

INTERNATIONAL STANDARD FOR RESULTS MANAGEMENT (ISRM) Consultation - First consultation phase

Showing: All (184 Comments)

PART ONE: INTRODUCTION, CODE PROVISIONS AND DEFINITIONS (9)

World Rugby

SUBMITTED

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

World Rugby welcome this addition to the bank of International Standards which provides a logical framework for Results Management. We note however there are several documents to be drafted which make some of the provisions difficult to comment on or assess and which we look forward to in due course.

Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

GENERAL COMMENTS AND OBSERVATIONS ON THE INTERNATIONAL STANDARD IN ITS ENTIRETY

General remark

In our previous submissions we have expressed concerns on how the Code and the Standards are increasingly becoming more extended and complex with detailed wording. , The increased complexity of the Code requires further emphasis on the legal rights of persons being accused of an ADRV and that this might be mitigated by WADA implementing more detailed requirements on the hearing process and other means to guarantee due process. Hence, we commend WADA for establishing ISRM.

CAS' jurisprudence and procedural rules

The WADC was established, not only to protect the athletes' fundamental right to participate in a fair, doping-free sport, but also to ensure harmonized anti-doping programs at both international and national level. Against this backdrop, in our previous submissions, we advised WADA to consider how to likewise accomplish and ensure harmonized jurisprudence. Today there are many hearing bodies rendering decisions based on the Code, and there is undoubtedly a need for an appeal body whose decisions are considered binding for the various hearing bodies. It is important to establish a system, which will provide guidance in deciding subsequent cases with similar legal issues or facts. We expressed concern that CAS panels, when organized as individual arbitral tribunals, are not structurally equipped for ensuring such uniformity of jurisprudence. Hence, we were hopeful that ISRM would contain provisions and regulations for the procedural rules in cases brought before CAS. We also suggested for WADA's consideration whether doping proceedings should be organized by an antidoping division in both first and second instance with a limited number of arbitrators. Our suggestion also included the introduction of plenary hearings in cases dealing with fundamental questions or interpretations of the Code.

We are pleased to see that ICAS has decided to evolve CAS to strengthen its role as a court of precedence for anti-doping cases, by establishing an anti-doping division. However, the procedural rules of CAS in doping cases should either be an integral part of the Code or ISRM, or at least be subject to a similar review process as the Code itself where we, as stakeholders, can provide our comments to the various articles of CAS' procedural rules.

US Olympic Committee

SUBMITTED

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

Overview & General Comments

As expressed when providing comments to Article 7 and Article 8 of the Code, the USOC believes that it is imperative that all athletes are afforded with a timely, fair, and impartial hearing and in a manner that is consistent worldwide. The USOC appreciates the efforts that WADA has undertaken in that regard within this new document, outlining numerous minimum standards that ADOs must comply with.

The USOC noticed that a number of integral annexes still need to be drafted, and hope that stakeholders are able to provide comments to those upon drafting. In particular, some U.S. National Federations have concerns about how ABP cases are processed. Considering that the Results Management Requirements and Procedures for the Athlete Biological Passport annex still needs to be drafted, it would be helpful to get assurances that the results management of those cases do not allow for “cases on the fence” to slip through the system.

Council of Europe

SUBMITTED

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

The Council of Europe supports the introduction of this International Standard and recommends that the standard includes both investigation and prosecution as these issues are closely related and should be reviewed in the same context. The standard should as a principle ensure an objective and thorough investigation of all potential ADRVs and give both parties access to all documents relevant for the case.

Anti-Doping Norway

SUBMITTED

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

General

ADNO strongly support the introduction of this International Standard.

We recommend that the standard include both investigation and prosecution as these issues are closely related and should be reviewed in the same context. Procedural rules concerning investigation should be defined.

We note that some parts are still to be drafted, such as WA failures. We request been given the opportunity to review these drafts.

The standard should create a clear separation between the reporting body (including intelligence, testing, investigation and prosecution) and the judicial body covering hearing and appeals.

The standard should, as a principle, ensure an objective and thorough investigation of all potential ADRVs.

Both (all) parties should have access to all documents relevant for the case.

Doping Authority Netherlands

SUBMITTED

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

Doping Authority Netherlands (DAN) welcomes the extraction of the Results Management processes, partly contained in the current International Standard for Testing and Investigations, into the new International Standard for Results Management (ISRM). The ISRM is an important comprehensive standard that safeguards the rights of athletes.

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

The Standard for result management describes the process encompassing between initial review (for an analytical case) or notification of a potential anti-doping rule violations through notification and charge, until the final resolution of the hearing and appeal process. In this text we have found some points in which we disagree. On one hand, the article 4 refers to the Responsibility for conducting Results Management, as we have said previously, our system is structured in public law body whose rules are in laws and regulations of general application and approved by our national parliament, so the participation of private entities and private foreign institutions, is not possible. This system is based on the 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.

Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

As a general comment, ensure the term “Vulnerable Person” is updated as per the approved definitions in the Code, as it currently proposes the term “Protected Person.”

Conseil supérieur des sports

SUBMITTED

Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

1.0 Introduction and Scope

The purpose of the International Standard for Results Management is to set out the core responsibilities of Anti-Doping Organizations with respect to Results Management.

2.0 Code Provisions

1.

3.0 Terms and Definitions

2.

3.1 2021 Code Defined Terms

3.

3.2 ISTI Defined Terms

4.

3.3 ISL Defined Terms

5.

3.4 ISRM Defined Terms

- Hearing Process: The process encompassing the timeframe between the appointment of a hearing panel until the issuance and notification of a decision by the hearing panel
- Results Management: The process encompassing the timeframe between initial review (for an analytical case) or notification of (a) potential anti-doping rule violation(s) .
- Results Management Authority: The Anti-Doping Organization responsible for conducting Results Management in a given case.

1.0 Introduction and Scope (1)

International Paralympic Committee

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

SUBMITTED

It is difficult to fully comment on this Standard, as the document has not been finished. Some of the details to be written in the annexes will be very important to the value of the overall document.

3.0 Terms and Definitions

3.1 2021 Code Defined Terms (1)

Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

SUBMITTED

The Standard uses the term 'Protected Person' and 'Vulnerable Person' interchangeably. The term 'Protected Person' should always be used to remain consistent with the Code.

3.4 ISRM Defined Terms

3.4.1 Hearing Process (1)

Anti-Doping Norway

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

SUBMITTED

3.4.1 Hearing Process

This definition makes no sense for those hearing panels that has permanent independent members. In these instances, the process will start when the panel receives a case. An option could be do define a hearing panel.

3.4.2 Results Management (1)

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

Drafting note:

The definition of Results Management seems to be drafted with regard to Anti Doping Rule Violations. There is however in both this standard as well as in the ISTI reference made to Results Management to a potential whereabouts failure. The definition should take into account that the Results management

process for whereabouts failures is different from the general definition as included in the draft. Therefore, it could be preferable to have a different definition for Results Management for Whereabouts Failures, this being the timeframe between the reporting of a potential whereabouts failure until the decision on the whereabouts failure. This could be done referring to the procedure in the Annex (to be drafted).

PART TWO: RESULTS MANAGEMENT PROCESS (3)

US Olympic Committee

SUBMITTED

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

Having clear procedural steps is necessary for an efficient and expedient process. However, in practicality, many cases are settled, and the procedural steps are not followed. At the initial notification and throughout various points in the case, athletes are not aware of the possibility of simply working directly with the ADO to agree to a resolution. WADA should consider including commentary that ADOs should provide athletes with information about resolution methods at any and all steps in the process.

Anti-Doping Singapore

SUBMITTED

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

There does not seem to be any parts of the proposed IS for Results Management that cover an ADRV for Prohibited Association. This area is assessed under the Code Compliance Questionnaire, and there should be standards and guidelines for this.

Conseil supérieur des sports

SUBMITTED

Matheo TRIKI, Sportif Rugby (Espagne)
WADA - Others

1.

General Principle: In principle and subject to the Specific Cases set out at 4.1.2 below Results Management shall be the responsibility, and shall be governed by the procedural rules.

1.

1.

2.

Any Anti-Doping Organization seeking to conduct Results Management outside of the authority provided in this Article 4.1 may seek approval to do so from WADA.

3.

If an Athlete or other Person retires while Results Management is underway, the Anti-Doping Organization with Results Management Authority retains jurisdiction for Results Management.

4. If an Athlete or other Person retires before Results Management has begun, the Anti-Doping Organization which would have had Results Management Authority over the Athlete or other Person at the time the Athlete or other Person committed an anti-doping rule violation has jurisdiction for Results Management.

4.1.2 Specific Cases

-Event Organizations

- National Anti-Doping Organization Testing of non-nationals, non-residents, etc.
- Delegation by International Federation to National Anti-Doping Organization or National Federation
- WADA-conducted Testing
- Major Events
- Whereabouts Failures
- Results Management for Athlete Passport Cases
- WADA Designation
- Disputes

Confidentiality of Results Management

4.3 Public Disclosure

- 1.

