

The 2009 Code provided for the increase of the otherwise applicable period of ineligibility when aggravating circumstances were present. When the 2015 Code increased the period of ineligibility for intentional doping from 2 years to 4 years, the Aggravating Circumstances Article was deleted. The Aggravating Circumstances Article has been reinserted in the First Draft to deal with special or exceptional circumstances where an additional period of ineligibility from 0-2 years is appropriate. For example, where a provisional suspension is violated (Definition of Aggravating Circumstances).

Second Draft – The concept of Aggravating Circumstances is retained. However, the revision in the Second Draft makes clear that it does not apply to Anti-Doping Rule Violations where intentional misconduct is already an element of the violation. (Aggravating Circumstances is now found in Article 10.4)

19. Improvements to the Multiple Violation Rules - (Article 10.8)

Two proposed changes to the Multiple Violations Rules are noteworthy. First, the rule in the current Code is that an athlete cannot be charged with a second anti-doping rule violation until he or she has been previously notified of a first violation. This makes

sense in the circumstance where an athlete tests positive twice in the same one week doping cycle - he or she should not be subject to the increased sanctions for a first and second violation. When an anti-doping organization discovers an earlier anti-doping rule violation which occurred before notice of a first violation, the approach has been to go back and consider the two violations together as a first violation for purposes of imposing the longer of the two sanctions. For example, under the current Code, if an athlete commits two anti-doping rule violations 4 years apart, but the first occurring violation is not discovered until after notice has been given of the second occurring violation, then the combined period of ineligibility would still only be 4 years. This is a particular problem when further analysis of old samples produces an adverse analytical finding. The proposed First Draft of the 2021 Code addresses this problem in two ways. If the anti-doping organization can establish that the two violations resulted from separate culpable intents, which is presumed if the two violations are more than 12 months apart, then they can be sanctioned with the longer periods of ineligibility applicable to separate first and second violations (Article 10.8.4.3). Alternatively, the sanction can be increased by an additional 0-2 years on the basis of aggravating circumstances (Article 10.7).

Second, if a person commits a second anti-doping rule violation during a period of ineligibility, the period of ineligibility for the second violation is served consecutively after the period of this first violation (Article 10.8.4.4).

Second Draft - The changes to this Article were generally very well received by the stakeholders. The Article has been simplified by providing that when a prior undiscovered violation occurred more than 12 months before the first sanctioned violation, then the later-discovered violation shall be punished as a first violation and run consecutively. This preserves the principle that a person doesn't get a "second strike" until he/she has been notified of the first strike but yet maintains serious consequences for separate violations. For example, in the hypothetical described above, when it is discovered that an athlete who is serving or has already served a ban for a more recent Anti-Doping Rule Violation also committed an Anti-Doping Rule Violation more than 12 months earlier (for example when a sample from an earlier competition was retested) the athlete can be sanctioned for the later-discovered violation as a stand-alone violation but it would not count as a second violation going forward. (Article 10.9.4.2)

The new Article 10.8 has two parts. Article 10.8.1 provides that where an athlete or other person who is facing an asserted period of ineligibility of 4 or more years admits the violation within ten days of notice of the B sample analysis then there will be a reduction of one year from the otherwise applicable period of ineligibility. This provides some incentive for the person to admit the Anti-Doping Rule Violation without being too lenient.

The second part of Article 10.8. (Article 10.8.2) provides an opportunity for the Anti-Doping Organization, the athlete or other person and WADA to enter into a Case Resolution Agreement in which the otherwise applicable period of ineligibility can be

reduced down to one-half and the start date of the ineligibility can commence as early as the date of sample collection as long as the athlete serves at least one-half of the agreed-upon period of ineligibility going forward. The reduction possibilities permitted in a Case Resolution Agreement are not something that a hearing body is permitted to impose or review. Case resolution agreements are not appealable by anyone. As in the case of “Substantial Assistance” an athlete who is negotiating a Case Resolution Agreement is entitled to tell his or her story under a “Without Prejudice Agreement.”

20. Forfeited Prize Money Goes to Other Athletes (Article 10.10)

As modified, Article 10.10 now provides that when an athlete is required to forfeit prize money as a result of an anti-doping rule violation and the forfeited prize money is collected by the anti-doping organization, then the forfeited prize money shall be distributed to the athletes who would have been entitled to the prize money had the forfeiting athlete not competed. It is left up to the rules of the sporting body whether any rankings which are based on prize money will be reconsidered. Athlete stakeholders have argued that forfeited prize money which has been recovered, belongs to the athletes who were cheated, and to the extent an anti-doping organization wants to recoup some of its costs in bringing the case, it is permitted to do so in Article 10.11.

