

INTERNATIONAL STANDARD FOR THE PROTECTION OF PRIVACY AND PERSONAL INFORMATION (ISPPPI) Consultation - Second consultation phase

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Preamble (3)

Antidoping Switzerland

Ernst König, CEO (Switzerland)
NADO - NADO

SUBMITTED

General comment: Antidoping Switzerland does not see any major issues with the current ISPPPI. However, we would like to point out that in Switzerland we are currently in a revision process of the Federal Act on Data Protection of 19 June 1992 (FADP; SR235.1). It is currently in Parliament and it is not clear yet when the Federal Act will be finalised. Although this Act will or must show many similarities with the European GDPR, it should be monitored if some discrepancies arise. As a Swiss Foundation, Antidoping Switzerland must also comply with Swiss Law and it may well have wider implications than just on the ISPPPI, for example, it may also affect ISTI or others.

Doping Authority Netherlands

Olivier de Hon, Chief Operating Officer (Netherlands)
NADO - NADO

SUBMITTED

We do not have any comments on the current draft.

Conseil supérieur des sports

Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

SUBMITTED

The main purpose of this International Standard is to ensure that organizations and Persons involved in anti-doping in sport apply appropriate, sufficient and effective privacy protections to Personal Information that they Process, regardless of whether this is also required by applicable laws.

PART ONE: INTRODUCTION, CODE PROVISIONS AND DEFINITIONS (1)

Antidoping Switzerland

Ernst König, CEO (Switzerland)
NADO - NADO

SUBMITTED

Antidoping Switzerland welcomes the fact that the ISPPPI is also applicable to WADA itself.

1.0 Introduction and Scope (1)

Antidoping Switzerland

Ernst König, CEO (Switzerland)
NADO - NADO

SUBMITTED

General comment: Antidoping Switzerland does not see any major issues with the current ISPPPI. However, we would like to point out that in Switzerland we are currently in a revision process of the Federal Act on Data Protection of 19 June 1992 (FADP; SR235.1). It is currently in Parliament and it is not clear yet when the Federal Act will be finalised. Although this Act will or must show many similarities with the European GDPR, it

should be monitored if some discrepancies arise. As a Swiss Foundation, Antidoping Switzerland must also comply with Swiss Law and it may well have wider implications than just on the ISPPPI, for example, it may also affect ISTI or others.

3.0 Terms and Definitions (1)

Anti-Doping Norway

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

SUBMITTED

Definition “processing”

Anti-Doping Norway suggest that some items are amended in this definition so that it reads as follows:

Any operation or set of operations performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

PART TWO: STANDARDS FOR HANDLING PERSONAL INFORMATION

4.0 Processing Personal Information in Accordance with International Standard and Applicable Law (1)

AEPSAD

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

SUBMITTED

Following the legal changes about Data Protection rules, the International Standard for the Protection of Privacy and personal information must be amended to be in line with European Data Protection Regulation. In this sense some changes introduced in the European Regulation have been covered in the new ISPPPI, however we have some comments regarding some others issues that we consider that should be changed;

4.4 (1)

AEPSAD

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

SUBMITTED

In relation to 4.4 comment, stating that ‘WADA shall be solely responsible for maintaining a record reflecting the processing of personal information in the database’, we consider that under the European Regulation, WADA’s role should be typified. In this sense we are talking about WADA’S legal duties and liabilities as ‘solely responsible’ of the processing of personal information in the database. Under European Data Protection, all parties involved in processing data must be typified. This paragraph refers to WADA as the controller for maintaining a record reflecting the processing of personal information in the database, so the requirements under European Data Protection about the responsibility of the controller should be provided in the document.

6.0 Processing Personal Information in Accordance with Law

6.3 (1)

AEPSAD

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

SUBMITTED

Regarding to article 6.3 under ISPPPI related to the consent for data processing, we also have some comments. On one hand, this paragraph only mentions the consent as an 'explicit consent' of the participant or person to whom the personal information shall be obtained. However the new European regulation requires that specific measures about the consent must be typified.

Taking into account that the 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her; we propose that the conditions for consent should be added to the document. These requirements is set out in article 4 of the General Data Protection Regulation. But we also consider that it's necessary to introduce some provisions about the conditions of the consent, which are set out in article 7 of the European regulation. Where processing is based on consent, the controller shall be able to demonstrate that the subject has consented to the processing of his, or her, personal data. This requirements should be introduced on the ISPPPI.