4.4 Timeliness

5.0 First Results Management Phase

5.1 Adverse Analytical Findings

5.2 Atypical Findings

- 1.

5.3 Matters not involving an Adverse Analytical Finding or Atypical Finding

5.4 Decision not to move forward

6.0 Provisional Suspensions

6.1 Scope

- 1.

6.2 Imposition of a Provisional Suspension

6.3 Voluntary Provisional Suspension

6.4 Notification

7.0 Charge

8.0 Hearing Process

1.

9.0 Decisions

4.0 General Principles

4.1 Responsibility for Conducting Results Management (2)

AEPSAD

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

SUBMITTED

The Standard for result management describes the process encompassing between initial review (for an analytical case) or notification of a potential anti-doping rule violations through notification and charge, until the final resolution of the hearing and appeal process. In this text we have found some points in which we disagree. On one hand, the article 4 refers to the Responsibility for conducting Results Management, as we have said previously, our system is structured in public law body whose rules are in laws and regulations of general application and approved by our national parliament, so the participation of private entities and private foreign institutions, is not possible. This system is based on the 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.

International Paralympic Committee

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

SUBMITTED

As the term "Test Authority" is used in ADAMS, should it be used here as well?

4.1.1 General Principle

4.1.1.1 (1)

Union Cycliste Internationale

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

SUBMITTED

4.1.1.1 a) The UCI would suggest replacing “the ADO which initiated and directed sample collection” with “Testing Authority”.

4.1.1.1 b) 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.

4.1.2 Specific Cases

4.1.2.1 National Anti-Doping Organization Testing for International Federations and/or Major Event Organizations (2)

Union Cycliste Internationale

SUBMITTED

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

The UCI would suggest to add “unless provided otherwise by the ADOs in the delegation agreement”

UK Anti-Doping

SUBMITTED

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

“...for a test of a...” should be “...for a test or a...”

4.1.2.2 National Anti-Doping Organization Testing of non-nationals, non-residents, etc. (2)**Union Cycliste Internationale**

SUBMITTED

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

The UCI would suggest adding the following Comment to clarify the process.

Before contacting the athlete, the NADO shall inform the International Federation concerned of the reasons why it cannot or refuses to conduct the results management of the case. If the International Federation disagrees with the reasons brought forward by the NADO, WADA shall decide which organization has Results Management Authority in accordance with Article 4.1.2.9.

Once the International Federation has agreed to take on Results Management of the case, the NADO shall inform the athlete in writing that it will not be conducting the results management of his/her case and of the reasons thereof and shall clarify which organization will do it in its place.

Sport Ireland

SUBMITTED

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

This provision is identical to Article 7.1.1 of the draft Code and it may therefore be unnecessary for it to appear in both the draft Code and the ISRM.

In addition, the difficulty is that the rules of some IFs allow them to direct that the NADO which has already declined to exercise Results Management authority shall conduct Results Management. This is inappropriate and appears to us to be contrary to the Code which refers to the IF directing a third party (i.e. not the ADO which has already refused to exercise Results Management Authority).

4.1.2.3 Delegation by International Federation to National Anti-Doping Organization or National Federation (10)**World Rugby**

SUBMITTED

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

This is a welcome clarification which has been an area of confusion across a number of our

Union Cycliste Internationale

SUBMITTED

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

The UCI suggests adding a Comment clarifying that the IF remains the responsible authority under the Code to ensure compliance.

Council of Europe

SUBMITTED

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

4.1.2.3

National sport federations are not anti-doping organizations, so they could not act as Results Management Authorities.

Anti Doping Denmark

SUBMITTED

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

According to article 4.1.2.3, if its anti-doping rules authorize it, an International Federation can decide to delegate its authority for Results Management to a NF or a NADO, which will then act as the Results Management Authority provided that it must apply the anti-doping rules of the International Federation.

As a NADO, we believe that this rule is potentially very unfair to NFs and NADOs. It is a fact that a results management procedure may be very costly, involving substantial amounts of both time and money. For a NADO to conduct a results management procedure applying the IF's anti-doping rules which may differ from the NADO's rules would mean an added burden on the NADO.

We acknowledge that for some cases, it may be the best solution to change the results management authority from one ADO to another. Particularly out of fairness to the athlete due to language barriers, etc. If there is a dispute about this between ADOs, WADA can take a decision according to the proposed Code article 7.1.5 (and ISRM article 4.1.2.8) whereby WADA may direct another ADO to conduct results management, but the costs must be reimbursed by the ADO refusing to handle the case.

We suggest that a similar principle is introduced in article 4.1.2.3 whereby the article would read:

4.1.2.3 Delegation by International Federation to National Anti-Doping Organization or National Federation: *"An International Federation may, if authorized by its anti-doping rules, delegate its authority for Results Management to a National Federation or a National Anti-Doping Organization, which will act as the Results Management Authority provided that it must apply the anti-doping rules of the International Federation. In such case, the International Federation shall reimburse the costs and attorney's fees of conducting Results Management to the other Anti-Doping Organization. If, authorized by its own anti-doping rules, the other Anti-Doping Organisation refuses to accept Results Management authority, the matter will be resolved by WADA in accordance with the Code's article 7.1.5. Failure to conduct Results Management as directed or failure to reimburse costs and attorney's fees shall be considered an act of non-compliance."*

We believe that this would be a much fairer solution to the problem and it would also be aligned with article 4.1.2.9 - disputes.

Sport Ireland

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

SUBMITTED

This provides that an IF may, if authorised by its anti-doping rules, delegate its authority for results management to a NF or a NADO. Sport Ireland's view is that an IF should not be able to delegate to a NADO without the NADO's agreement.

Anti-Doping Norway

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

SUBMITTED

4.1.2.3 Delegation by IF to NADOs or NFs

An International Federation (IF), being the Results Management Authority (RMA) of a case, should, as a principle, not be able to delegate its authority to a National Federation (NF). Only the National or Regional Anti-Doping Organisation (NADO or RADO), should be able to handle a possible rule violation and act as the RMA on a national level.

If the authority is delegated to the national level, the RMA should apply the anti-doping rules of the NADO. If this is not acceptable to the IF, they should not delegate the RMA to the national level.

NADA

Regine Reiser, Result Management (Deutschland)
NADO - NADO

SUBMITTED

This rule should be reviewed because its legal disbalance.

While the delegation of the Results Management from an IF to its NF is based on the legal statutes, normally there is no legal basis between the IF and an NADO.

So, the delegation from the IF shall only be possible if the NADO agrees or based on an collaboration agreeent between the IF and the NADO.

RUSADA

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

SUBMITTED

National sport federations are not anti-doping organizations, so they could not act as Results Management Authorities.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 4.1.2.3, the notion of International Federations delegating results management to the NADO or National Federation continues to be problematic. CCES doesn't see it as appropriate that IFs can impose, simply by writing it in their rules, the requirement that a NADO or National Federation have to take over a case. National Federations do not typically have the capacity or understanding required to manage results cases and many NADOs (and RADOs) do not necessarily have the financial resources to take on cases resulting from testing that they did not conduct. The system could require a standing

agreement between the NADO and IF which stipulates the circumstances when a NADO would take on a case, or an agreement would need to be made at the time for the NADO to take over the case. If the NADO did not agree, then the IF continues to be responsible for results management of the case. CCES does not believe it is appropriate for a National Federation to be involved in this process at all given the lack knowledge and capacity to properly manage the case.

International Testing Agency

SUBMITTED

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

Consider including a reference to third parties or service providers, so to reflect the right to delegate any aspect of Doping Control enshrined in Code Introduction and Art. 20.

4.1.2.4 WADA-conducted Testing (1)

Doping Authority Netherlands

SUBMITTED

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

Please remove ... “or, if there is no such *Anti-Doping Organization* willing to do so, any other *Anti-Doping Organization* that is willing to do so”. We are not in favor of creating jurisdiction where there is none. This will lead to legal conflict.

4.1.2.5 Major Events (2)

Union Cycliste Internationale

SUBMITTED

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

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.

If the current wording is maintained, then it should be clarified that the MEO shall keep the concerned IF and NADO updated at each stage of the results management and send them a copy of each communication to the athlete

US Olympic Committee

SUBMITTED

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

Section 4.1.2.5. Major Events

The USOC supports the additional clarification to the scope of results management authority for Major Event Organizations, and ensuing consequences, within this International Standard and the Code.

4.1.2.6 Whereabouts Failures (5)

Union Cycliste Internationale

SUBMITTED

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

The UCI would suggest adding “Unless agreed otherwise by the ADOs”.

