

Report of the WADA Working Group on Code Compliance

Preamble and Guiding Principles

The Working Group (**WG**) was established by the WADA Foundation Board (**FB**) at its meeting in Johannesburg in November 2013. The WG consists of:

Dr. Christiane Ayotte
Dr. Andy Parkinson
Adam Pengilly
Andrew Ryan
Richard W. Pound (Chair)

Its mandate is to present recommendations to the WADA Executive Committee (**EC**) for consideration by the EC at its meeting in May 2014.

In particular, the WG was asked to focus on compliance with the World Anti-Doping Code, as adopted by the FB in Johannesburg on the occasion of the Fourth World Conference on Doping in Sport, such amended Code to come into effect as of January 1, 2015. (**Code**)

Such forward-looking focus requires that, for purposes of its current mandate, the WG not dwell too much on experiences with the earlier iterations of the Code, but address, instead, the requirements needed to ensure that Signatories will be ready to perform all of their respective obligations pursuant to the amended Code, as and from January 1, 2015.

On the other hand, the WG report will necessarily be grounded to a certain extent in the knowledge of experiences with earlier versions of the Code and, in particular, the wide variation in the standards of anti-doping programs and the relatively low standard for Signatories to achieve compliance with such earlier versions. This was particularly true as to the absence of a link between quality and compliance, with the result that formal compliance could be achieved with no correlation to effective anti-doping programs.

As of January 1, 2015, there will have been well over a decade of shared experiences with a universally applicable Code and the overwhelming majority of Signatories will have had (or should have had) considerable experience operating within an international sport system governed, as to doping, by the Code.

At its base, an effective anti-doping program must be concerned with and be dedicated to protecting the "clean" athletes and to ensuring that their rights are protected. This is not to be achieved at the expense of the rights of those charged with anti-doping rule violations, which must also remain protected, but the fundamental purpose and objective of the Code, which informs its application, is the positive value of doping-free sport practiced by all involved.

Johannesburg Declaration

Additional principled grounding of this WG report is derived from the unanimous adoption of the Johannesburg Declaration (**Johannesburg Declaration**) dated November 15, 2013, on the occasion of the Fourth World Conference on Doping in Sport. The WG has taken the Declaration as the good faith expression of commitments on the part of sport and public authorities in relation to the fight against doping in sport. The following extracts from the Declaration reflect the nature and intensity of the signatory commitments that bear, in particular, on Code compliance.

Concerned by the persistent threat that doping in sport represents, in total contradiction with the spirit of sport and to the detriment of the health of athletes;

Emphasising the need to protect all clean athletes, to preserve the integrity of sport competitions and to ensure a level playing field;

...

Disturbed by the fact that not only athletes, but also their entourage, including agents, coaches, medical and scientific personnel as well as other professionals, continue to be involved in doping activities;

...

Stressing the need to increase and intensify the complementary and joint efforts of the Olympic and Sports Movement, National Anti-Doping Organizations, Governments, Inter-governmental and Non-governmental Organisations in the fight against doping in sport;

...

Reaffirming that the adoption, implementation and review of the World Anti-Doping Code are essential steps for an effective fight against doping in sport;

Recognising that the World Anti-Doping Code has proven to be an effective instrument for the fight against doping in sport;

...

Expecting effective compliance with the UNESCO Convention and the World Anti-Doping Code through enforceable laws and rules as well as through an effective monitoring of program quality;

...

The World Conference

6. *Requires* National and Regional Anti-Doping Organizations, to implement and be fully compliant with the 2015 Code.

10. *Requires* the International Olympic Committee, the International Paralympic Committee, International Sports Federations, National Olympic Committees, National Paralympic Committees and Major Event Organisations to implement and be fully compliant with the 2015 Code;

Code Compliance

A preliminary question might well be what is meant by “compliance” with the Code? Compliance is not merely having in place a set of rules that conform with the language of the Code and the International Standards.¹

Perhaps an even more basic question might be, on what principled basis should “compliance” be pursued?