Second Draft – No change to the basic concept however new language makes clear that athletes are only entitled to distribution of prize money which has been recovered by an Anti-Doping Organization and that Anti-Doping Organizations have no affirmative duty to try to recover prize money. Further, in response to comments from some stakeholders that in their sports redistribution of prize money would be extremely difficult if not impossible to accomplish, the term “take responsible measures” has been added to this Article and an exception is made where there is an agreement in place between the International Federation and its athletes as to how recovered prize money should be distributed. (Article 10.11).

21. Clarifications Relating to Sanctions for Violation of a Provisional Suspension

The general rule is that if a person respects the terms of a provisional suspension, that provisional suspension will be credited against any period of ineligibility which may ultimately be imposed (2015 Code - Article 10.11.3). The intent of this provision was that if the person did not fully respect the provisional suspension, then he or she would get no credit against the ultimate sanction. That intent has been clarified in new Article 10.12.2.1. Any results obtained during the period of violation are also disqualified (Article 10.7). In addition, the new Aggravating Circumstances Article (Article 10.7) provides that a person’s violation of the terms of a provisional suspension may independently result in a sanction from 0-2 years. Finally, Article 14.3.1 (Public Disclosure) has been modified to make clear that prior to the final decision in the case, an anti-doping organization may publicly disclose the identity of the individual who has been charged and whether a provisional suspension has been imposed.

Second Draft – This is now Article 10.13.2. There are no major changes to this Article except it should be noted that in Article 7.4.4 an athlete who has voluntarily accepted a provisional suspension may at his/her own discretion withdraw that voluntary acceptance. In such case there shall be no credit granted for time served under the voluntary provisional suspension and the Anti-Doping Organization with Results Management Authority has the right to impose either a mandatory or optional provisional suspension on its own initiative.

22. Express Authority of a Signatory to Exclude Athletes and Other Persons from its Events as a Sanction Against a Member Federation (Article 12.2)

The language added to Article 12.2 makes clear that discipline by the IOC against a member National Olympic Committee or by an international federation against a member national federation may include exclusion of athletes from that country from its events. This is already the current practice under the Code.

Second Draft – No major change to Article 12.2.

Proceedings against Code signatories as a matter of Code compliance has been moved from Article 12.1 to Article 23.5.

23. Implementation of Decisions (Formerly Mutual Recognition) – (Article 15)

Two concerns with the current Code are addressed in the revisions to this Article. First, there has been some contention that when a Signatory recognizes the decision of another Signatory, that recognition decision is itself subject to appeal by the athlete (as opposed to an appeal of the underlying decision). That was never the intent of the Code. As revised, Article 15 provides that a final decision by a Signatory is automatically implemented by other Signatories following notice of that decision to WADA. The first Signatory's decision may, of course, be appealed to CAS by WADA and other Signatories, but it shall remain in effect until reversed by CAS.

The second issue with Article 15 is the fact that mutual recognition of Provisional Suspension decisions is neither required nor discussed. As revised, the Article provides that mandatory Provisional Suspensions imposed as the result of a Provisional Suspension hearing or voluntary acceptance are automatically implemented. (Provisional Suspensions are "mandatory" when there is an adverse analytical finding for a non-specified substance). Optional Provisional Suspensions (suspensions for adverse analytical findings for specified substances and other anti-doping rule violations) may be implemented by other Signatories in their discretion.

Any anti-doping organization that imposes or recognizes a Provisional Suspension assumes a risk that the anti-doping rule violation upon which the Provisional Suspension is based will not ultimately be upheld. The likelihood that an adverse analytical finding will ultimately be reversed is sufficiently low, and violations involving non-specified substances are sufficiently serious, that the automatic implementation of mandatory Provisional Suspensions is justified. On the other hand, since the Signatory imposing an optional Provisional Suspension had the discretion to impose a Provisional Suspension in the first place, other Signatories should also have discretion in whether they choose to implement it.

Second Draft – Article 15 is changed substantially in the Second Draft in response to stakeholder calls for harmonized enforcement. All provisional suspensions are automatically binding on other Signatories. As previously mentioned in addressing Article 7 in paragraph 10 above, with the exception of decisions by Major Event Organizations where there is no opportunity for appeal outside of the fast track of the event structure, all the Results Management Decisions of all Anti-Doping Organizations are automatically recognized world-wide in all sports.

24. Signatories' Expectation of Governments – Access for Doping Control Officials and Removal of Samples - (Article 22)

The ability to conduct effective no advance notice testing is frustrated in a number of countries by government regulations that limit the ability of doping control officials to enter the country or to have access to restricted areas where athletes train and live. There are also problems in some countries removing blood and urine samples for analysis outside of the country. These issues are addressed in the proposed Amendment to Article 22.2. It is the unanimous view of Signatories and athletes that these problems must be remedied through the implementation of corrective government regulation.