US Olympic Committee

SUBMITTED

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

Section 4.1.2.6 Whereabouts Failures

For whereabouts filing failures and missed tests, the ADO should have the obligation to notify athletes exactly how many other filing failures and/or missed tests they have from *any* ADO that may have given one. Since athletes may have a combination of failures from their International Federation and/or NADO, there should be a mechanism in place to easily check any pending failures over the previous 12 months and include this in the notification to athletes. The burden it would take an ADO to provide this is small compared to the seriousness of the consequence of an anti-doping rule violation.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

Drafting note:

The definition of Results Management is not suitable due to the direct reference in the definition to a possible ADRV. A whereabouts failure is not an ADRV. There should be a specific definition that differentiates between (general) Results Management for a potential ADRV and (specific) results management for Whereabouts Failures)

Doping Authority Netherlands

SUBMITTED

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

We trust that the draft of the Results Management for Whereabouts Failures annex will reflect the annex I of the ISTI being in to force.

UK Anti-Doping

SUBMITTED

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

There is a lack of clarity around arrangements for athlete in multiple whereabouts pools. Is the intention that, for an athlete in both the IRTP and NRTP who has an IF as their whereabouts custodian, UKAD would pass any apparent whereabouts failures to the IF? What about athletes in the IRTP and DTP?

4.1.2.7 Results Management for Athlete Passport Cases (3)**Union Cycliste Internationale**

SUBMITTED

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

The UCI would suggest adding “Unless agreed otherwise by the ADOs”.

Doping Authority Netherlands

SUBMITTED

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

We welcome a revision of the ISTI annex L to be drafted into the Results Management Requirements and Procedures for the Athlete Biological Passport.

International Testing Agency

SUBMITTED

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

Consider clarifying that Passport Custodianship may be delegated/shifted based on existing understandings between ADOs.

4.1.2.8 WADA Designation (3)**NADO Flanders**

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

It should be further emphasized that RMA can only be requested from an ADO that has jurisdiction over the athlete.

It will be equally important for a NADO, such as NADOF that operates under Flemish antidoping legislation, that there is not only jurisdiction over the athlete, but also that results management falls within the scope of the legislation. The ADO must have jurisdiction over the athlete and at least residuary results management authority over the case.

Also, if WADA directs RMA to a NADO that is acting as a public authority and issues some sort of direct order, this can be perceived as interference in matters of internal law. It should be formulated as a request, and if the NADO considers it can have jurisdiction, failure to perform RMA is a matter of non compliance.

Doping Authority Netherlands

SUBMITTED

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

Analogous to 4.1.2.4, we are not in favor of creating jurisdiction where there is none. This will lead to legal dispute and conflict.

Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

In Article 4.1.2.8, CCES suggests clarification as the wording is not clear: if this is a non-adverse case, is this Article saying that WADA can direct the NADO to push the case forward?

4.1.2.9 Disputes (3)**Department of Health - National Integrity of Sport Unit**

SUBMITTED

Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Article 4.1.2.9.1 should be amended to clarify who, from WADA, determines which anti-doping organisation has results management authority. Does this refer to WADA management, the Executive Committee, or the Foundation Board?

Sport Ireland

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

SUBMITTED

Following publication of Annex III, Sport Ireland may wish to submit observations in this regard.

Doping Authority Netherlands

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

SUBMITTED

We encourage the protocol for disputes regarding the applicable Results Management Authority.

4.2 Confidentiality of Results Management

4.2.1 (1)

Union Cycliste Internationale

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

SUBMITTED

The UCI thinks that "Team in a Team Sport" should be replaced by "Team" only. For example, cycling is not considered as a Team Sport.

4.2.2 (1)

International Testing Agency

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

SUBMITTED

Consider the following addition: "(...) except in response to public comments attributed to, or based on information provided by, the Athlete, other Person or their entourage or other representatives **or other sources different from the Anti-Doping Organisation**"

4.3 Public Disclosure (4)

US Olympic Committee

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

SUBMITTED

Section 4.3. Public Disclosure

As noted within comments to the Code, the USOC advocates that individual subject to a provisional suspension must remain a confidential matter and not be subject to public disclosure. The USOC believes that limited details of the case can be provided to those on a need to know basis, but there is absolutely no reason that this type of information should be provided to the public at such stage of the case. Athletes should be afforded with the benefit of the doubt during the pendency of their case, and not until they have an opportunity to be heard and present their side, should the matter be made public.

Council of Europe

SUBMITTED

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

- as a principle, the Athletes name should only be published after a final verdict if it is of public interest (top level athletes). This will normally not include Lower Level Athletes.

-strongly recommend that public disclosure of “Vulnerable Persons” and “Recreational Athletes” are restricted specially as publication by name may have major consequences for the Athletes concerned.

- However, all the decisions should in their entirety be published in an anonymous form.

Anti-Doping Norway

SUBMITTED

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

4.3 Public Disclosure

As a principle, we believe that the Athletes name should only be published after a final verdict if it is of public interest (top level athletes). This will normally not include Lower Level Athletes.

However, all decisions should in their entirety be published in an anonymous form, including CAS decisions.

AEPSAD

SUBMITTED

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

In Article 4.3, referring to ‘Public disclosure’, we have not found any legal provision regarding the Minors public disclosure. In this regard we have the same criteria that we have explained before: In case of any anti-doping rule violation by a Minor, the identity of this Minor must never be published. On the other hand, we also have to take into consideration that our anti-doping system regulation only allows us to disclose anti-doping sanctions if they relate to serious offenses.

In relation to paragraph 3, we propose that if any Minor did not commit any anti-doping rule violation, the Anti-Doping Organization with results management responsibility never can put any effort to obtain such a consent. We must take into account that the consent has new legal criteria under European Data Protection provisions.

4.3.1 (2)

Anti Doping Denmark

SUBMITTED

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

Public disclosure. We appreciate the added clarity in the proposed wording of this article (and article 14.3.1 in the Code). However, the reference to article 4.3.5 seems to be wrong, should it not be article 5.1.2?

Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

An incorrect reference is made in Article 4.3.1. Where it states "in accordance with Article 4.3.5," it should read "in accordance with Article 4.3.2."

4.3.2 (2)**Union Cycliste Internationale**

SUBMITTED

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

The UCI thinks it should be clarified that it applies only where an ADRV has been established

NADA

SUBMITTED

Regine Reiser, Result Management (Deutschland)
NADO - NADO

The requirements of Art. 4.3.2 must be in line with the ISPPPI as well as (prior applicable) national or European Data Protection law.

4.3.3 (1)**Antidoping Switzerland**

SUBMITTED

Ernst König, CEO (Switzerland)
NADO - NADO

By publicly disclosing decisions of not guilty, even with the consent of the athlete, all parties involved are unnecessarily exposed and may suffer unjustified backlash. E.g. an athlete could still be accused of having tried to evade doping control by not properly filling out his Whereabouts even if he was found not guilty for three Whereabouts Failures. Or the ADO could be publicly blamed for going after "innocent" athletes. In addition, this approach is far from any best practice in (Swiss) jurisprudence. Therefore, such decision should only be publicly disclosed if it serves to exculpate the person who is subject to the decision, i.e. only if the public already was aware of the pending case.

4.3.5 (3)**Sport Ireland**

SUBMITTED

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

'Vulnerable Person' is not defined in the Code and it appears that the drafters intended to refer to 'Protected Person'.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

Reference is made to the Code article 14.3.6 in the current draft and the NADOF statement made there. In brief:

- the athlete definition in de WADC gives does not require mandatory public disclosure for lower level athletes as part of Consequences- athletes that are not national level, competing at a recreational level but for some reason are not considered recreational athletes under the definition, should not fall under mandatory public disclosure. They can be excluded from the flexible sanctioning for recreational athletes, but bringing them under public disclosure violates the principle of equality and is in the view of NADOF disproportionate.

Doping Authority Netherlands

SUBMITTED

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

- We welcome the protection of a vulnerable person. In our opinion consistency in use of the definition throughout the Code and its standards is key, therefore we are curious how the term vulnerable person relates to the 'Protected Person' as introduced in the draft 2021 Code.

4.4 Timeliness (8)**World Rugby**

SUBMITTED

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

We support this provision and think 6 months is realistic in most instances noting the current language is 'should' rather than 'shall'.

Union Cycliste Internationale

SUBMITTED

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

The UCI believes there should not be a hard deadline to complete the prosecution of a case. Some of the unwanted consequences of such a rule could include:

- Prosecution of lesser quality given the time constraints.
- Fewer or shorter investigations into whether the violation is part of an organized doping system.
- Reduced efforts to obtain Substantial Assistance
- Reduced efforts in relation to determining whether the theory brought forward by the athlete is the source of the AAF.

The UCI believes that the aim of anti-doping proceedings should be to resolve cases in an acceptable way to the ADO, athlete and WADA at the first instance (particularly considering the legal and expert costs that are incurred in CAS proceedings). Thus, while the UCI considers that cases should be conducted as expeditiously as possible, a hard deadline will not necessarily improve the system and the UCI believes the focus should rather on the quality of the prosecution. It should also be considered that complicated cases take more time.