In the considered view of the WG, Code compliance should mean an enthusiastic, common and unwavering commitment by all Signatories to recognize and perform the obligations they have assumed regarding doping-free sport. Compliance with the mutual commitments contained in the Code – a Code that signatories negotiated, approved and adopted - should be a positive and willingly-assumed obligation to perform the agreed-upon part in the fight against doping in sport as a minimum commitment; it should not be characterized as a burden imposed on any Signatory against its will.

Code compliance should reflect each Signatory’s particular contribution to doping-free sport and the protection of clean athletes, and should acknowledge that all Signatories rely on each other for the good faith performance of their obligations, since, without a coordinated and consistent performance of all such obligations, it will never be possible to achieve doping-free sport. Thus, it is in the best interests of every athlete, every sport and every country that Code compliance be achieved.

In a sense, therefore, Code compliance is a means of demonstrating that Signatories meant what they said in the new Code and in the Declaration regarding their commitment to doping-free sport. It also enables other stakeholders (as well as the public at large) to determine whether rhetoric is matched by effective action, since the entire worldwide fight against doping in sport depends on consistency and harmonization.

This Report deals with several aspects of compliance, including the process of becoming compliant, the measurement of compliance and remedial and other measures to be applied when Code compliance has not been achieved by any particular signatory or group of signatories.

Operational Responsibilities

The primary objective of the report is to try to ensure that all Signatories have the opportunity and the motivation to become Code compliant, and for WADA to provide such assistance to Signatories as may be required to help achieve that objective. Since the adoption of the original Code in 2003, a considerable proportion of WADA’s activities has been directed at assisting Signatories to become Code compliant.

At the same time, however, it is not WADA’s responsibility to ensure that Signatories become Code compliant. That responsibility rests with the Signatories, each of which has undertaken the obligation to achieve Code compliance. It is they and their athletes (and athletes within their jurisdictions) who will benefit the most from Code compliance and they who must bear whatever consequences flow from their failure to do so. WADA’s role is to provide guidance and to assist, when requested, any efforts by Signatories. Ultimately, however, WADA has the monitoring responsibility of determining whether Code compliance has been achieved by Signatories and of reporting to the responsible authorities accordingly.

¹ For purposes of this Report, references to Code compliance shall include compliance with the International Standards.

That said, this Report is directed primarily at the means of achieving the desired result of Code compliance on the part of all Signatories.

Any declaration of non-compliance on the part of any Signatory means that there has been a failure that has compromised the objective of doping-free sport because one or more Signatories did not fulfill the obligations that they have assumed.

The responsible authorities, in each reported circumstance of non-compliance, have obligations within the world anti-doping system to take the necessary measures. "Responsible authorities" will likely vary according to the circumstances and their responsibilities may, on occasion, overlap. Compliance matters may lead to required actions by IFs, NADOs, and major event organizers (**MEO**). It is assumed and expected, by all stakeholders, that they will act accordingly.

The Process of Compliance

It is impossible to over-emphasize the importance of 2014 and the amount of effort that will be required for all Signatories to have Code compliant rules, effective January 1, 2015. As indicated earlier, WADA has assumed the role of facilitator for such purpose and has provided advice, precedents and other support to Signatories to assist them in their efforts to achieve Code compliance on a timely basis. This includes:

- Reminding all Signatories of their obligations regarding Code compliance
- Posting Revised Model Rules on the WADA website, including redlined comparisons between the Model Rules based on the 2009 Code and those relating to the 2015 Code
- Meeting with Signatories in Lausanne on March 25-26, 2014, to remind them of their obligations and to provide general guidance as to the requirements
- Meeting with some countries and IFs that face greater challenges in amending their rules
- Providing ongoing personalized assistance and guidance to ADOs that require it
- Emphasizing key elements of Code compliance beside testing, such as results management, TUEs, education, investigations and additional areas specific to IFs, NADOs, MEO, etc.