7.0 Ensuring Appropriate Information is Furnished to Participants and Other Persons (1)

AEPSAD

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

SUBMITTED

On the other hand, in article 7, relating to 'the appropriate information that is furnished to participants and other persons', we have not found any legal provision about the subject rights. In the same way, we consider that references about transparent information, communication and modalities for the exercise of the rights of the subject, should be specified.

7.3 (1)

AEPSAD

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

SUBMITTED

In paragraph 3 of article 7, regarding the information that an Anti-doping Organization shall provide to persons to whom the personal information relates, we only found a short description about the processing of their personal information. In this sense, there is a very important item that it also must be detailed: Minors. As we have commented previously, the Minors chapter should be developed as a solely chapter. In the new European regulation minor's rights are reinforced and extended so it's necessary to be conform to requirements set by the European legal provisions. The conditions in order to have a valid consent is a very important matter in data protection and it should be well clarified on the International Standard.

8.0 Disclosures of Personal Information to other Anti-Doping Organizations and Third Parties

8.3 (1)

UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

SUBMITTED

Article 8.3.cWe suggest that this Article be broadened to permit disclosure of personal information to third

parties where this is necessary to assist "...law enforcement or governmental or other authorities in the detection, investigation or prosecution of a criminal offence, breach of professional conduct rules or breach of the Code."

We say this is an appropriate extension of this provision to enable the sharing of information with professional regulatory bodies, for example in respect of medical personnel, where the misconduct involved may not be a breach of the Code or a criminal offence.

9.0 Maintaining the Security of Personal Information (1)

AEPSAD

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

SUBMITTED

Regarding maintaining the security of personal information set out in article 9, we can see in the new paragraph 6 that 'anti-doping organizations shall assess their processing of sensitive personal information and whereabouts information every three years to determine the proportionality and risks of their processing and to assess any measures, including privacy by design measures, that could be taken to reduce the risks for the participants concerned', we not understand the reason for this three year timeline, so we propose to change this wording and to add the accuracy and minimization data principle. In this regard the assessing of the processing of sensitive personal information and whereabouts information by anti-doping organizations can be carried out at any time.

9.3 (1)

Anti-Doping Norway

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

SUBMITTED

Agreements with third parties re. ISPPPI 9.3

ADOs can be both data controllers and processors handling personal data including a large amount of medical and legal information (sensitive information). WADA has previously made a reciprocal testing agreement template. ISPPPI 9.3 identify an agreement with a third party if this party is processing data on behalf of the ADO. Anti-Doping Norway suggest that the reciprocal testing agreement is amended (or by other means) with requirements relating to data processing in line with the requirements of the GDPR article 28.

10.0 Retaining Personal Information Where Relevant and Ensuring Its Destruction (1)

Organizacion Nacional Antidopaje de Uruguay

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

SUBMITTED

The retention period for certain TUE-related information has been reduced from 18 months to 12 months to align with the shortest whereabouts retention period.

ANNEX A - RETENTION TIMES (3)

UEFA

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

SUBMITTED

Annex A - The retention time for Whereabouts is planned to be updated to 12 months from the end of the quarter for which the whereabouts is submitted *except for the city, country and in-comp whereabouts data (which should be stored for 10 years for the purposes of the ABP)*. Unless WADA produces a suitable tool for the submission of Team Whereabouts, this would be impossible to implement. The city, country and in-comp schedule cannot be separated from the rest of the Whereabouts submission if it comes in via anything other than a specific tool.

Antidoping Switzerland

Ernst König, CEO (Switzerland)
NADO - NADO

SUBMITTED

Information relating to Whereabout Failures or Missed tests is to be retained for 12 months in the draft. That would exclude the possibility to pursue an ADRV under art. 2.3 or art. 2.5 WADC for evading Sample collection or providing fraudulent information to an ADO. For example, an athlete could change his whereabouts currently, so the ADO cannot find him. If the ADO does not notice this behaviour within 12 months and starts a disciplinary case, then the data is lost respectively cannot be retained. This is particularly annoying with regard to the statute of limitation, which is ten years. So theoretically an ADRV under art. 2.3 or art. 2.5 could be pursued but there is no data anymore to support the case.