In conclusion, the UCI would suggest that this provision be removed or amended by adding "in principle". If necessary, it could also be mentioned that either WADA or the athlete can request a single hearing at CAS if the case is not being resolved fast enough.

Council of Europe

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

SUBMITTED

4.4 and 8.7

Establishing a limited time frame for results management process and holding hearings may affect the quality of these procedures.

In practice, a reasonable significant increase of terms of the results management is due to two circumstances: providing the athlete with a extension to collect the necessary documents and conducting his own investigation of the entering of a prohibited substance in his/her body (for example, by contaminating food supplements) and the ADRV investigation by the anti-doping organizations themselves (which also sometimes takes a considerable amount of time).

Sport Ireland

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

SUBMITTED

This provision says that ADOs should be able to conduct Results Management within a maximum of six months from notification. Sport Ireland supports this principle.

However, our experience is that our hearing panels will almost always err on the side of giving an Athlete an adjournment if sought. We would wish to avoid a scenario in which an Athlete (or other Person) could argue that it is in fact a deadline and that any Results Management process which takes longer is somehow compromised.

Therefore, we are of the view that the wording should be softened slightly to say that the Results Management Authority "should where possible use reasonable endeavours" to ensure that Results Management is completed within six months of notification, or similar wording.

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

NADOF would like to indicate that from experience, not all cases can be adjudged in a timeframe of 6 months. This is considering that an appeal process is also to be handled within this timeframe. It is also not clear if the 6 month period is enforceable or if an athlete can invoke the as a right to have RM

finished within six months. Some cases can take lengthly debate, and it can be within the right to formulate a proper defense that more time is given to an athlete, or that an ADO needs to reply to the arguements made by the athlete.

RUSADA

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

SUBMITTED

Establishing a limited time frame for results management process and holding hearings may affect the quality of these procedures.

In practice, a reasonable significant increase of terms of the results management is due to two circumstances: providing the athlete with an extension to collect the necessary documents and conducting his own investigation of the entering of a prohibited substance in his/her body (for example, by contaminating food supplements) and the ADRV investigation by the anti-doping organizations themselves (which also sometimes takes a considerable amount of time).

UK Anti-Doping

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

SUBMITTED

This Article should make clear that the six months period for concluding Results Management is a guide and not mandated in any way, particularly as this time period may be exceeded due to the conduct of the person charged delaying matters.

International Testing Agency

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

SUBMITTED

The reference to 6-months may lead to specious challenges. Consider removing it, while keeping the general principle according to which "In the interest of fair and effective sport justice, anti-doping rule violations should be prosecuted in a timely manner (...)".

5.0 First Results Management Phase (1)

Swedish Sports Confederation

Tommy Forsgren, Results Mangement Manager (Sweden)
NADO - NADO

SUBMITTED

- 5.2.2 c
WADA to Clarify, or to give examples, on "serious pathology"

- 5.3.6.1 b
There is a "verb" missing and continuation of the sentence

5.1 Adverse Analytical Findings

5.1.1 Initial Review (1)

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 5.1.1, with respect to the wording “or will be granted,” there is no guidance regarding how long a NADO should reasonably wait to for the TUE to be granted. Perhaps a reasonable time frame should be identified.

5.1.1.1 Therapeutic Use Exemption (2)

UEFA

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

SUBMITTED

It would be advised to add one more provision between 5.1.1.1.1 and 5.1.1.1.2 to explain one step to undertake in the TUE assessment for the sake of clarity.

Suggested new 5.1.1.1.1bis: The RMA checks that the existing TUE is valid/recognised by RMA.

The results management Authority (RMO) checks the existing TUEs as described in Article 5.1.1.1.1. Then, the RMO needs to check whether the existing TUE is valid/recognised by the RMO. Should this be the case, the TUE would be considered as “applicable” as described in Article 5.1.1.1.2.

Reason: Some IF do not recognise automatically TUEs granted by NADO. Therefore an existing TUE approved by the NADO would not necessarily be valid/*applicable*

UK Anti-Doping

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

SUBMITTED

Comment to 5.1.1.1.1

This comment draws directly from the Prohibited List, and so will need to be update each time the Prohibited List is.

5.1.1.2 Apparent Departure from ISTI and/or ISL (1)

UK Anti-Doping

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

SUBMITTED

Propose removing the words “serious or obvious” as we do not think these are required, as any departure from the ISTI/ISL that could have caused the AAF would be serious. The review should look for any departures, regardless of how obvious they are.

5.1.1.3 Glucocorticosteroids (6)

Union Cycliste Internationale

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

SUBMITTED

The UCI thinks it should be added that the RM Authority may conduct additional investigations and contact the athlete.

Department of Health - National Integrity of Sport Unit

SUBMITTED

Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

Article 5.1.1.3 should be amended to allow the anti-doping organisation to communicate with the athlete and/or their doctor to obtain information to assist in determining the route of administration.

Organizacion Nacional Antidopaje de Uruguay

SUBMITTED

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

We consider it accurate and very practical for the Results Management Authority to verify that any indication of the administration route in the Doping Control form matches the level detected in the laboratory with the Laboratory (or other relevant expert), as well as a scientific investigation of why that adverse analyst is linked to the way of administration

Anti-Doping Norway

SUBMITTED

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

5.1.1.3 Glucocorticosteroids

There is no requirement to identify the route of administration on the Doping Control Form. It would be natural to ask the athlete of the route if the analysis result require such investigation.

UK Anti-Doping

SUBMITTED

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

As currently written, this check of the route of administration is solely based on the declaration made by the athlete on their Doping Control Form. This Article should make clear that the NADO can undertake any other investigation into the route of administration that it considers necessary.

International Testing Agency

SUBMITTED

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

Consider the following addition "(...) the Results Management Authority may request additional information and explanations related to the review of an *Adverse Analytical Finding*, including regarding the route of administration." - so to allow the RMA to gather additional evidences during the Initial Review in cases where the glucocorticoid was not declared on the DCF (e.g. because it was taken before the period contemplated on the DCF).

5.1.2 Notification**5.1.2.1 (7)****Union Cycliste Internationale**

SUBMITTED

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

5.1.2.1 Notification:

We would suggest also clarifying which documents should be provided to the athlete at the time of the notification (i.e. DCF + Lab Results Report).

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5.1.2.1 (d) :

The UCI understands that this deadline is not mandatory. In any event, the UCI believes that a deadline of 20 working days would be more reasonable considering the difficulties of communicating with athletes living in remote areas or with limited access to internet or who do not speak English.

US Olympic Committee

SUBMITTED

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

Section 5.1.2.1(f) Laboratory Documentation Package Fee

Although cognizant of the limited funds of some ADOs, the ability for ADOs to charge athletes for the laboratory package is unfair to the athlete who may have substantially less resources. Athletes deserve to know the basis upon which their allegations are founded, and the price for an ADO to pay for this service is disproportionately small compared to the harm it could cause to an athlete's defense. The USOC recommends that WADA consider requiring ADOs to provide this service as a minimum standard. As a caveat, WADA could allow ADOs to later recoup any laboratory package fee under exceptional circumstances.

UEFA

SUBMITTED

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

Article 5.1.2.1 d) It shall not be an obligation to set up a date for B analysis in the first notification to the athlete. It would be interesting to know how many B analysis are requested as an average. In our case, it is quite rare so it does not make sense to ask the laboratory to plan a B analysis if there are high chances it will not take place at all. Furthermore, it can be confusing for the athlete to have a date and place planned and a request if he wishes a B analysis. It might encourage to have B analysis, which will cause an unnecessary burden on the laboratories.

Article 5.1.2.1 b) The applicable consequences: this is defined partly in the Code but does this include the provisions that may be applicable for reducing the ineligibility ?

Anti Doping Denmark

SUBMITTED

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

5.1.2.1 d)

Proposed text: d) The scheduled date, time and place for the B Sample analysis if the Athlete or

Results Management Authority chooses to request an analysis of the B Sample;

[Comment to Article 5.1.2.1 d): In order to provide this information, the Results Management Authority shall immediately liaise with the Laboratory to determine a date for the B Sample analysis. The Results Management Authority should provide information and/or instructions in writing to the Laboratory regarding the B Sample analysis within ten (10) working days following the notification of an A Sample Adverse Analytical Finding by the Laboratory.

The timing of the B Sample confirmation analysis may be strictly fixed at short term with no postponement possible, when circumstances so justify. This can notably and without limitation be the case in the context of Testing during or immediately before or after Major Events.]

While this article is repeated from the current Code article 7.3 (d) we would like to point out that as an ADO where very few athletes request the analysis of the B-sample, we only schedule a time for B-sample analysis with the laboratory if the athlete requests the analysis. This saves time and effort for both ADO and lab in the vast majority of cases where no B-sample analysis is requested. We propose that this provision is made optional. The rule might then read:

"d) If the Athlete or Results Management Authority chooses to request an analysis of the B Sample the Results Management Authority must without delay schedule the date, time and place for the B Sample analysis."

The comment can remain unchanged.