Second Draft – A new provision has been added to this Article (Article 22.8) which provides that government shall not limit or restrict WADA's access to any doping or any anti-doping records or information held or controlled by any Signatory, member of a Signatory or WADA accredited laboratory.

25. How Does a Sport Organization Become a Signatory?

The only change which has been made to the Code in relation to WADA's acceptance of a sport organization as a Signatory is the addition of the following drafting note to Article 23.2:

“WADA will publish a Guideline describing the process for an organization to become a

Signatory.”

The criteria for when and how WADA will accept an organization as a Signatory does not need to be spelled out in the Code; a Guideline is sufficient. With that said, it is the strong view of the Project Team that WADA’s willingness to accept an organization as a Signatory should be kept completely separate from International Federation politics. WADA is an anti-doping organization whose business is to protect clean athletes in all sports. WADA’s goal should be to have as many sport organizations Code compliant as possible - whether or not they are part of the Olympic Movement and whether or not an International Federation which is already a Signatory wants to put a competitor at a disadvantage by freezing it out of Code Signatory status. If the Olympic Movement is concerned about funding WADA’s compliance monitoring of organizations outside the Olympic Movement, that can be addressed in the fees which WADA charges non-Olympic Movement organizations as part of their Signatory status.

Second Draft – This is a political issue that does not need to be decided in the Code other than by reference to a WADA Guideline to be published in the future.

The Code Project Team had a very productive meeting with representatives of GAISF. It was clear that in developing the criteria to go into its Guideline, WADA could learn from the experience GAISF has developed. On the other hand, the Code Project Team continues to believe that blocking potential new Signatories because they compete with existing recognized Signatories is neither legally justifiable nor in the best interest of Clean Sport.

26. Subject Areas Where Changes May be Made in Future Code Drafts Following Finalization of Recommendations from Working Groups

There are four areas where no attempt at Code revision was made pending receipt of recommendations from active working groups: Data Privacy (Article 14.6); Education (Article 18); WADA Governance and Mechanisms for Monitoring WADA’s Performance; and appropriate references to The Anti-Doping Charter of Athletes’ Rights. Stakeholder comments on these subjects have been referred to an applicable working group for their consideration. The expectation is that these areas will be addressed as may be appropriate in the Second Draft of the 2021 Code.

Second Draft – We made changes to Articles 14.6 and 18 consistent with the recommendations of the Data Privacy Working Group and Education Committee. We are still waiting on feedback from the Working Group on Governance.

We received numerous comments on the Fundamental Rationale for the World Anti-Doping Code from both the WADA Ethics Committee and numerous stakeholders. We have forwarded the stakeholders’ comments to the WADA’s Ethics Committee to see if a consensus view can be achieved.

We have reviewed numerous comments and held lengthy discussions with both stakeholders and the WADA Compliance Review Committee regarding potential changes to WADA Code compliance monitoring in Article 23. Based on these comments, we have revised Article 23.5.

27. SUBSTANCES OF ABUSE – ARTICLE 10.2.4

We received considerable stakeholder feedback that sanctions for street drugs remain a significant problem under the Code. Cocaine is a particular problem. According to WADA testing statistics in 2017, there were 69 positive tests for cocaine world-wide

Concerned stakeholders make the following points:

1. Use of these drugs is a problem for society generally unrelated to sport performance.
2. The Code only prohibits use/presence of these drugs in competition. While stimulants like cocaine can clearly have a performance enhancing effect when used in competition, often the quantity detected in competition strongly suggests that the use occurred out of competition in a social context.
3. In cases where an athlete has a drug problem and not a performance enhancement problem that affects the level playing field, Signatories should prioritize the athlete's health.
4. Substantial resources are being spent arguing in hearings over the appropriate length of sanction in Substances of Abuse cases. These resources could be better spent on anti-doping investigations or anti-doping rule violations which really do affect the level playing field of sport.

Based on this stakeholder input, we have proposed a new Article 10.2.4 which provides as follows:

1. The WADA List Committee would identify those substances on the Prohibited List which are often abused in society outside of sport as "Substances of Abuse." The List Committee has the expertise to do this.
2. In order for this Article to apply, the athlete must establish that the use occurred out of competition and was unrelated to sport performance. Otherwise, the normal sanctioning scheme applies. (This means that it is not a level playing field case.)
3. The period of ineligibility would be a flat three months with no argument over No Significant Fault etc. (This eliminates the need for expensive hearings on appropriate length of sanction.)

4. The athlete can reduce the period of ineligibility down to one month by completing a rehabilitation program satisfactory to the Results Management Authority. (This addresses the athlete health concern.) We understand that this may not be a perfect solution because rehabilitation programs are not equally available around the world, however we agree with the stakeholders that this would be a step in the right direction.

