

ISCCS - SUMMARY OF MAIN CHANGES

The Drafting Team of the International Standard for Code Compliance by Signatories (ISCCS) presented in November 2018 in Baku to the Executive Committee and Foundation Board members, a paper on the major changes between the version of the ISCCS in force and Draft 1.0 of the revised ISCCS.

Based on the comments received from stakeholders since then, as well as refinements identified as necessary by the WADA Compliance Taskforce, the following changes have been made to Draft 2.0 of the revised ISCCS (and, where necessary, to the parallel provisions in the draft revised Code):

- A number of changes have been made to emphasize the fact that it is the Court of Arbitration for Sport (CAS) alone that has the power to impose sanctions on a Signatory for non-compliance with the Code and the International Standards. This includes stating throughout that WADA does not 'assert' but rather 'alleges' non-compliance, and 'proposes' consequences, whereas it is CAS that determines non-compliance and consequences if the Signatory does not accept WADA's allegation and proposal.
- A new Article 6.4 and a new Article 10.4.3 have been added to give further emphasis to the 'principle of last resort' (i.e., the principle that the aim is to get Signatories to conform, and that seeking sanctions against them for non-compliance should be the last resort), by confirming expressly that if a Signatory corrects a non-conformity after the matter has been referred by the WADA Compliance Taskforce to the Compliance Review Committee (CRC), or by the CRC to the WADA Executive Committee, or by the WADA Executive Committee to CAS, then that correction will be sufficient to end the proceedings against the Signatory, and no consequences will be imposed on the Signatory for confirming after the deadline, save to the extent that (a) costs have been incurred in pursuing the case before CAS (in which case the Signatory must cover those costs); and/or (b) the failure to correct the non-conformity within the required timeframe has resulted in irreparable prejudice to the fight against doping in sport (in which cases CAS can decide if it sees fit to impose consequences to reflect that prejudice).
- Article 8.4.1.7 has been tightened up to make it clear that while WADA will not start compliance proceedings against a Signatory for one non-conforming results management/disciplinary decision, if there are a number of such decisions, then WADA will inform the Signatory, and if they do not stop, then compliance proceedings will be started. This is to reflect the cost to WADA and its stakeholders if WADA is forced to go to CAS repeatedly to correct a Signatory's non-conforming results management/disciplinary decisions.
- A new Article 8.8 has been added to reflect the concept of 'continuous compliance monitoring'. This is a concept that WADA enhanced in January 2019 to fill a potential gap in oversight in the period after a Signatory has corrected non-conformities identified by a Code Compliance Questionnaire (CCQ) response or in a Compliance Audit and before it has to respond to another CCQ or audit. The program allows WADA to use various means to conduct continuous monitoring of certain Critical requirements in that period, both generally in respect of all Signatories, but also specifically to check that a Signatory is implementing the corrections it made of Critical requirements following a CCQ response and/or the corrections it made of Critical and High Priority requirements following an audit. Examples include checking in ADAMS that Signatories are uploading doping control forms and TUE decisions on a timely basis.

- A number of refinements have been made to Article 8.9 (special provisions for monitoring compliance of Major Event Organizations) based on helpful comments received from the International Olympic Committee (IOC).
- New Article 9.2.7 and Article 9.3.2 have been added to deal with the situation where a new non-conformity is identified after compliance proceedings have been commenced in respect of other non-conformities, with specified timeframes for correction. It enables WADA Management to add the new non-conformity to the proceedings and to adapt the timeframe for correction accordingly.
- Article 9.4.4 has been refined to require the CRC report to WADA's Executive Committee to set out the relevant facts and to explain why those facts have led to the particular recommendation. A new Article 9.4.6 has also been added that confirms that in making its recommendation as to the consequence to be proposed for non-compliance, the CRC will assess and consider, in determining what consequences should be pursued, the potential impact of different potential consequences on innocent third parties, including in particular athletes. The revised ISCCS makes WADA Management responsible for ensuring that the CRC is fully informed of the potential impact on third parties of the different possible consequences. This is effectively a formalization of what is the current practice in any event.
- On the other hand, the drafting team has not implemented the IOC's proposal to require WADA to prove its case at CAS not just on the balance of probabilities (the current standard of proof) but rather 'to the comfortable satisfaction of the CAS Panel'. The higher standard applies in the Code to cases against athletes, but this is because the two main anti-doping rule violations by athletes are based on strict liability, and because athletes usually have less resources than Signatories to defend themselves. The policy behind the ISCCS (achieving a level playing field by ensuring Code compliance by all Signatories) militates in favour of a lesser standard for such cases. It is noted that the IOC has adopted the 'balance of probabilities' standard for proving cases under its own Code of Ethics, which tends to indicate that it is an appropriate standard in this context.
- In Appendix A (categorizing requirements by importance to the fight against doping, which is then the key factor in determining what consequences should be imposed if the requirements are not met):
 - the lowest category has been renamed 'General' rather than 'Other';
 - some refinements have been made to the lists of General, High Priority and Critical requirements (including making certain education requirements High Priority and others Critical, making the requirement to pay investigation costs and results management costs incurred by WADA a High Priority requirement rather than Critical, and making the following requirements Critical – the Code obligation for a Signatory to devote the resources required to ensure its anti-doping program is Code compliant, as well as the obligation to ship samples to the lab in a timely fashion, and the obligation to abide by the strict procedural requirements set out in the Code and International Standards in respect of analysis of B samples); and

- at the request of the IOC, to add further certainty for Signatories, it is now specified that the list of Critical requirements is an exhaustive list in respect of all requirements specified in the Code and International Standards (although to ensure the Executive Committee retains the sort of flexibility that proved so useful in the Russian Anti-Doping Agency's case, the list of Critical requirements now includes 'any requirement that is not already set out in the Code or the International Standards that WADA's Executive Committee exceptionally sees fit to impose as a Critical requirement').
- In Appendix B (which sets out as a 'starting point' the range of consequences that might be imposed in cases of non-compliance with General, or High Priority, or Critical requirements), various changes have been made to address the concern of the IOC that the current regime defaults too quickly to exclusion from the Olympic Games, when that should really be the last resort. In particular, new potential consequences have been added (including the ability to suspend funding until the non-conformity is fixed, but then pay that funding out following correction of the non-conformity), and the consequences have been staggered so that the option to deny a country the right to host or to participate in events applies first to regional or continental championships or World Championships and only to the Olympic Games and/or Paralympic Games in the most serious cases. In addition, first it will be representatives of the Signatory who are excluded, with athletes only being excluded in the most serious cases, where necessary to ensure the consequences imposed have the desired effect on the non-compliant Signatory and on all other Signatories.
- Lastly, a change has been made to specify that any amount recovered from a Signatory as a fine for its non-compliance may be applied by WADA to finance further Code compliance monitoring activities **and/or** anti-doping education **and/or** anti-doping research.