The International Standard for Code Compliance by Signatories – Update & Review

2019 Annual Symposium – 14 March 2019, Lausanne, Switzerland

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

- For the second consecutive year, Symposium participant poll rated monitoring and enforcement of Signatories’ compliance with their World Anti-Doping Code obligations the number one priority for WADA

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

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

2. Implementing a way to address the weaknesses in the Code provisions and the uncertainty about the extent of parties’ legal rights and responsibilities exposed in particular in 2016 by the controversies around Russian participation in major Games and events

- International Standard for Code Compliance by Signatories (ISCCS)
Genesis of the ISCCS

- **November 2017**

  Executive Committee and Foundation Board approve ISCCS and Code amendments following six-month stakeholder consultation under the oversight of the CRC

- **1 April 2018**

  ISCCS and Code amendments come into force
Major Features of the Standard
Major Features of the Standard

Key Compliance Monitoring Tools

- Code Compliance Questionnaire (CCQ)
- Compliance Audit
- Mandatory Information Request
- Intelligence and investigations
- Continuous compliance monitoring through ADAMS and other ways
  - Doping Control Forms and TUE entries into ADAMS
  - Results Management cases
  - Athlete Biological Passport programs
  - Etc.
Major Features of the Standard (Cont’d)

- ‘Policy for the Initial Application of the ISCCS by WADA’ adopted by WADA Executive Committee in November 2017 with the ISCCS

- Developed following stakeholders’ feedback insisting during the ISCCS drafting that prioritization should be applied

- Gives WADA the ability to prioritize its monitoring and enforcement efforts by focusing on “higher risk” categories/tiers of Signatories and the most serious types of non-compliance during the first two years (i.e. until 31 March 2020)
Major Features of the Standard (Cont’d)

▪ Focus is on securing compliance; sanctions for non-compliance are a last resort

▪ The process for enforcing Code compliance by Signatories mirrors, as much as possible, the process set out in the Code for enforcing Code compliance by athletes

▪ The CRC and WADA do not decide on non-compliance or consequences
  - The CRC recommends to the Executive Committee, which can assert non-compliance and propose consequences
  - If the Signatory disputes either, the case goes to the Court of Arbitration for Sport (CAS), which ultimately decides, with the opportunity for other interested parties to intervene (no case so far has ended up at CAS)
Process in cases of non-compliance under the ISCCS

- WADA engages Signatory for 3, 6, 9 months
- Internal WADA Compliance Taskforce reviews (3 months)
- CRC reviews/recommends (possible 4 months extension)
- Executive Committee asserts Signatory non-compliance
- Non-compliance consequences
- WADA and CRC review; Executive Committee reinstates

If Signatory disagrees, can go to CAS.
Major Features of the Standard (Cont’d)

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

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

**ISCCS Art 11.2.5:** ‘Above all else, the Signatory Consequences imposed should be sufficient to maintain the confidence of all athletes and other stakeholders, and of the public at large, in the commitment of WADA and its partners from the public authorities and from the sport movement to do what is necessary to defend the integrity of sport against the scourge of doping. This is the most important and fundamental objective, and overrides all others’
What benefits has the ISCCS brought to the fight against doping?
Strengths of the ISCCS

- Has demonstrated willingness and readiness from WADA and the anti-doping community to address loopholes quickly and to respond to the call of numerous athletes for such a Standard

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

- Beckie Scott, Chair, WADA Athlete Committee
Strengths of the ISCCS (Cont’d)

- Has consolidated the overall philosophy of WADA’s compliance monitoring program
  - WADA’s focus is on supporting Signatories' compliance efforts
  - Emphasis on improved anti-doping programs that contribute to enhanced global harmonization and greater protection of the integrity of sport
  - Close cooperation between WADA and each Signatory to address any shortfall within specified timeframes
  - Seeking sanctions for non-compliance is the last resort
Strengths of the ISCCS (Cont’d)

- Has enabled WADA and the global anti-doping community to formalize:
  
  - The ways that WADA supports Signatories in achieving, maintaining or regaining Code compliance
  
  - A range of graded, predictable and proportionate sanctions in case of ultimate non-compliance
  
  - One single centralized and fair process for determining non-compliance and sanctions, with the CAS as the ultimate decision-maker
Has created a lot more legal certainty around roles and responsibilities, sanctions, and mechanisms