These activities will continue throughout 2014. Assuming the EC accepts the WG proposals, this means that WADA will focus on maximizing the achievement of Code compliance by as many Signatories as possible before December 31, 2014. Signatories will be invited to submit copies of their new rules in advance of their adoption for review by WADA, to avoid the need to recommence the process should their rules not be sufficient to achieve Code compliance. Reports will be provided to the EC in September and November 2014 to indicate progress. In particular, in November 2014, a list of Signatories that have not yet adopted rules that will be Code compliant will be presented to the FB, with the recommendation that notice be given regarding those which do not achieve Code compliance by December 31, 2014.

The objective of all Signatories should be to have in place, as and from January 1, 2015 Code compliant rules which will lead to a Code compliant anti-doping program. Such a program must include, as a minimum, the following elements:

1. An education program pursuant to Article 18.1 of the Code
2. A TUE program in accordance with Article 4.4 of the Code and the ISTUE
3. A testing program in which sample collection and analysis are done through a Test Distribution program developed in accordance with Article 5.4.2 of the Code (plus the ISTI)
4. Investigations conducted pursuant to Article 5.1.2 of the Code and the ISTI
5. Results management conducted pursuant to Articles 8, 9, 10, 11 and 13 of the Code

6. ADAMS/Clearing house activity in accordance with Article 14 of the Code
7. Data protection in accordance with ISPPPI

While operationally in 2014, Signatories will continue to apply the 2009 Code, there will be significant changes in the nature and extent of their responsibilities when the 2015 Code comes into effect, and significant changes in the responsibilities delegated to WADA under the Code.

Recommendations

1. Signatories that do not have approved rules in place by 1 January 2015 that comply with the Code, and that are capable of being implemented by that date, shall not be considered in compliance with the Code (Article 23.4 Code). WADA should publish, on the first working day of 2015, a list of Signatories that have not yet adopted the rules required to become Code compliant.
2. Ensuring that Code compliance is effective will require that adequate resources be allocated to the relevant activities. The EC should ensure that the WADA Finance Committee is fully informed regarding the importance of this matter in respect of the 2015 Budget.
3. Because the FB is unlikely to possess the necessary expertise to make the required technical and other judgment assessments on compliance matters, the WG recommends that the EC create an independent expert group (**Expert Group**) to carry out compliance-related functions and related recommendations. The composition of the Expert Group in relation to compliance should be based on the required anti-doping competencies, including experience in auditing compliance, as distinguished from the “political” or “organizational” imperatives that may apply in other WADA activities. Since authority for compliance decisions rests with the FB, the Expert Group should provide independent assurance directly to the FB and make recommendations on compliance-related matters.² The WG recommends that the Expert Group be appointed prior to the November 2014 FB meeting and that the EC recommend to the FB that it approve the manner in which the Expert Group will function.
4. The WG agrees with the concept of tiered priorities and recommends that WADA management prepare for consideration by the EC and FB such proportionality considerations as may be considered reasonable in the circumstances of different signatories.
5. WADA should continue its positive and proactive provision of advice and support to all Signatories with respect to Code compliance.
6. The WG recommends that, prior to any declaration of non-Code compliance by the FB, there be a sliding scale of potential actions (e.g., recommendation, warning, provisional declaration of non-compliance, full declaration of non-compliance, notification to responsible authorities, public notification of non-compliance, etc.)

² Consider the advisability of seeking external assurance on the compliance process in general (e.g., ISO accreditation).

7. Where non-compliance is determined, in the case of an international federation, the IOC shall be advised accordingly. In cases of non-compliance by other ADOs or NADOs, similar notice shall be given, which may also include national governments and UNESCO.
8. Escalating responses should be considered in such cases by any competent authority, which may include financial measures (e.g., withholding of television or Olympic Solidarity funds), refusal of accreditation to sport and governmental officials, refusal to analyze samples coming from non-compliant NADOs, loss of representation on any WADA board, committee or working group, ineligibility to host events, suspension, expulsion, etc.³ Useful resort may be taken to considerations of a similar nature in matters of autonomy, under current study by the IFs.
9. Time limits should be established for “remedial” actions: where there is non-compliance, clean athletes are not being protected, so time limits should reflect a sense of urgency in achieving the necessary solutions.
10. WADA should continue its policy of following best practices in its relationships with Signatories (e.g., the management of case files for all complicated and related activities).