UK Anti-Doping

Pola Murphy, Compliance Coordinator (United Kingdom)
NADO - NADO

SUBMITTED

2 – Whereabouts, and 8 – Athlete Biological Passport

We note that our suggestion from the last consultation round has been partly implemented, in that city/country/IC Whereabouts data can be retained for 10 years for all samples, but for more detailed whereabouts, the retention period is reduced to 12 months. We see significant practical difficulties with this, as all of the data, when not stored in ADAMS, will be stored in the same medium eg on a DCF, and therefore would need to be partly redacted to comply with this provision.

2 – Whereabouts Failures / Missed tests

Currently, information relating to Whereabouts Failures (Missed Tests or Filing Failures) is to be retained for 18 months, and the new draft has reduced this to 12 months. However, as we have previously submitted, UKAD has found that this information can be relevant to an Article 2.4 ADRV even after a Missed Test or Filing Failure has expired. Whilst an expired Whereabouts Failure could not count as one of the three for an Article 2.4 ADRV, a previous Whereabouts Failures may well be relevant when determining an Athlete's level of fault (e.g. because the Athlete received several reminders or failures in the past about an aspect of updating their whereabouts). For this reason we would prefer a retention period that is as long as legally possible, and not one tied to the terms of Article 2.4. If WADA does want to tie the retention period directly to the 12-month period in Article 2.4, we suggest that a 12-month retention period is not long enough in any event. It creates the risk that an ADO could delete a Whereabouts Failure after precisely 12 months, and then a week or so later become aware of a whereabouts failure by an Athlete that took place less than a year after the one that it has deleted. This could lead to the fact that an Athlete has three Whereabouts Failures in a twelve-month period being missed. We would therefore suggest a fifteen-month retention period to allow time for Whereabouts Failures to be detected and actioned, and records checked, to ensure that any failures within the last twelve months will definitely still be on record, and so be acted on.

3 - TUE, supporting medical information

It is our recommendation that the retention time for the supporting medical information towards a TUE application is extended beyond the proposed 12 months from the expiry date of the TUE, to a period of five years.

This is because an ADO may be required to defend a historical decision to approve a TUE application well beyond this timeframe. It is therefore important that the ADO can access the supporting documents to be able to evidence how the medical information presented sufficiently fulfilled the ISTUE criteria.

Furthermore, this supporting medical evidence may prove to be a useful resource to the Legal Team of the ADO, for example if an Athlete asserts that an AAF is related to a medical condition for which they had previously been granted a TUE.

UKAD has developed an internal medical data retention framework for retaining the supporting medical documentation of TUE applications for a duration of 5 years. This includes TUE applications that were rejected by the UKAD TUE Committee and applications that were cancelled following a failure to provide further requested medical evidence.

With relation to rejected TUE applications, we would propose that these are retained on ADAMS for the same duration as a TUE approval form. After the period of retaining supporting medical evidence has finished, an ADO should still be able to access the main TUE page on ADAMS relating to that application and provide evidence of the decision that was reached.

In summary, UKAD disagrees with the proposed reduction in the retention time for the supporting medical information towards TUE applications and recommends that this retention period is extended to one of five years. We also believe that there should be parity between the retention periods on ADAMS for approved and rejected TUE applications.

8 - Athlete Biological Passport

The retention period is currently set at 10 years for ABP results, and is indefinite for ABP documentation packages. 'Results' includes; Biological variables, ATPF, APF, APMU reports, expert reviews and other supporting documentation. As the 'ABP Documentation Package' includes this data, it would seem logical to standardise these two retention periods, as follows.

Section 1.2 of The ABP Operating Guidelines highlights that the aim of the ABP program is to review '...changes in biological Markers of doping collated over an Athlete's career'. Many Athletes' careers last beyond 10 years, and as such it is worth considering the potential impact of the proposed

10-year data retention cap on the effectiveness of the program in years to come. We therefore suggest that the data retention policy be based on an Athlete's retirement status, and therefore that it be set at 2-4 years post retirement.

General Comment

It has been noted that the retention times built into the ADAMS database do not currently match those set out in the ISPPPI (e.g. Athlete whereabouts are still visible for longer than the retention times set out in Annex A - 2 – Whereabouts). The new ADAMS system should reflect the retention times that appear in the updated version of the ISPPPI, with data automatically deleted / archived as appropriate.