28. Obligation of Individual Signatory Participants to Agree to Be Bound by the Code (Introduction and Article 20).

This concept was included in First Draft. It has been expanded and clarified in the Second Draft. The general requirement is that officers and directors as well as certain employees and volunteers of Signatories should agree to be subject to the Code. This does not mean that they will be tested, rather only that they will not commit intentional Anti-Doping Violations under the Code such as tampering, trafficking, administration, complicity, prohibited association and retaliation. A new Article 20.7.10 has been added to require that all of WADA's directors, officers, employees and volunteers agree to be bound by the Code. We understand that in some countries this may not be imposed as a permissible condition of employment, so a comment was then added explaining that this particular Code provision is subject to national employment law.

The First Draft at Article 23.3 included a similar expectation for governments.

Article 21.3 briefly describes the roles and responsibilities of other persons who are subject to the Code.

29. Procedures related to split samples (Article 2.1.2 and Article 6.7).

These Articles, together with the revised International Standard for Laboratories permit a single A sample or B sample to be split and used for both initial analysis and confirmation analysis. Where only a single bottle is to be used for analysis, the laboratory and Anti-Doping Organization with Results Management responsibility must attempt to notify the athlete of the opportunity to observe the bottle opening. A new provision has been added to the ISL requiring that when an athlete or his/her representative does not attend a B sample or split sample opening the bottle should be photographed.

30. Specified methods (Article 4.2.2.)

The Code provides potentially different sanction schemes for non-specified substances and specified substances. Currently, all methods are non-specified. This change allows the WADA List Committee with subsequent approval from the WADA Executive Committee the flexibility to identify certain new or existing prohibited methods as "specified."

31. Delays Not Attributable to the Athlete or Other Person (Article 10.13.1)

This Article found in the 2015 Code allows hearing panels to start a period of ineligibility running from the date of the Anti-Doping Rule Violation. A number of stakeholders expressed concern that hearing panels have gone too far in applying this Article. As a result the Article now makes clear that the burden of establishing that delays are not attributable to the athlete or other person is on the athlete or other person, and a comment has been added noting that in cases involving lengthy investigations, particularly where the athlete or other person has taken affirmative action to avoid detection, the flexibility provided in this Article should not be used.

32. Status During Ineligibility or Provisional Suspension (Article 10.14.)

In response to stakeholder questions, examples of the types of activity which are not permitted during a period of ineligibility or provisional suspension have been provided.

33. Scope of Review on Appeal (Article 13.1.1)

This Article makes clear that any party to an appeal may submit evidence, legal arguments and claims that were not raised in the first hearing so long as they arrived from the same cause of action or same general facts or circumstances raised in the first instance hearing.

34. Appeals Involving National Level Athletes (Article 13.2.2.)

Under the current Code, it is often the case that appeals by National Level Athletes are heard by national level appellate bodies not by CAS. The amendment to this Article makes clear that where the structure of the national level appellate body is not fair, impartial and independent, the athlete or other person shall have the right of appeal to CAS.

35. Mandatory Public Disclosure (Article 14.3.2.)

A number of stakeholders have commented that public disclosure as required by Article 14.3.2 may violate national law. A comment to Article 14.3.2 has been added to make clear that failure to make a public disclosure under 14.3.2 will not be considered a Code compliance violation where it is prohibited by national law.

36. Definition of In-Competition.

The First Draft made no change to the “In-Competition” definition found in the 2015 Code. Each International Federation and Major Event Organization was allowed to develop its own definition of the In-Competition period. The Code provided a fallback

definition under which In-Competition was defined as the period commencing twelve hours before a competition in which the athlete is scheduled to participate through the end of such competition and the sample collection process related to such competition. Athletes have expressed concern that it is an unnecessary burden on them to try to keep track of the “In-Competition” definition used by all of the major events in which they compete which may be different from the definition used by their International Federation. In addition many stakeholders reported logistical problems with the twelve hour rule. The Second Draft provides a standard definition for In-Competition which is the period commencing at 11:59 pm on the day before a competition in which the athlete is scheduled to compete through the end of such competition and the sample collection process related to such competition. However, as an accommodation to those sports where there are unique reasons for a different definition of In-Competition, for example sports in which they have a pre-competition weigh-in, WADA may approve a special definition for that sport which will in turn be followed by Major Event Organizations conducting those sports.

37. Tampering (Article 2.5) and Definition of Tampering

In the 2015 Code and the First Draft the act of Tampering was described in Article 2.5, in a comment to Article 2.5 and in a separate definition of “Tampering.” In the Second Draft all of that has been consolidated into the definition of Tampering.