³ Examples given are for general consideration only, especially by competent authorities other than WADA itself.

Measuring Quality

The fundamental difference between measurement under the 2015 Code and predecessor Codes is that, now, the key element is the measurement of the quality of the program, (including tests, results management, TUEs and education) not merely the existence of rules and the performance of a certain number of tests, with little, if any, focus on the effectiveness of such tests.

Changes resulting from this new emphasis will include the following:

- Significantly enhanced self-assessment and subsequent review/verification
- Independent expert assessment of the anti-doping program (including, for example, TDPs, TUEs, results management)
- Analysis of reports provided by signatories
- Analysis of data captured by ADAMS and other sources
- Proactive investigations of possible compliance-related issues
- Coordination with other compliance-oriented organizations
- On-site evaluations
- Corrective action plans

As a result of the additional obligations undertaken by Signatories and stakeholders for purposes of the 2015 Code, WADA will have a significant amount of information and data at its disposition for purposes of evaluating both compliance and effectiveness of anti-doping programs. Rigorous analysis of such information will enable WADA to make a much more informed assessment of effectiveness. This will enable assessments to be made regarding not only technical compliance with the Code, but also to identify evident shortcomings that may fail to meet reasonable expectations and which may require a determination of non-compliance. An important component of such analysis depends on the proper use by Signatories of ADAMS (or other approved system) pursuant to Article 14.5 of the Code.

Measurement of effectiveness will be an empirical work-in-progress, based on increasing sophistication in identifying the specific elements of effective anti-doping programs. It is reasonable to expect that, with increasing experience with results-oriented programs, anti-doping programs will continue to improve. The proposed Expert Group may include persons having experience with quality management programs, together with other areas of expertise considered advisable.

Monitoring Responsibilities

All signatories and stakeholders have agreed to accept responsibilities regarding improvements to the anti-doping measures now included in the 2015 Code and International Standards. The references below serve as specific reminders of those obligations.

IOC

- implement requirements of Article 20.1 of the Code

IPC

- implement requirements of Article 20.2 of the Code

International Federations

- implement requirements of Article 20.3 of the Code

NOCs/NPCs

- implement requirements of Article 20.4 of the Code

NADOs

- implement requirements of Article 20.5 of the Code

MEOs

- implement requirements of Article 20.6 of the Code

WADA

- implement requirements of Article 20.7 of the Code
- publish compliance reports (Article 23.5.5 of the Code)

Signatories have a general responsibility, in addition to their specific Code obligations, to ensure that they conduct results management and prepare related reports in a timely, complete and transparent manner, that they share problems, issues and difficulties relating to the application of the Code, that they report to WADA on the outcomes of investigations (ISTI Article 12.4.3) and that they carry out their Code-related activities in accordance with best practices and in complete good faith.

The WG wishes to record its thanks to WADA Management and Staff for their assistance in obtaining background information and for greatly facilitating its work.

Respectfully submitted,

May 2, 2014

APPENDIX

Principle Issues on which WG Assumes EC Concurrence

1. The EC embraces the principles underlying the Code and Johannesburg Declaration.
2. Since the matter of enhanced Code compliance monitoring reflects a major increase in signatories' expectations of WADA, significant funding and resources will be allocated to Code compliance activities.
3. There is no reason why stakeholders should not have the necessary rules in place to be formally Code compliant as of January 1, 2015.
4. The EC agrees on adoption of a tiered approach (e.g., Tier 1, Tier 2 and Tier 3) for Code compliance monitoring and reporting purposes. On this model, more rigorous conduct will be expected of those in Tier 1 than for those in Tier 2 and the least would be expected from Tier 3.
5. The EC agrees that early Code compliance in Tier 1 situations must be a priority.
6. The EC agrees that reports should be regular, complete and frequent. This includes both regular agenda items as well as the ability to deal quickly with situations that require fast action.
7. The EC prefers the continued offering of assistance in becoming Code compliant, combined with escalating actions and tight delays for curing particular aspects of possible non-compliance.
8. The EC is willing to establish an independent expert group to assist with Code compliance activities.