5.1.2.1 g) , 5.3.1.2 and 7.1

We appreciate that the athlete's explanation is now specifically mentioned in articles 5.1.2.1 g), 5.3.1.2 and 7.1. However, we believe that the importance of hearing the athlete's explanation before a charge is made in accordance with article 7 could be stressed further, for instance by adding the following wording from art. 5.3.2.1 to art. 5.1.2.1 (g):

"This shall include obtaining the Athlete's or other Person's explanation (either through interview or in writing) for the alleged anti-doping rule violation."

The reason for this proposal is that under the current code it is necessary for the Results Management authority to take a number of individual aspects into account before making the charge, such as the athlete's degree of intent, fault and negligence.

Anti-Doping Norway

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

SUBMITTED

5.1.2.1 d) A deadline of 10 days from A-sample analysis to the instructing to the Laboratory is too short. We recommend the deadline to be extended. The athlete would need to have received the notification and have had time to consider the facts before requesting a B-sample analysis.

Antidoping Switzerland

Ernst König, CEO (Switzerland)
NADO - NADO

SUBMITTED

Comment to art. 5.1.2.1 d)

The provision of that information within 10 working day following the notification of the A sample is not realistic given that an AAF will trigger different processes within the ADO (before notifying the athlete)

and that the athlete, once notified, will also have a deadline for providing his statement and potentially request the analysis of the B sample.

Setting a deadline for that process at all could lead to ADOs acting hasty in the aftermath of an AAF. Therefore, the information in question should rather be communicated to the lab within reasonable time.

UK Anti-Doping

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

SUBMITTED

Comment 5.1.2.1 (b)

Why is it necessary for both Articles 2.1 and 2.2 to be referred to in the notification and charging letter in all AAF cases?

Comment to 5.1.2.1(d)

We request clarity on what information / instructions the RMA is providing to the lab at this stage. It seems that what would be happening is the RMA requesting a date and time for any B sample analysis to take place? Or is this comment proposing that the RMA should be telling the lab whether or not the B sample will be analysed within this ten-day time frame?

5.1.2.2 (2)

Union Cycliste Internationale

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

SUBMITTED

WADA may wish to consider requiring that a fixed deadline be given to the athlete to provide his intentions regarding the controlled pharmacokinetic study. We would suggest also clarifying which documents should be provided to the athlete at the time of the notification. For example:

Salbutamol or Formoterol: The ADO shall give the Athlete a seven-day deadline to confirm if he intends to prove, through a controlled pharmacokinetic study, that the Adverse Analytical Finding was the consequence of a therapeutic dose [by inhalation] up to the maximum dose indicated under S3 of the Prohibited List. The rider should also be provided with a list of all WADA-Accredited Laboratories and the Guiding Principles of a controlled pharmacokinetic study.

Doping Authority Netherlands

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

SUBMITTED

5.1.2.2 c) We encourage the creation of the technical document on clenbuterol.

5.1.2.3 (3)

Union Cycliste Internationale

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

SUBMITTED

The UCI welcomes the possibility for the athlete to witness the B sample analysis via video conference.

The UCI believes that this could also be used as an option in simplifying what an ADO must do when an athlete claims not to be available on the proposed date. One option would be to proceed as follows:

■

If the Athlete requests the B Sample analysis but claims that he or his representative is not available on the scheduled date indicated by the Results Management Authority, the Results Management Authority shall liaise with the Laboratory and propose (at least) two alternative dates.

■

Such alternative dates should take into account: (i) the reasons for the athlete's unavailability; and (ii) the need to avoid any degradation of the sample and ensure timely prosecution.

■

If the Athlete claims not to be available on the alternative dates proposed, the Results Management Authority shall instruct the Laboratory to proceed regardless and appoint an Independent Witness to verify that the B Sample container shows no signs of Tampering and that the identifying numbers match that on the collection documentation. In this case, the athlete shall also be offered the opportunity to witness the process via video conference.

This would strike a balance between respecting the athlete's right to witness the B sample analysis and the ADO's need to proceed to the B sample analysis as soon as possible in order to avoid any degradation of the sample and ensure timely prosecution.

With the current situation, it is sometimes difficult for ADOs to make sure they have made a "reasonable attempt to find a suitable date". There always remains a risk that the Hearing Panel will determine they should have tried harder to find a suitable solution. We feel this would clarify the matter.

Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

SUBMITTED

Article 5.1.2.3 refers to an athlete as a 'he' or 'his' representative. This should be changed to reflect gender neutral language, as should any other examples of this throughout the Standard.

UK Anti-Doping

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

SUBMITTED

Article uses the pronoun "he". Should this now refer to "they" to be consistent with the Code drafting?

5.1.2.4 (2)

UEFA

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

SUBMITTED

Article 5.1.2.4 Independent witness: the definition of independent witness should not be too narrow. An ADO may want to appoint one of their DCO, a representative of the RMA with no conflict of interest

with the player.

UK Anti-Doping

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

SUBMITTED

“Convenient” in the fourth line should be “convenient for” or “convenient to”.

5.1.2.5 (2)

UEFA

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

SUBMITTED

Article 5.1.2.5 This provision in which a deadline of 10 calendar days to admit the anti-doping rule violation to potentially benefit from a one-year reduction in the period of ineligibility under article 10.8.1 should also apply in case the athlete waives the B analysis. It would be suggested to add this either in the first notification (Article 5.1.2.1) to the athlete or after the athlete has waived his right for a B analysis and the RMA also waives the B analysis and therefore add an extra article after article 5.1.2.1 and before 5.1.2.2. (see article 6.6.of the Code 2021 draft)

Sport Ireland

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

SUBMITTED

Article 5.1.2 provides that the initial notification letter to an Athlete shall provide him / her with the "*opportunity...to provide an explanation within a short deadline.*" Article 5.1.2.5 provides that after a B Sample result, the Results Management Authority "*shall grant the Athlete a short deadline to provide or supplement his/her explanations.*" This wording suggests that the deadline in the initial notification letter falls away if the B Sample is analysed, or at least that the Athlete can decline to provide an explanation until after the B Sample is analysed. Is this the intention?

5.1.2.6 (4)

Union Cycliste Internationale

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

SUBMITTED

The UCI believes the extent to which the team can/should be kept informed should be clarified (vs 4.2.1)

UK Anti-Doping

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

SUBMITTED

This Article presumes changes to ADAMS to enable the reporting of a notification of an AAF. This applies to other elements of the ISRM (e.g. 6.4.1).

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 5.1.2.6, the wording “any communication notified” and “notified by” is awkward. CCES recommends adjusting the wording in the article to: “Any notification provided to the Athlete under this Article 5.1.2 shall simultaneously be provided the Results Management Authority to the Athlete’s National Anti-Doping Organization(s), International Federation and WADA and shall promptly be reported into ADAMS.”

International Testing Agency

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

SUBMITTED

Under the literal meaning of the provision, each and every communication under 5.1.2 needs to be notified to the parties with right to appeal. In order to avoid excessive correspondence, consider clarifying that only relevant communications should be notified to the counterparties (i.e. AAF notification, imposition of Provisional Suspension, etc.).

5.2 Atypical Findings (1)**International Paralympic Committee**

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

SUBMITTED

It would be beneficial to have an explicit instruction on closing an ATF without declaring an AAF. How is a long term ATF investigation closed for ATFs such as LH?
Is it necessary to contact an athlete about an ATF that is closed without an ADRV?

5.2.1 (1)**Union Cycliste Internationale**

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

SUBMITTED

It would be useful to precise where the ADO can find out what exactly is the required investigation it must conduct

5.2.2 (2)**Union Cycliste Internationale**

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

SUBMITTED

5.2.2 (b):

The UCI's opinion is that this possibility should be limited to MEOs only. Otherwise, the term "Sport Organisation" should be defined.

UK Anti-Doping

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

SUBMITTED

5.2.2.b

As currently worded, this clause risks compromising an investigation if the Atypical result has to be disclosed to the Athlete, especially if the investigation is into a large number of Athletes / ASP. Consequently, there's a case for changing "the RMA shall..." to "the RMA may...".

5.3 Matters not involving an Adverse Analytical Finding or Atypical Finding (2)

Norwegian Olympic and Paralympic Committee and Confederation of Sports

Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

SUBMITTED

5.3 Matters not involving an Adverse Analytical Finding or Atypical Finding

5.3.1 Evading, Refusing or Failing to Submit to *Sample* collection or *Tampering* or *Attempted Tampering with Doping Control*

According to Article 5.3.1.2, the Results Management Authority shall i.a. "attempt to interview as many persons as possible who were present at the time of the alleged anti-doping rule violation....."Clearly, there should not be a requirement to attempt to interview as many persons as possible, regardless of the number present. The Results Management Authority should be required to attempt to interview persons present at the the time of the alleged anti-doping rule violation who might contribute with information, but not in a greater scale than what is necessary for the investigation. A limitation should be implemented.

5.3.4 Prohibited Association

Please confer Article 5.3.1.