- Standardized, transparent and pre-determined procedure for all cases of non-conformities
- Signatories are fully aware of the various steps, timelines and potential consequences
- Experience has shown that the overwhelming majority of Signatories are able to successfully address their outstanding issues in the framework of the process without having their case escalated to WADA’s Executive Committee
- The CRC has established a series of precedents, in particular in terms of consequences proposed to the Executive Committee in cases of potential non-compliance, which will help ensure harmonization for similar cases
WADA Focus on Cooperation – Some Figures

- **328** Signatories (IFs and NADOs) worldwide have been subject to WADA’s CCQ and/or a WADA Compliance Audit to date

- As a result, WADA has identified more than **10,000** corrective actions to be completed

- Signatories have implemented **3,700** corrective actions so far following the CCQ and more than **540** following Audits, with the support of WADA and of other Signatories in some cases
WADA Focus on Cooperation – Some Figures (Cont’d)

- **82** Signatories have fully implemented their corrective actions from the CCQ or from an Audit; the rest are in progress

- Only **5** Signatories have been declared non-compliant under the enhanced compliance monitoring program launched by WADA in early 2017, and **3** of these 5 have been reinstated to date after addressing their issues
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<th>Year</th>
<th>Month</th>
<th>Action Description</th>
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<td>2017</td>
<td>Sep</td>
<td>CCQ review &amp; Corrective Action Report (CAR) distribution by WADA</td>
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Challenges with the ISCCS to date
Challenges with ISCCS

- The ISCCS is a living document; we learn from experience.

- The RUSADA case shows the strength of the new regime compared to the old… but there is a need to identify further potential graded consequences, in order to increase flexibility and so strengthen proportionality in future cases.

- The issue of exclusion of athletes from major events as a consequence of Signatory non-compliance remains controversial.
Challenges with ISCCS (Cont’d)

- Complexity of managing new non-conformities identified while a Signatory is already in a compliance procedure.
  - Need to clarify the process

- Prioritization policy approved by the ExCo for the first two years of application of the ISCCS.
  - Will the number of non-compliance cases explode post-March 2020 if this policy is stopped?
  - Should a risk-based approach continue?
ISCCS Review
The main change as a result of the comments received was to move the list of potential consequences from the ISCCS to the Code (but keeping in the ISCCS the principles that apply to determine consequences in a particular case, based on the 'starting point' in Annex B)

A few requirements have been added or re-classified within the three categories of requirements (Critical, High Priority and Other)

Proposal to make a fine available as a sanction in any case (not just in cases involving non-compliance with Critical requirements, as it is now)
Major Changes in Draft 1.0 (Cont’d)

- Code Article 20 has been amended to clarify that the obligation not to grant event hosting rights to a country whose NADO or NOC acting as a NADO is non-compliant with the Code does not apply automatically but only when that consequence has been proposed by WADA and either agreed by the non-compliant Signatory or determined by CAS.

- This was omitted in error from the changes made in April 2018.
In the ISCCS itself, the main change has been to:

1. Move the various provisions relating to Major Event Organizations (MEOs) to a new stand-alone subsection (Article 8.8), and

2. Add more detail to that subsection setting out the means that WADA will use to monitor and ensure Code compliance by MEOs (tailored Code Compliance Questionnaire and addition of WADA auditors to the Independent Observer team at the event)
Major Comments Received in Phase 2

- Make clearer the fact that it is ultimately CAS that rules on the compliance status of a Signatory and on consequences, as well as the involvement of impacted Signatories.

- Strengthen the independence of the CRC in the Standard or in the CRC bylaws.

- Three months may be too short to implement Critical corrective actions, and six and nine months respectively may be too long to implement High Priority and Other corrective actions.
Art. 11.2.6: some want to reinforce this article that allows clean athletes from a non-compliant Signatory to compete under a neutral status (and, generally speaking, want to see consequences impacting athletes – e.g. prohibition from participation in Major Games and Events – applied only to the most severe cases); others want to abrogate it.

- Rename “Other” requirements – “General”

- Make the list of Critical requirements a closed one
Major Comments Received in Phase 2 (Cont’d)

- Discussions on the categorization of certain requirements
  - Education; payment of costs of WADA investigations, fines or any costs associated to supervision or supervision
  - Critical or High Priority?

- Further grade potential consequences to include reference to national, regional and continental events and to avoid always using Olympic and Paralympic Games in first instance
Questions for Discussion
Discussion

- How much more gradation should we introduce in the consequences of non-compliance, in particular for the Critical and High Priority requirements?
- The Russian case showed the importance of keeping an open list of requirements. Should we make the list of requirements (Critical, High Priority and Other) longer though?
- Prioritization policy. Should we maintain it, or amend it, post-31 March 2020?
- Other comments or questions to the panel?