International Paralympic Committee

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

SUBMITTED

It would be beneficial to have the process for the management of an admission, including the process for closing an admission without and ADRV (for instance if the athlete admits to take a substance that is not banned out-of-competition).

5.3.1 Evading, Refusing or Failing to Submit to Sample collection or Tampering or Attempted Tampering with Doping Control

5.3.1.1 (1)

Doping Authority Netherlands

SUBMITTED

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

We welcome a revision of the ISTI annex A to be drafted into the document Investigating a Possible Failure to Comply.

5.3.1.2 (2)

Anti Doping Denmark

SUBMITTED

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

5.1.2.1 g) , 5.3.1.2 and 7.1

We appreciate that the athlete's explanation is now specifically mentioned in articles 5.1.2.1 g), 5.3.1.2 and 7.1. However, we believe that the importance of hearing the athlete's explanation before a charge is made in accordance with article 7 could be stressed further, for instance by adding the following wording from art. 5.3.2.1 to art. 5.1.2.1 (g):

"This shall include obtaining the Athlete's or other Person's explanation (either through interview or in writing) for the alleged anti-doping rule violation."

The reason for this proposal is that under the current code it is necessary for the Results Management authority to take a number of individual aspects into account before making the charge, such as the athlete's degree of intent, fault and negligence.

UK Anti-Doping

SUBMITTED

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

5.3.1.2 / 5.3.4 The requirement to attempt to interview as many persons as possible ("who were present", in the case of 5.3.1.2) is too wide as this could be, for example, an entire squad. We would suggest that this requirement be limited to require the RMA to attempt to interview as many people who may be able to give material evidence as it considers appropriate in the circumstances. The same comment applies to Article 5.3.4. As currently worded these Articles may enable those subject to a charge to seek to invalidate perfectly proper investigations

5.3.4 Prohibited Association (2)

Sport Ireland

SUBMITTED

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

The words "...as many persons as possible..." should be revised, perhaps to "*as many persons as is reasonably required*".

UK Anti-Doping

SUBMITTED

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

The definition of the mental element of "Prohibited Association" ("...knew that there was a significant risk that the ASP had a disqualifying status...") is inconsistent with Article 2.10.2 of the draft Code ("...knew or should have known of the ASP's disqualifying status...").

5.3.5 Other Anti-Doping Rule Violations (1)

Sport Ireland

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

SUBMITTED

The wording of this provision is somewhat unclear. The lack of clarity arises due to the wording "*...applicable anti-doping policies and rules adopted pursuant to the Code...*". It is not clear what anti-doping policies are being referred to.

5.3.6 Notification under Article 5.3

5.3.6.1 (7)**Union Cycliste Internationale**

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

SUBMITTED

There appears to be a typo at 5.3.6.1 (b)

The UCI believes that such Notification should only occur once the ADO considers that the Athlete committed an ADRV (as opposed to may have).

The UCI would suggest that it be clarified that not all of the evidence relied on must be disclosed at this stage. There are multiple reasons for this, including:

■

Some evidence may be confidential, or the UCI may be dealing with witnesses who are unwilling to cooperate unless required to do so in a hearing and the athlete may be willing to accept the ADRV without disclosing those witness' identities.

■

Further evidence may be discovered/obtained following notification.

With that said, all available evidence should be disclosed when the case is referred to the hearing body.

ISU

Christine Cardis, Anti-Doping Administrator (Switzerland)
Sport - IF – Winter Olympic

SUBMITTED

b) The relevant factual circumstances that the Results Management Authority;

This sentence is incomplete

US Olympic Committee

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

SUBMITTED

Section 5.3.6.1(b)

This is simply to call attention to the fact that it appears this sentence in this section is incomplete.

Sport Ireland

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

SUBMITTED

Article 5.3.6.1.(b). This provision appears to be incomplete.

UK Anti-Doping

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

SUBMITTED

5.3.6.1.b

This Article is missing some words, that appear to have been added to the end of 5.3.6.1.c in error.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

Article 5.3.6.1 b) may be missing a portion of the sentence. Should it read similar to 5.3.6.1 c)? If so, it would read: "The relevant factual circumstances that the Results Management Authority considers demonstrate that the Athlete or other Person may have committed (an) anti-doping rule violation(s);"

International Testing Agency

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

SUBMITTED

5.4.6.1 b) appears to be incomplete.

5.3.6.2 (3)

Union Cycliste Internationale

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

SUBMITTED

The UCI believes the extent to which the team can/should be kept informed should be clarified (vs 4.2.1)

UK Anti-Doping

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

SUBMITTED

Comment to 5.3.6.2

5.3.6.2 5.1.2.6 should be 5.3.6.2. The same applies to the Comment to Article 7.2, which states “Comment to 7.25.1.2.6”.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 5.3.6.2, the wording “the communication notified” and “notified by” is awkward. CCES recommends adjusting the wording in the article to: “The notification provided to the Athlete simultaneously be provided by the Results Management Authority to the Athlete’s National Anti-Doping Organization(s), International Federation and WADA and shall promptly be reported into ADAMS.”

The Comment to Article 5.3.6.2 has an incorrect reference to Article 5.1.2.6.

5.4 Decision not to move forward (1)

Union Cycliste Internationale

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

SUBMITTED

The UCI thinks that the athlete should only be notified of a decision not to move forward if he was notified of a potential ADRV or of the start of an investigation. For example, Athletes should not be notified of a decision not to move forward with an ATF or with a Failure to Comply. ATFs and failures to comply are sometimes used to conduct Target Testing on athletes therefore it would be detrimental to inform the athlete.

6.0 Provisional Suspensions (1)

US Olympic Committee

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

SUBMITTED

Section 6. Provisional Suspensions

See USOC comments within the Code and Section 4.3 related to the restriction of being able to participate in activities.

6.1 Scope

6.1.1 (1)

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In principle, a Provisional Suspension means that an Athlete or other Person is barred temporarily from participating in any Competition or activity in accordance with Article 10.14.1 of the Code prior to the final decision at a hearing pursuant to Article 8.0.

Does the scope of the prohibitions during a Provisional Suspension match exactly the prohibitions during a sanction or is it only a prohibition under Code-compliant organizations? Does it apply in professional leagues? If this is the intent, it should be explicitly stated that the prohibitions during the provisional suspension match the prohibitions during a sanction.

6.1.2 (3)

Union Cycliste Internationale

SUBMITTED

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

The UCI would suggest clarifying to which RMAs exactly this article applies to (e.g. MEO, NOC). The current wording could lead to confusion given that many IFs are also the ruling body of an Event. There also appears to be a typo in the article number referred to (i.e. 4.3.5)

Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

Some language appears to be missing, or the language may be unclear, in Article 6.1.2, where the sentence ends with “respectively team selection.”

International Testing Agency

SUBMITTED

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

The wording of this provision seems unclear. Consider better clarifying its content.

6.2 Imposition of a Provisional Suspension

6.2.1 Mandatory Provisional Suspension

6.2.1.1 (2)

Union Cycliste Internationale

SUBMITTED

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

As mentioned in our WADC Comments, 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).

Sport Ireland

SUBMITTED

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

We would suggest that the words "...notification of Article 5" be replaced with "notification provided for in Article 5".

6.2.1.2 (1)

International Testing Agency

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

SUBMITTED

In the interest of fairness, consider expanding the plausible grounds on which the Provisional Suspension could be cancelled; for instance: (1) the assertion of an anti-doping rule violation has no reasonable prospect of being upheld, (2) there is a strong arguable case that the Athlete bears No Fault or Negligence for the anti-doping rule violation asserted, (3) some other facts or circumstances exist that make it clearly unfair to impose or maintain the Provisional Suspension.

6.2.2 Discretionary Provisional Suspension

6.2.2.1 (3)

Doping Authority Netherlands

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

SUBMITTED

Comment to Article 6.2.2.1: It is not up to the Result Management Authority being a NADO to recover forfeited prize money.

UK Anti-Doping

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

SUBMITTED

The words "rule violation" are missing from the third line, after "...an anti-doping...".

International Testing Agency

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

SUBMITTED

Consider clarifying grounds or guiding criteria for ADOs to decide on the imposition of Discretionary Provisional Suspension; for instance: (1) fairness grounds; (2) available evidences; (2) seriousness of the ADRV, including potential sanction to be imposed; (3) impact of a continued participation of the athlete; (4) time of the season considering the specificities of the sport, etc.

6.3 Voluntary Provisional Suspension

6.3.1 (2)

Union Cycliste Internationale

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

SUBMITTED

Please refer to the comment we made in the third consultation phase of the 2021 WADC

Anti-Doping Norway

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

SUBMITTED

6.3.1

A deadline of 10 calendar days from time of notification of other rule violations we believe is too short and ask for a minimum of 15 calendar days.

6.4 Notification (1)

Department of Health - National Integrity of Sport Unit

Luke Janeczko, Policy Officer (Australia)
Public Authorities - Government

SUBMITTED

Article 6.4 should include the person's national level sporting organisation in the list of notifications for issuing or lifting of a provisional suspension.

7.0 Charge (3)

Council of Europe

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

SUBMITTED

7.0 Charge

- The Athlete should be informed, have access to new documentation, be given time to prepare his/her defense and to request additional investigation (if the ADO has the burden of proof).

- It should be possible for the Results Management Authority to waive charges, if new evidence indicates that the standard of proof has not been met.

Anti-Doping Norway

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

SUBMITTED

7.0 Charge

ADNO suggest that a requirement is added ensuring the Athlete is informed of the charge imposed, have access to new documentation, be given time to prepare a defense and to request additional investigation (if the ADO has the burden of proof).

ADNO also suggest that it should be possible for the RMA to waive charges, if new evidence indicates that the standard of proof has not been met.

It should be a requirement that the RMA is obligated to ensure that all relevant factual issues of the case is documented.

NADA

Regine Reiser, Result Management (Deutschland)
NADO - NADO

SUBMITTED

Rules and requirements in Art. 7.0 ("charge") should be a Guideline and not mandatory.
Due to specific arbitral procedures, the requirements of a charge as well as Statement of the Claim will be guided by national law (civil law and/or arbitration law)

Union Cycliste Internationale

SUBMITTED

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

The UCI thinks that the Case Resolution Agreement should be proposed at this stage already instead of the Acceptance of Consequences. As mentioned in the WADC Comments, 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 would also suggest to consider carefully whether this step is the "assertion" of the ADRV and ensure that this makes sense with the way in which this concept is used in the Code.

ISU

SUBMITTED

Christine Cardis, Anti-Doping Administrator (Switzerland)
Sport - IF – Winter Olympic

1. d) Shall grant a deadline of not more than twenty days from receipt of the letter of charge
1. In general why the ISRM at many places introduces a deadline of 20 days. It would be advisable to use either 14 days or 21 days (as for CAS).
1. This comments is valid for the all ISRM where "20 days" is set as deadline.

Anti Doping Denmark

SUBMITTED

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

5.1.2.1 g) , 5.3.1.2 and 7.1

We appreciate that the athlete's explanation is now specifically mentioned in articles 5.1.2.1 g), 5.3.1.2 and 7.1. However, we believe that the importance of hearing the athlete's explanation before a charge is made in accordance with article 7 could be stressed further, for instance by adding the following wording from art. 5.3.2.1 to art. 5.1.2.1 (g):

"This shall include obtaining the Athlete's or other Person's explanation (either through interview or in writing) for the alleged anti-doping rule violation."

The reason for this proposal is that under the current code it is necessary for the Results Management authority to take a number of individual aspects into account before making the charge, such as the athlete's degree of intent, fault and negligence.

7.1.d-f

A number of ADOs has not introduced the Code's article 8.3 (waiver of hearing) in their anti-doping rules and refer all cases to a hearing in the relevant hearing panel. This has until now been accepted by WADA. Anti Doping Denmark is one of these ADOs and we would like to keep this arrangement which has suited anti-doping in Denmark well for more than 25 years.

We therefore suggest that article 7.1.d-f (as well as article 8.3 in the Code) is made optional rather than mandatory.

Sport Ireland

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

SUBMITTED

The implication of this Article appears to be that there is now a mandated two-step process, notification of the Athlete and then the charging of the Athlete. This additional step appears to us to be somewhat unnecessary as most if not all of the information in the charging letter will be available and already provided to the Athlete as part of the notification letter.

It appears to us that it is only if the explanation provided by the Athlete were to cause us to seek a different period of Ineligibility that an additional charging letter, setting out the revised Consequences sought might be appropriate.

If the new process is implemented unchanged it appears to Sport Ireland that the new process introduces additional burdens on RMAs in relation to provisional suspensions in particular. More particularly there is no clarity as to how the issue of provisional suspension is to be managed in circumstances where a "charge" letter cannot be issued for a number of weeks or months. In these circumstances, as no allegations are made by the RMA it appears that they would be unable to impose such a measure. In addition, if it seeks to impose such a measure, that step would likely result in challenge by the Athlete.

It is our view that detailed guidance documents with process flow charts and template documents (to include template notification letters and letters of charge) would also be of assistance if the two stage process is mandated.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

Article 7.1.d. should read "ten days", rather than "20 days," to be consistent with the draft of the Code, assuming that change to the related Code Article is approved.

In Article 7.1.g, CCES suggests rewording the phrase "obtain a suspension of Consequences" to "obtain a reduction of Consequences" for greater clarity.

7.3 (3)

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

For a NADO under public law such as NADOF, the reasoned decision should be issued by the same panel (or a member of that panel) that decides after a hearing. If NADOF would issue a decision, this would be under the constitutional law a decision of a public body that can be appealed before the Council of State (Administrative high court). Therefore, it should be left to the rules of the RMA/NADO if this can be a reasoned decision by the RMA/NADO itself, or if the actual decision can be referred to a panel or an appointed person that has a similar status as the hearing panel, within the limits of the proposed consequences.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 7.3, the phrasing “notify it” seems awkward, and perhaps should be replaced by “notify the parties.” The sentence would then read: “...the Results Management Authority shall promptly issue the decision and notify the parties in accordance with Article 9.0.”

International Testing Agency

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

SUBMITTED

Clarify the process of deemed admission and acceptance of a violation

7.6 Sole instance before CAS (1)

AEPSAD

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

SUBMITTED

In article 7.6, referring to ‘Sole instance before CAS’, we strongly disagree because our legal system will not allow it in any case. The CAS Jurisdiction is a private system and it cannot be accepted in Spanish law, since it would supposed to exclude the administrative acts of the Spanish administrative and judicial control. (excluding the Spanish Sport court decisions). Our sanctioning procedures is rendered by public law and any athlete or other person can be governed by the rules of the CAS.

7.6.2 (1)

Union Cycliste Internationale

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

SUBMITTED

The UCI would suggest to clarify that an ADO with a right to appeal can only refuse a CAS hearing when it has a legitimate reason to refuse. Otherwise, this could unnecessarily delay the proceedings.

8.0 Hearing Process (3)

Norwegian Olympic and Paralympic Committee and Confederation of Sports

Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

SUBMITTED

8.0 Hearing Process

General remark

We are pleased that WADA with this new standard, implements additional detailed regulations on the hearing process and other means to satisfy and guarantee due process. We believe this would safeguard and further strengthen the efforts of protecting fair play and clean sport. Being in line with the concerns and suggestions presented in our two submissions, we are pleased to see that several of our proposals are included in this article.

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. Hence, 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.

Furthermore, we repeat the suggestion that the Code should explicitly require that dissents are publicly disclosed.

US Olympic Committee

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

SUBMITTED

Section 8. Hearing Process

The Hearing Process section includes the statement that individuals have the right to an advisor. In addition, the USOC believes that initial notifications should include information about this right.

Section 8.7 provides that the hearing process shall be conducted within a reasonable amount of time, and Section 8.8 provides for an expedited process for Events. To expand upon this, the USOC advocates that all ADOs provide for an expedited process for any selection event to qualify for international competitions.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

The wording throughout Article 8.0 leaves the impression that a hearing panel must include more than one person. CCES recommends the section be written such that a hearing panel can consist of a single panel member or multiple panel members.

8.1 (1)

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

In Article 8.1, change “subject to its anti-doping rule” to “subject to its anti-doping rules.”

8.2 (3)

Union Cycliste Internationale

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

SUBMITTED

The UCI thinks it shall be clarified from where shall the members receive anti-doping education. If from the ADO, it must be specified that this does not interfere with their independence/impartiality.

Canadian Centre for Ethics in Sport

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

SUBMITTED

The comment to 8.2 provides for panels of different sizes but it's not particularly clear that this means a sole-arbitrator is appropriate.

International Testing Agency

SUBMITTED

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

In relation to 8.2 and 8.3, it should be clarified that a hearing can be conducted by a Single Judge/Sole Arbitrator. The proposed draft refers to "hearing panel members" and its multi-disciplinary composition exclusively. For cost-effectiveness, first instance proceedings often ought to be handled by one adjudicator. This practice has not been considered as a breach of due process and has been generally accepted by CAS insofar that CAS has not overruled a first instance decision on the basis that it was rendered by a Single judge. Moreover, CAS often acts on the basis of a Sole Arbitrator.

8.3 (3)

Union Cycliste Internationale

SUBMITTED

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

The UCI thinks a reference to the IBA guidelines could be appropriate here

UEFA

SUBMITTED

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

Article 8.3: "Upon appointment to a hearing panel, each hearing panel member shall sign a declaration that there are no facts or circumstances known to him/her which might call into question his/her impartiality in the eyes of any of the parties, other than any circumstances disclosed in the declaration. If such facts or circumstances arise at a later stage of the Hearing Process, the relevant hearing panel member shall promptly disclose them to the parties".

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

NADOF would prefer this to be a general commitment when accepting to be part of the pool of hearing panel members. This means signing a general agreement not specifically related to the case, but upon acceptance of being included in the pool. This general agreement or declaration includes the obligation to report any facts or circumstances that can affect impartiality in the case before taking part in the hearing process, but does not require to sign a declaration for every single case. This could in fact be timesaving when working with a relative small pool of members that have regular appointments during a certain timeframe..

8.5 (4)

8.5 The rules governing the activities of the Results Management Authority shall guarantee the operational independence of hearing panel members.

We find the wording of the comment to be too limited, as it does not cover all persons acting on behalf of the RMA. Furthermore, we disapprove of the proposed wording suggesting that a person can be “an organ”. Hence, we recommend the following amended comment;

[A person cannot at the same time be a member of and/or clerk of hearing panels of a Results Management Authority and perform other tasks on behalf of the same result Management Authority. Further, hearing panels shall be in a position to conduct the hearing and decision-making process without interference from the Results Management Authority or any third party.]

Council of Europe

SUBMITTED

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

“persons who are an organ or sit in a commission of the RMA cannot be appointed as members and/or clerks of hearing panels of the RMA”.

- First, the exact meaning of the word “organ” seems unclear and is at the root of our worries.

- Second, a clear distinction should be made, regarding incompatibility rules, between members of hearing panels and clerks, as it is the case in the case law of the ECHR. The only requirements of the Court regarding clerks is that they shall be functionally subject to the authority of the panel and act under their instruction and supervision. The current wording of the comment goes further as staff members of ADOs may be prohibited from assisting, as clerks, hearing panels of these ADOs.

NADO Flanders

SUBMITTED

Jurgen Secember, Legal Adviser (België)
NADO - NADO

It should be clarified what is meant by "organ" or "sitting in a commission of the RMA".

From a NADOF perspective, no personnel can ever be a member of a hearing panel. For clerks, it should be less strict, only excluding personnel that is directly involved in any part of decision making or preparation of decision making in RM cases.

It can prove cost effective if personnel of NADO, can provide administrative assistance to the hearing panel. In that capacity, members of NADO personnel (that have no decision or executive powers and act merely as clerks) can work under direct supervision and orders of the hearing panel for the purpose of organising and facilitating the hearing, but the personnel costs can be borne directly by the NADO. NADOF provides with this kind of service to hearing panels where certain administrative duties are taken up by an appointed member of NADO personnel, acting independently from NADO when performing these duties. This is not considered interference with the impartiality and independence of the hearing panel and has proven to be cost saving. The hearing panel can also benefit from the expertise and IT infrastructure of the NADO.

Canadian Centre for Ethics in Sport

SUBMITTED

Elizabeth Carson, Manager, Sport Services (Canada)
NADO - NADO

If WADA wishes to guarantee the independent operation of hearing panels, as noted in Article 8.5, ensure they are listed as being “fair, impartial and independent” under the Code in Article 8.1. A hearing, as described in Code Article 8.1, only involves a “fair and impartial hearing panel,” with no mention of an independent hearing panel.

8.7 (4)

Council of Europe

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

SUBMITTED

4.4 and 8.7

Establishing a limited time frame for results management process and holding hearings may affect the quality of these procedures.

In practice, a reasonable significant increase of terms of the results management is due to two circumstances: providing the athlete with a extension to collect the necessary documents and conducting his own investigation of the entering of a prohibited substance in his/her body (for example, by contaminating food supplements) and the ADRV investigation by the anti-doping organizations themselves (which also sometimes takes a considerable amount of time).

Anti-Doping Norway

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

SUBMITTED

8.0 Hearing Process

8.7

ADNO support the minimum principles of a Hearing Process.

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

part c) reasonable time

It is in many cases the request of an athlete to have a lengthy debate in order to prove certain elements before the hearing panel. Limiting the time frame might deprive parties of properly addressing issues raised before the hearing panel.

NADOF agrees that hearings should be conducted and finalised in a reasonable time, but is not in favour of imposing strict terms or time frames.

RUSADA

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

SUBMITTED

Establishing a limited time frame for results management process and holding hearings may affect the quality of these procedures.

In practice, a reasonable significant increase of terms of the results management is due to two

circumstances: providing the athlete with an extension to collect the necessary documents and conducting his own investigation of the entering of a prohibited substance in his/her body (for example, by contaminating food supplements) and the ADRV investigation by the anti-doping organizations themselves (which also sometimes takes a considerable amount of time).

9.0 Decisions

9.1 Content

9.1.1 (3)

Union Cycliste Internationale

SUBMITTED

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

9.1.1 (c):

The following part below seems to require something that is not required under the Code. If the athlete does not raise a defence, the ADO has only done a prima facie evaluation of this in its review (i.e. see 5.1.1.2.):

Where the violation is based on an Adverse Analytical Finding, the decision shall inter alia set out that there was no departure from the International Standards, or that the alleged departure(s) did or did not cause the Adverse Analytical Finding and demonstrate that the violation of Article 2.1 of the Code is made out (see Article 2.1.2 of the Code).

9.1.1 (d)

It could also be clarified that the decision must set out whether any credit is to be granted for a provisional suspension and if any part of the period of ineligibility is to be suspended based on substantial assistance.

9.1.1 (e)

The UCI thinks it should be clarified what needs to be set out (and when) in terms of the avenues of appeal (e.g. is the panel required to obtain the information regarding the athlete's level prior to issuing the decision so that it can set out the details in the final para of this provision?)

UEFA

SUBMITTED

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

Article 9.1.1: It is mentioned that all decisions “must not purport to be limited in to a geographic area or sport (...). How can an International Federation impose a sanction to be applicable in a sport different from its own ? Who is responsible to check that the athlete is not competing in other sport during his ineligibility ?

UK Anti-Doping

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

SUBMITTED

9.1.1

The word “in” should be deleted from “limited in to a particular geographic area”.

Comment to 9.1.1.d

“The decision shall identify...” should be “The decision shall identify...”.

9.2 Notification (1)**Union Cycliste Internationale**

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

SUBMITTED

The UCI would suggest amending the title to Notification of Decision

9.2.2 (3)**Union Cycliste Internationale**

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

SUBMITTED

The UCI would suggest to remove the following:

The Results Management Authority shall ensure that the period of Ineligibility is duly respected.

The UCI is unsure how an ADO can ensure this beyond duly investigating and pursuing (where applicable) any potential breach of period of ineligibility

Anti-Doping Norway

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

SUBMITTED

9.2.2

It may be very difficult for the RMA to ensure that the period of ineligibility is respected. We believe that this requirement must be left to the sport itself, including reporting violation if relevant.

UK Anti-Doping

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

SUBMITTED

Further guidance would be helpful in relation to “The RMA shall ensure that the period of Ineligibility is duly respected”. Do WADA envisage minimum standards to achieve this?

9.2.4 (2)

UEFA

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

SUBMITTED

Article 9.2.4: It should be specified that the RMA has to be the owner of the sample in order to ask the laboratory to dispose of the sample. Furthermore, the disposal of the sample once the decision is final should not be compulsory. The ADO that owns the sample may want to keep the sample (rest of sample A and sample B) and has the right to do so.

Anti-Doping Norway

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

SUBMITTED

9.2.4

ADNO fail to understand why the laboratory must be notified of a disposed matter.

10.0 Appeals**10.2 (2)****Swedish Sports Confederation**

Tommy Forsgren, Results Mangement Manager (Sweden)
NADO - NADO

SUBMITTED

It can be considered unfair by athletes that under the current WADC is gets decisions on 1 to 4 years ineligibility

NADO Flanders

Jurgen Secember, Legal Adviser (België)
NADO - NADO

SUBMITTED

NADOF is in favour of deleting reference to 'arbitral' bodies. The appeal procedure for athletes below national level in Flanders is not an arbitral instance sensu stricto, but is fully impartial and independent.

10.3 (2)**Union Cycliste Internationale**

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

SUBMITTED

10.3 (b):

The UCI believes that all parties to any CAS appeal must ensure that not only WADA but also any other ADO with a right to appeal has been given timely notice of the appeal.

10.3 (c):

The UCI finds this article problematic in terms of costs for the ADOs.

The UCI's suggestion would be that:

- WADA may not unreasonably withhold approval of a settlement deemed reasonable by the ADO and athlete
- In the event that WADA insists on continuing the hearing despite the parties' agreement, WADA shall be required (and permitted by CAS) to intervene in the hearing and take over the ADOs position (i.e. the ADO should not be required to continue in the hearing – and cover the costs of same – if it does not agree with WADA's position on settlement).

Norwegian Olympic and Paralympic Committee and Confederation of Sports

SUBMITTED

Henriette Hillestad Thune, Head of Legal Department (Norway)
Sport - National Olympic Committee

10.3 With respect to appeals before CAS

Please confer our submission to “General comments and observations on the International Standard in its entirety.”